

2014 No. 3188

CORPORATION TAX

The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) (Amendment) Regulations 2014

<i>Made</i>	- - - -	<i>1st December 2014</i>
<i>Laid before the House of Commons</i>		<i>2nd December 2014</i>
<i>Coming into force</i>	- -	<i>31st December 2014</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 310, 328(4) and (7), 598(1)(a) and (4) and 606(4) and (7) of the Corporation Tax Act 2009(a).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) (Amendment) Regulations 2014 and come into force on 31st December 2014.

(2) These Regulations have effect from that date, but—

- (a) regulations 3, 4 and 5 have effect in relation to accounting periods beginning on or after 1st January 2015,
- (b) regulations 6 and 7 have effect in relation to periods of account beginning on or after 1st January 2015.

(3) For the purposes of regulations 3, 4 and 5, an accounting period beginning before and ending on or after 1st January 2015 is to be treated for the purposes of these Regulations as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.

Amendments to the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004

2. The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004(b) are amended as follows.

Non-lending money debts

3. In regulation 3 (exchange gains or losses arising from liabilities or assets hedging shares etc), omit paragraph (1A)(c).

(a) 2009 c. 4.
(b) S.I. 2004/3256, relevantly amended by S.I. 2005/2012, 2005/3374, 2006/3236, 2007/948, 2007/3431, 2009/1886, 2011/698, 2013/2781 and 2013/3209.
(c) Paragraph (1A) was inserted by S.I. 2005/2012.

Elections under regulation 4A

- 4.**—(1) Amend regulation 4A (relevant value)(a) as follows.
- (2) For paragraph (7) substitute—
- “(7) An election under paragraph (1)—
- (a) must be made by the company by notice in writing to an officer of Revenue and Customs, and
 - (b) must specify the review period.
- (7A) An election—
- (a) applies to all the shareholdings held by the company which are matched in accordance with regulation 3(3)(b) or 4(3)(b), and
 - (b) has effect from a date specified in the notice which must be later than the date the notice is given.
- (7B) An election may be amended or revoked by notice in writing to an officer of Revenue and Customs—
- (a) before the election has effect, or
 - (b) with effect from a date specified in the notice which must be—
 - (i) later than the date the notice is given, and
 - (ii) at least 12 months after the election was made.
- (7C) Where the date specified in a notice under paragraph (7) or (7B) is not the first day of an accounting period so much of the period as falls before that date and so much of the period as falls on or after that date are treated as separate accounting periods.”
- (3) Omit paragraphs (8) to (8B).
- 5.** In regulation 4C (review period)(b), in paragraph (1) for “regulations 4A(7)(e)” substitute “regulations 4A(7)(b)”.

Derivative contracts

- 6.** For regulation 6 substitute—

“Application of regulations 7, 8 and 9 in relation to derivative contracts where fair value accounting applies

- 6.**—(1) Regulation 7, 8 or 9 apply in relation to a derivative contract (which satisfies the conditions in regulation 7(1)(a), 8(1)(a) or 9(1), as the case may be) if—
- (a) an election under regulation 6A has effect in relation to the contract,
 - (b) the contract or part of the contract is a designated fair value hedge,
 - (c) the hedged item is a loan relationship in relation to which the company uses fair value accounting, or
 - (d) the contract forms part of an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage in relation to that contract that would not arise if regulation 7, 8 or 9 applies.
- (2) In paragraph (1)(d)—
- “arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
- “tax advantage” has the meaning given in section 1139 of CTA 2010(c).

(a) Regulation 4A was inserted by S.I. 2007/3431 and amended by S.I. 2011/698.
(b) Regulation 4C was inserted by S.I. 2011/698..
(c) 2010 c. 4.

Election to apply regulations 7, 8 or 9

6A.—(1) An election for the purposes of regulation 6(1)(a) must be made by a company by notice in writing to an officer of Revenue and Customs and applies regulations 7, 8 and 9 unless the notice states which of those regulations apply to the company’s derivative contracts.

(2) The election has effect—

- (a) in the case of a new adopter where the election is made on or before the later of the dates set out in paragraph (3), in relation to derivative contracts held in the first relevant period and any subsequent period, and
- (b) in any other case, in relation to derivative contracts entered into on or after a date specified in the election which must be later than the date the election is made, and in the case of a new adopter cannot be before two years after the end of the first relevant period.

(3) The dates referred to in paragraph (2)(a) are—

- (a) the date six months after the start of the first relevant period,
- (b) the date six months after the date the company first enters into a relevant derivative contract in relation to which the company uses fair value accounting, and
- (c) in the case of a company which is not a qualifying company for the purposes of Schedule 46 to the Finance Act 2009(a), the date 12 months after the end of the first relevant period.

(4) An election may be amended or revoked by notice in writing to an officer of Revenue and Customs—

- (a) in the case of an election made by a new adopter within paragraph (2)(a), before the later of the applicable dates set out in paragraph (3), or
- (b) in any other case—
 - (i) before the election has effect, or
 - (ii) after the election has effect, in relation to derivative contracts entered into on or after a date specified in the notice which must be later than the date the notice is given, and in the case of a new adopter cannot be before two years after the end of the first relevant period.

(5) For the purposes of this regulation—

- (a) a “new adopter” is a company which adopts fair value accounting for the first time on or after 1 January 2015 in relation to a relevant derivative contract,
- (b) “the first relevant period” is the first accounting period in which a company uses fair value accounting in relation to a relevant derivative contract,
- (c) a “relevant derivative contract” is a derivative contract which satisfies the conditions in regulation 7(1)(a), 8(1)(a) or 9(1).

Effect of elections on transfers within groups

6B.—(1) If a derivative contract, in relation to which regulation 7, 8 or 9 applies, is transferred by a company in circumstances in which section 625 of CTA 2009 would apply but for section 628 of that Act—

- (a) section 628 does not apply (and accordingly section 625 applies),
- (b) regulation 7, 8 or 9, as the case may be, applies for the purposes of determining the carrying value of the contract for the purposes of section 702 of CTA 2009 as those regulations apply for the purposes of determining the debits and credits to be brought into account under Part 7 of that Act, and

(a) 2009 c. 10, “qualifying company” is defined in paragraph 15 of Schedule 46.

(c) regulation 7, 8 or 9, as the case may be, applies in respect of that contract in relation to the transferee.

(2) If a derivative contract, in relation to which no election under regulation 6A has effect, is transferred by a company in circumstances in which section 625 of CTA 2009 applies or would apply but for section 628 of that Act, any election made by the transferee company under regulation 6A has no effect in relation to that contract.”

7.—(1) Immediately before regulation 9A(a), insert the following heading—

“Profits or losses arising from designated cash flow hedges”

(2) In regulation 9A—

(a) in paragraph (1) for sub-paragraph (c) substitute—

“(c) regulation 7, 8 or 9, as the case may be, does not apply in respect of contracts of that type.”, and

(b) for paragraph (3A) substitute—

“(3A) Where a derivative contract becomes a contract in relation to which debits and credits are prescribed by this regulation, or ceases to be such a contract, the amount to be brought into account for the purposes of section 598(1)(b) of CTA 2009 is such amount as is just and reasonable in the circumstances, and with regard to whether as a result of the change any amounts cease to be brought into account or are brought into account more than once.”

Definitions and updating statutory references

8.—(1) In regulation 2(1)—

(a) before the definition of “deferred shares”(b) insert—

““CTA 2009” means the Corporation Tax Act 2009;

“CTA 2010 means the Corporation Tax Act 2010;”;

(b) in the definition of “derivative contract”, for “Schedule 26 to the Finance Act 2002”(c) substitute “Part 7 of CTA 2009”;

(c) in the definition of “exchange gain or loss”, for “Paragraph 54 of Schedule 26 to the Finance Act 2002” substitute “section 475 of CTA 2009”;

(d) in the definition of “fair value accounting”, for “section 103 of the Finance Act 1996”(d) substitute “section 313 of CTA 2009”;

(e) in the definition of “loan relationship”(e), for “section 81 of the Finance Act 1996” substitute “section 302 of CTA 2009”;

(f) in the definition of “a paragraph 50A credit or debit”(f)—

(i) for “a paragraph 50A credit or debit” substitute “a section 614 or 615 credit or debit”;

(ii) for “paragraph 50A of Schedule 26 to the Finance Act 2002” substitute “section 614 or 615 of CTA 2009”;

(g) in the definition of “a prior period adjustment credit or debit”(g), for “paragraph 17B(1)(b) of Schedule 26 to the Finance Act 2002” substitute “section 597(1)(b) of CTA 2009”;

(a) Regulation 9A was inserted by S.I. 2005/3374 and amended by S.I. 2006/3236.

(b) This definition was inserted by S.I. 2013/2781.

(c) 2002 c. 23.

(d) 1996 c.8.

(e) This definition was inserted by S.I. 2005/2012.

(f) This definition was inserted by S.I. 2005/2012.

(g) This definition was inserted by S.I. 2005/2012.

- (h) in the definition of “underlying subject matter”, for “Schedule 26 to the Finance Act 2002” substitute “Part 7 of CTA 2009”.
- (2) In regulation 2(2)—
- (a) in the definition of “generally accepted accounting practice” for “section 50 of the Finance Act 2004” substitute “section 1127 of CTA 2010”;
- (b) after ““effective interest method”,” insert ““fair value hedge”,”.
- (3) In regulation 3(1) and (5), for “section 84A(3A) of the Finance Act 1996” substitute “section 328(4) of CTA 2009” in both places that it appears.
- (4) In regulation 4(1), for “paragraph 16(3A) and 17C(1)(a) of Schedule 26 to the Finance Act 2002” substitute “section 606(4) and 598(1)(a) of CTA 2009”.
- (5) In regulation 4(4A)(a), for “paragraph 16(3A) of Schedule 26 to the Finance Act 2002” substitute “section 606(4) of CTA 2009”.
- (6) In regulation 4A(9)(b), in the definition of “control”, for “section 840 of the Income and Corporation Taxes Act 1988”(c) substitute “section 1124 of CTA 2010”.
- (7) In regulation 5(4)—
- (a) for “section 84A(3) of the Finance Act 1996” substitute “section 328(3) of CTA 2009”;
- (b) for “section 84A(3A)” substitute “section 328(4)”;
- (c) for “paragraph 6D(2) of Schedule 28AA to the Taxes Act 1988” substitute “section 192(1) of the Taxation (International and Other Provisions) Act 2010(d)”.
- (8) In the following regulations, for “paragraph 17C(1)(a) of Schedule 26 to the Finance Act 2002” substitute “section 598(1)(a) of CTA 2009” in each place that it appears—
- (a) regulation 7(1)(e);
- (b) regulation 8(1)(f);
- (c) regulation 9(1), (5) and (6);
- (d) regulation 9A(1),(2) and (3)(g);
- (e) regulation 10(10) and (11).
- (9) In regulation 7(1) and 8(1), for “paragraph 50A credit or debit” substitute “section 614 or 615 credit or debit” in each place that it appears.
- (10) In regulation 7(4)(h) and 9(3), for “paragraph 16(3) of Schedule 26 to the Finance Act 2002” substitute “section 606(3) of CTA 2009” in both places that it appears.
- (11) In regulation 9(2) and (2A), for “paragraph 17C(1)(b) of Schedule 26 to the Finance Act 2002” substitute “section 598(1)(b) of CTA 2009”.
- (12) Omit regulation 9(7).
- (13) In regulation 10(1), for “paragraph 17C(1)(c) of Schedule 26 to the Finance Act 2002” substitute “section 598(1)(c) of CTA 2009”.
- (14) In regulation 10(3C)(i), for “paragraph 28(6) of Schedule 26 to the Finance Act 2002” substitute “section 624(3) of CTA 2009”.
- (15) In regulation 10(4), for “paragraph 32(2) of Schedule 29 to the Finance Act 2002 (gains and losses of a company from intangible fixed assets)” substitute “section 748(4) of CTA 2009”.

(a) Regulation 4(4A) was inserted by S.I.2005/3374.

(b) Regulation 4A was inserted S.I. 2005/3374 and substituted by S.I. 2007/3431. Regulation 4(9) was re-numbered by S.I. 2011/698.

(c) 1988 c. 1.

(d) 2010 c. 8.

(e) Regulation 7(1) was substituted by S.I. 2005/2012.

(f) Regulation 8(1) was substituted by S.I. 2005/2012.

(g) Regulation 9A was inserted by S.I. 2005/3374.

(h) Regulation 7(4) was inserted by S.I. 2005/2012.

(i) Regulation 10(3C) was inserted S.I. 2005/3374.

(16) In regulation 10(8)(a)—

- (a) for “paragraph 28 of Schedule 26 to the Finance Act 2002 would apply but for paragraph 30 of that Schedule” substitute “section 625 of the Corporation Tax 2009 would apply but for section 628 of that Act”;
- (b) for “(within the meaning paragraph 28 of that Schedule)” substitute “(within the meaning of section 625 of that Act)”.

(17) In the following regulations, for “section 85B(3) of the Finance Act 1996” substitute “section 310(1) of CTA 2009”—

- (a) regulation 11(1) and (1A)(b);
- (b) regulation 12(1) and (1A)(c).

(18) In regulations 11(4)(d) and 12(3)(e), for “Chapter 2 of the Finance Act 1996” substitute “Part 5 of the Corporation Tax 2009” in both places that it appears.

Transitional provision

9.—(1) This regulation makes transitional provisions in relation to any company which at any time before the start of the first period of account beginning on or after 1st January 2015 uses fair value accounting in relation to a derivative contract which satisfies the conditions in regulation 7(1)(a), 8(1)(a) or 9(1).

(2) At the start of the first period of account beginning on or after 1st January 2015—

- (a) the company is treated as having made an election under regulation 6A of the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (as amended by these Regulations) except to the extent that an election under regulation 6 (the “original election”) of those Regulations (as they stood before the coming into force of these Regulations) had effect before the coming into force of these Regulations,
- (b) the election treated as being made has effect in relation to derivative contracts held by the company in that period and subsequent periods (subject to any amendment or revocation of the election under regulation 6A(4)(b)(ii)), and
- (c) the original election, if any, is treated as revoked.

*David Evennett
Alun Cairns*

1st December 2014

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 which allow certain profits and losses from loan relationships and derivative contracts to be left out of account, to be brought into account in a different way or to be brought into account at a later date.

Regulation 1 provides for citation, commencement and effect.

Regulation 2 introduces the amendments.

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- (a) Regulation 10(8) was amended by S.I. 2005/2012.
 - (b) Regulation 11 inserted by S.I. 2005/2012. Paragraph (1) substituted, and paragraph (1A) inserted, by S.I. 2006/3236.
 - (c) Regulation 12 inserted by S.I. 2005/2012. Paragraphs (1) and (1A) substituted by regulation 7 of S.I. 2006/3236.
 - (d) Regulation 11(4) Inserted by regulation 12 of S.I. 2005/3374.
 - (e) Regulation 12(3) inserted by regulation 13 of S.I. 2005/3374.

Regulation 3 amends regulation 3 (exchange gains or losses arising from liabilities or assets hedging shares etc) to remove the exclusion of non-lending money debts from the scope of the Regulations.

Regulation 4 amends regulation 4A (relevant value) to allow elections to be made and revoked under that regulation at any time.

Regulation 5 makes a consequential amendment to regulation 4C (review period).

Regulation 6 substitutes regulation 6 and inserts new regulations 6A and 6B. The substituted regulation 6 sets out the cases where regulations 7, 8 and 9 apply and permits an election to be made to apply those regulations. New regulation 6A makes provisions in relation to the election and new regulation 6B makes provision where a derivative contract in relation to which an election has been made is transferred to a group company.

Regulation 7 inserts a heading to regulation 9A and makes consequential amendments to that regulation.

Regulation 8 inserts definitions and updates the statutory references in the Regulations.

Regulation 9 makes transitional provisions to preserve the treatment of derivative contracts in relation to which regulations 7, 8 or 9 of the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 applied before the amendments made to the election provisions by these Regulations have effect.

A Tax Information and Impact Note covering this instrument was published on 7th August 2014 alongside draft legislation and is available on the GOV.UK website at www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

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