

**2015 No. 1961**

**CORPORATION TAX**

**The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) (Amendment) Regulations 2015**

<i>Made</i>	- - - -	<i>3rd December 2015</i>
<i>Laid before the House of Commons</i>		<i>7th December 2015</i>
<i>Coming into force</i>	- -	<i>31st December 2015</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 310(1)(a) and (3), 328(4), 598(1)(a), (4) and (5) and 606(4) 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 2015 and come into force on 31st December 2015.

(2) These Regulations have effect in relation to accounting periods beginning on or after 1st January 2016.

**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.

3. In regulation 2 (interpretation), in paragraph (1)—

(a) omit the definition of “fair value accounting”,

(b) for the definition of “fair value profit or loss” substitute—

““fair value profit or loss” means the profit or loss brought into account in relation to a derivative contract or an asset or liability representing a loan relationship where for the period in question—

(a) the derivative contract or asset or liability representing a loan relationship is measured at fair value, or

(b) the derivative contract or asset or liability representing a loan relationship is a hedged item in a designated fair value hedge and the carrying value of the hedged item is adjusted for changes in fair value attributable to the hedged risk;”, and

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(a) 2009 c. 4. Section 310(1)(a) was amended and sections 328(4) and 606(4) were substituted by paragraphs 6, 20(5) and 68(5), respectively, of Schedule 7 to the Finance (No 2) Act 2015 (c. 33).

(b) S.I. 2004/3256; relevant amending instruments are S.I. 2005/2012, 2005/3374 and 2014/3188.

- (c) in paragraph (2), in the list of terms that have the same meaning as for accounting purposes, after “foreign operation” insert “, fair value, items of other comprehensive income”.

4. After regulation 5 insert—

**“Net investment hedge of foreign operations**

**5A.**—(1) For the purposes of sections 328(4) and 606(4) of CTA 2009 there is prescribed an exchange gain or loss arising to a company in an accounting period in relation to a liability representing a loan relationship or derivative contract of the company where—

- (a) the loan relationship or derivative contract is a designated hedge of a net investment in a foreign operation of the company, and
- (b) amounts representing exchange gains or losses in respect of the loan relationship or derivative contract have, in accordance with generally accepted accounting practice, been recognised in the company’s accounts as items of other comprehensive income.

(2) In determining what amounts fall within paragraph (1)(b) at any time in an accounting period, it is to be assumed that the accounting policy applied in drawing up the company’s accounts for the period was also applied in previous accounting periods.

(3) But if the company’s accounts for the period are, in accordance with generally accepted accounting practice, drawn up on an assumption as to the accounting policy in previous accounting periods which differs from that mentioned in paragraph (2), that different assumption applies in determining what amounts fall within paragraph (1)(b) at the time in question.”

5. In regulation 6A (election to apply regulations 7, 8 or 9)(a)—

- (a) in paragraph (3)(b) for “in relation to which the company uses fair value accounting” substitute “which the company measures at fair value”,
- (b) in paragraph (4)(b) for “in any other case” substitute “either”, and
- (c) in paragraph (5)—
  - (i) in sub-paragraph (a) for the words from “adopts” to the end substitute “measures a relevant derivative contract at fair value for the first time on or after 1st January 2015”, and
  - (ii) in sub-paragraph (b) for “uses fair value accounting in relation to a relevant derivative contract” substitute “measures a relevant derivative contract at fair value”.

6. For regulation 6B (effect of elections on transfers within groups)(b) substitute—

**“Effect of elections on group member replacing another as party to derivative contract: regulations 7 and 8**

**6B.**—(1) This regulation applies if—

- (a) one company replaces another as party to a derivative contract in relation to which regulation 7 or 8 applies, in circumstances in which section 625 of CTA 2009 applies or would apply but for section 628 of that Act,
- (b) the transferee (within the meaning of section 625 of CTA 2009) meets the conditions in regulation 7(1)(a)(i) and (ii) or 8(1)(a)(i) and (ii), as the case may be, in relation to the contract, and
- (c) the hedged item in relation to the derivative contract remains the same before and after the change of party.

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(a) Regulation 6A was inserted by SI 2014/3188.

(b) Regulation 6B was inserted by SI 2014/3188.

- (2) Where this regulation applies—
  - (a) section 628 applies (and accordingly section 625 does not apply),
  - (b) regulation 7 or 8, as the case may be, applies in respect of the contract in relation to the transferee, and
  - (c) regulation 10(9) applies.

**Effect of elections on transfers within groups: regulation 9**

- 6C.**—(1) This regulation applies if—
- (a) one company replaces another as party to a derivative contract in relation to which regulation 9 applies, in circumstances in which section 625 of CTA 2009 applies or would apply but for section 628 of that Act,
  - (b) the transferee (within the meaning of section 625 of CTA 2009) meets the conditions in regulation 9(1)(a) and (b) in relation to the contract, and
  - (c) the hedged item in relation to the derivative contract is the same before and after the change of party.
- (2) Where this regulation applies—
- (a) section 628 does not apply (and accordingly section 625 applies),
  - (b) regulation 9 applies for the purposes of determining the carrying value of the contract for the purposes of section 702 of CTA 2009 as that regulation applies for the purposes of determining the debits and credits to be brought into account under Part 7 of that Act, and
  - (c) regulation 9 applies in respect of the contract in relation to the transferee.

**Transfers within groups where no election under regulation 6A**

- 6D.**—(1) This regulation applies if—
- (a) one company replaces another as party to a derivative contract in relation to which no election under regulation 6A has effect in circumstances in which section 625 of CTA 2009 applies or would apply but for section 628 of that Act,
  - (b) the transferee (within the meaning of section 625 of CTA 2009) meets the conditions in regulation 7(1)(a)(i) and (ii), 8(1)(a)(i) and (ii) or 9(1)(a) and (b), as the case may be, in relation to the contract, and
  - (c) the hedged item in relation to the derivative contract is the same before and after the change of party.

(2) Where this regulation applies, any election made by the transferee under regulation 6A has no effect in relation to the contract.”

**7.** In regulation 7 (fair value profits or losses arising from derivative contracts which are currency contracts)—

- (a) omit paragraph (4)(a), and
- (b) at the end insert—

“(5) Where regulation 4 applies to a contract to which this regulation applies, nothing in this regulation or regulation 10 is to require any exchange gains or losses in relation to that contract to be brought into account.”

**8.** In regulation 9 (profits or losses arising from derivative contracts which are interest rate contracts)—

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(a) Paragraph (4) was inserted by S.I. 2005/2012.

- (a) in paragraph (2A)(a), at the end insert “and to the unexpired term of the hedged item”,
- (b) in paragraph (3)(b), for “section 606(3) of CTA 2009 or regulation 4” substitute “regulation 4 or 5A”, and
- (c) omit paragraphs (5) and (6).

**9.** Omit regulation 9A (profits or losses arising from designated cash flow hedges)(c).

**10.** In regulation 10 (bringing fair value profits or losses into account on currency and commodity contracts)—

- (a) in paragraph (1), for “and (8)” substitute “and (9)”,
- (b) for paragraph (9) substitute—
  - “(9) Where regulation 6B applies—
  - (a) paragraph (1)(b) does not apply to the transferor, and
  - (b) the aggregate prescribed in paragraph (1)(a) in relation to the contract held by the transferor is treated as included in the aggregate prescribed in relation to the contract held by the transferee.

In this paragraph “the transferor” and “the transferee” have the same meaning as in section 625 of CTA 2009.”,

- (c) omit paragraphs (8), (10) and (11).

*Mel Stride*  
*George Hollingbery*

3rd December 2015

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 (“the principal Regulations”) 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.

Regulation 3 amends regulation 2 to update the interpretation provisions in consequences of changes to accounting standards and amendments made to Part 5 of the Corporation Tax Act 2009 by the Finance (No 2) Act 2015.

Regulation 4 inserts a new regulation 5A to ensure that following the amendments made to Part 5 of the Corporation Tax Act 2009 by the Finance (No 2) Act 2015 the principal Regulations continue to apply properly to disregard exchange gains and losses in respect of net investment hedges of foreign operations.

Regulation 5 makes consequential amendments and amends regulation 6A in relation to the time limits for revocation of elections to apply regulations 7, 8 or 9 of the principal Regulations.

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(a) Paragraph (2A) was inserted by SI 2005/3374 and amended by SI 2014/3188.  
 (b) Paragraph (3) was amended by SI 2014/3188.  
 (c) Regulation 9A was inserted by S.I. 2005/3374.

Regulation 6 substitutes regulation 6B and inserts new regulations 6C and 6D to restrict the application of the principal Regulations where a derivative contract is transferred to a group company.

Regulation 7 makes consequential amendments and amends regulation 7 to ensure that exchange gains and losses from derivative contracts matching shares, ships or aircraft are not brought into account under that regulation or regulation 10.

Regulation 8 makes consequential amendments and amends regulation 9 to provide that in determining the amount brought into account under that regulation regard must be had to the unexpired term of a hedged item.

Regulation 9 omits regulation 9A as special rules in relation to designated cash flow hedges are not needed following amendments made by the Finance (No 2) Act 2015.

Regulation 10 amends regulation 10 where derivation contracts have been transferred within a group and omits provisions which are not needed following amendments made by the Finance (No 2) Act 2015.

Tax Information and Impact Note for the modernisation of the taxation of corporate debt and derivative contracts which covers this instrument was published at Summer Budget 2015 on 8th July 2015 and is available on the HMRC website at: [www.gov.uk/government/collections/tax-information-and-impact-notes-tiins](http://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins). It remains an accurate summary of the impacts that apply to this instrument.

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