

2008 No. 3237

CORPORATION TAX

The Loan Relationships and Derivative Contracts (Change of Accounting Practice) (Amendment) Regulations 2008

Made - - - - *17th December 2008*
Laid before the House of Commons *17th December 2008*
Coming into force - - *7th January 2009*

The Treasury make the following Regulations in exercise of the powers conferred by sections 85B(3) and (5) of, and paragraph 19B of Schedule 9 to, the Finance Act 1996(a), paragraph 17C of Schedule 26 to the Finance Act 2002(b) and paragraphs 52(1) and (2) of Schedule 4 to the Finance Act 2005(c).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Loan Relationships and Derivative Contracts (Change of Accounting Practice) (Amendment) Regulations 2008 and shall come into force on 7th January 2009.

(2) Regulation 4 has effect in relation to periods of account beginning on or after 1st January 2008 and ending after 31 December 2008.

(3) Regulation 5 has effect in relation to periods of account beginning on or after 1st January 2009.

Amendment of the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004

2. The Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004(d) are amended as follows.

Amendment of regulation 2

3. In regulation 2 (interpretation) at the appropriate place insert—

““exchange gains and losses”—

(a) in relation to a loan relationship shall be construed in accordance with sections 103(1A) and 103(1B) of the Finance Act 1996(e); and

(a) 1996 c. 8; section 85B was inserted by paragraph 3 of Schedule 10 to the Finance Act 2004 (c. 12). Paragraph 19B was inserted by paragraph 36 of that Schedule.
(b) 2002 c. 23; paragraph 17C was inserted by paragraph 50 of Schedule 10 to the Finance Act 2004.
(c) 2005 c. 7.
(d) S.I. 2004/3271, amended by S.I. 2004/3347, 2005/3383, 2006/3238, 2007/950 and 2007/3432.
(e) Section 103(1A) and (1B) were inserted by paragraph 7 of Schedule 23 to the Finance Act 2002.

- (b) in relation to a derivative contract shall be construed in accordance with paragraphs 54(2) and (3) of Schedule 26 to the Finance Act 2002;”.

Amendment of regulation 3A

4.—(1) Regulation 3A(a) (prescribed debits and credits brought into account over prescribed period) is amended as follows.

(2) In paragraph (2) insert at the beginning “Subject to paragraphs (7A) and (7B),”.

(3) In paragraph (5) insert at the beginning “Subject to paragraphs (7A) and (7B),”.

(4) After paragraph (7) insert—

“(7A) To the extent that the applicable amounts (or fractions of applicable amounts) represent debits or credits to which sub-paragraph (ca) or (da) of regulation 3C(2) would apply if those sub-paragraphs had been in force at the time that the debits or credits arose—

(a) those amounts shall not be brought into account under paragraph (2) or (5) in relation to any accounting period beginning on or after 1st January 2009;

(b) the relevant fraction of those amounts shall not be brought into account under paragraph (2) or (5) in relation to any accounting period beginning on or after 1st January 2008 and ending after 31st December 2008.

(7B) In paragraph (7A)(b) the relevant fraction is—

$$1 - \frac{A}{B}$$

where—

A is the number of days in the accounting period up to, and including, 31st December 2008, and

B is the total number of days in the accounting period.”.

Amendment of regulation 3C

5.—(1) Regulation 3C (prescribed debits and credits not brought into account)(b) is amended as follows.

(2) In paragraph (2)—

(a) after sub-paragraph (c) insert—

“(ca) debits and credits in relation to a derivative contract the underlying subject matter of which consists wholly or partly of a currency, to the extent that—

(i) those debits and credits represent the reversal of exchange gains and losses arising to the company in an accounting period before the later period, and

(ii) those exchange gains and losses have not been brought into account for the purposes of corporation tax by virtue of paragraph 16(3) of Schedule 26 to Finance Act 2002(c), regulations 4 to 11 of the Exchange Gains and Losses (Alternative Method of Calculation of Gain or Loss) Regulations 1994(d) or regulation 4 of the Disregard Regulations(e);”;

(b) after sub-paragraph (d) insert—

(a) Regulation 3A was inserted by S.I. 2005/3383 and amended by S.I. 2007/3432.
(b) Regulation 3C was inserted by S.I. 2005/3383 and amended by S.I. 2006/3238 and 2007/950.
(c) Paragraph 16(3) was substituted by paragraph 48 of Schedule 10 to the Finance Act 2004.
(d) S.I. 1994/3227, relevantly amended by S.I. 1996/1347, 2000/3315 and 2002/1969.
(e) S.I. 2004/3256; regulation 4 was amended by S.I. 2005/2012, 2005/3374 and 2007/3431. “Disregard Regulations” is defined in regulation 3C(4).

“(da) debits and credits in relation to a loan relationship which is denominated in a currency which is not, or was not, the company’s functional currency, to the extent that—

- (i) those debits and credits represent the reversal of exchange gains and losses arising to the company in an accounting period before the later period, and
- (ii) those exchange gains and losses have not been brought into account for the purposes of corporation tax by virtue of section 84A(3) of the Finance Act 1996, regulations 4 to 11 of the Exchange Gains and Losses (Alternative Method of Calculation of Gain or Loss) Regulations 1994 or regulation 3 of the Disregard Regulations(a);”.

(3) In paragraph (4) insert at the end—

““underlying subject matter” has the meaning given in paragraph 11 of Schedule 26 to the Finance Act 2002(b).”.

Dave Watts
Steve McCabe

17th December 2008

Two of the Lords Commissioners for Her Majesty’s Treasury

(a) Regulation 3 was amended by S.I. 2005/2012, 2005/3374 and 2007/3431.
(b) Paragraph 11 was amended by S.I. 2005/2082 and 2005/2201.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004 (S.I. 2004/3271, as amended by S.I. 2005/3383, 2006/3238, 2007/950 and 2007/3432, “the principal Regulations”) which make provision for certain debits and credits not to be brought into account in the first accounting period of a company beginning on or after 1st January 2005, and for those debits and credits instead to be brought into account over a ten year period (beginning with the first period of account on or after 1st January 2006), or not to be brought into account for any period. These Regulations amend the principal Regulations to provide that debits and credits arising on a change of accounting policy which represent the reversal of foreign exchange gains or losses which were not taxed or relieved in earlier periods of account (as a result of the application of provisions matching those gains or losses to opposite gains or losses) are no longer to be brought into account.

Regulation 1 provides for citation, commencement and effect. Authority for the limited retrospective effect of these Regulations is given by paragraph 52(2) of Schedule 4 to the Finance Act 2005.

Regulation 2 introduces the amendments to the principal Regulations.

Regulation 3 amends regulation 2 of the principal Regulations (interpretation).

Regulation 4 amends regulation 3A of the principal Regulations (prescribed debits and credits brought into account over prescribed period). It deals with the case where debits and credits are currently being brought into account over a ten year period and provides that if those debits and credits would not be brought into account if the amendments made by regulation 5 (which extends the class of credits and debits which are not to be brought into account) had applied then, those debits and credits are not to be brought into account for any accounting period beginning on or after 1st January 2009, where the accounting period is within a period of account beginning on or after 1st January 2008. It also provides for a time based apportionment in relation to accounting periods which begin on or after 1st January 2008 and end after 31st December 2008.

Regulation 5 amends regulation 3C of the principal Regulations (prescribed debits and credits not brought into account) to extend the classes of specified debits and credits which are not to be brought into account in determining a company’s profit or loss for any period.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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