

2009 No. 1886

CORPORATION TAX

The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) (Amendment) Regulations 2009

<i>Made</i> - - - -	<i>14th July 2009</i>
<i>Laid before the House of Commons</i>	<i>15th July 2009</i>
<i>Coming into force</i> - -	<i>5th August 2009</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 598(1), (4) and (6) 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 2009 and shall come into force on 5th August 2009.

(2) These Regulations apply in relation to periods of account beginning on or after 1st January 2009 and have effect in relation to derivative contracts—

- (a) entered into on or after 1st January 2009 and which formed part of a relevant hedging relationship up to and including 10th March 2009; or
- (b) entered into on or after 10th March 2009.

Interpretation

2. In these Regulations—

“relevant hedging relationship” has the same meaning as in regulation 7A of the 2004 Regulations (inserted by regulation 5 of these Regulations); and

“the 2004 Regulations” means the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004(b).

Amendment of the 2004 Regulations

3. The 2004 Regulations are amended in accordance with these Regulations.

(a) 2009 c. 4.

(b) S.I. 2004/3256, as amended by S.I. 2005/2012, S.I. 2005/3374, S.I. 2006/3236, S.I. 2007/948 and S.I. 2007/3431.

Amendment of regulation 6

4. In paragraphs (1) and (2) of regulation 6 (rules about fair value profits and losses) of the 2004 Regulations, after “regulations 7,” insert “7A,”.

Insertion of regulation 7A

5. After regulation 7 of the 2004 Regulations, insert—

“Exchange gains or losses arising from derivative contracts hedging anticipated or future proceeds from certain issues of shares

7A.—(1) For the purposes of section 598(1)(a) of the Corporation Tax Act 2009(a), an exchange gain or loss arising to a company is an excluded amount in an accounting period in relation to a derivative contract if—

- (a) the underlying subject matter of the contract consists wholly of currency; and
- (b) there is a relevant hedging relationship within the meaning of paragraph (2).

(2) There is a relevant hedging relationship between a derivative contract (or part of a derivative contract) and the anticipated or future proceeds of an announced or proposed rights issue or open offer of shares (“relevant share issue”) if, and to the extent that—

- (a) the contract (or part of the contract) is intended to hedge the economic risk to future capital raised under the relevant share issue (“the hedged item”); and
- (b) the economic risk is attributable to fluctuations in exchange rates between the currency in which the relevant share issue is denominated and the company’s functional currency.

(3) If there is a hedging relationship between part of a currency contract and a hedged item, the part of the fair value profit or loss that is an excluded amount is the part which bears to the whole the proportion which the value of that part of the contract which is in the hedging relationship bears to the value of the whole contract

(4) Paragraph (1) shall not apply to a derivative contract which is entered into with a person (“person A”) to whom the company is connected unless—

- (a) a person who is connected to the company enters into a derivative contract with a person who is not connected with the company; and
- (b) that contract confers rights or imposes liabilities which are equivalent to those of A under the contract which A entered with the company.

(5) Section 466 of the Corporation Tax Act 2009 (companies connected for an accounting period) applies for the purposes of paragraph (4).

(6) A derivative contract to which this regulation applies may act as a hedge of the anticipated or future proceeds from a relevant share issue only to the extent that the value of the obligation under the derivative contract (within the meaning of regulation 4(5)) does not exceed the anticipated or future proceeds from the relevant share issue which, but for the derivative contract, would not be hedged.

(7) Subsections (3) and (4) of section 606 of the Corporation Tax Act 2009 do not apply to any exchange gain or loss which is an excluded amount by virtue of paragraph (1).

(8) In this regulation—

- (a) “functional currency”, in relation to a company, means the currency of the primary economic environment in which the company operates; and
- (b) “rights issue or open offer of shares” means an offer or invitation to existing shareholders to subscribe for or purchase further shares in proportion to (or as nearly as may be in proportion to) their current holdings.”.

(a) 2009 c. 4.

Insertion of regulation 10A

6. After regulation 10, insert—

“Bringing exchange gains into account on contracts to which regulation 7A applies

10A.—(1) For the purposes of section 598(1)(c) of the Corporation Tax Act 2009^(a) there is an amount to be brought into account which is equivalent to the amount of any exchange gain specified in paragraph (2).

(2) The exchange gain specified is any exchange gain—

- (a) arising to a company in relation to a derivative contract to which regulation 7A applies or applied, and
- (b) which has been distributed to the shareholders of the company.

(3) The amount to be brought into account by paragraph (1) is to be brought into account for the accounting period in which the distribution is made.”.

Insertion of regulation 13

7. After regulation 12, insert—

“Transitional provision: exchange losses arising from contracts to which regulation 7A applies

13.—(1) This regulation applies to a derivative contract to which regulation 7A applies—

- (a) which was entered into on or after 1st January 2009;
- (b) which formed part of a relevant hedging relationship (within the meaning of regulation 7A) up to and including 10th March 2009; and
- (c) in respect of which an exchange loss would have arisen to the company had an accounting period ended on 9th March 2009.

(2) For the purposes of section 598(1)(c) of the Corporation Tax Act 2009 the amount to be brought into account is the lower of—

- (a) the exchange loss arising to the company which is incurred on the termination of the derivative contract; or
- (b) the exchange loss which would have arisen to the company in relation to the derivative contract had an accounting period ended on 9th March 2009.

(3) Paragraph (4) applies if there is more than one derivative contract to which regulation 7A applies in relation to the same hedged item.

(4) The total amount of the exchange loss in relation to those contracts which is to be brought into account under this regulation shall not exceed the aggregate net exchange losses (if any) which—

- (a) arose to the company on the termination of those contracts, or
- (b) would have arisen to the company in relation to those contracts had an accounting period ended on 9 March 2009.

(5) Where paragraph (4) applies, the amount of loss to be brought into account is to be apportioned between each of the contracts on a just and reasonable basis.

(6) For the purposes of this regulation, the termination of a derivative contract shall be regarded as having occurred on the earlier of—

- (a) the day on which the contract is terminated, or
- (b) the last day of the first accounting period which ends on or after 10th March 2009.

(a) 2009 c. 4.

(7) The amount to be brought into account for the purposes of section 598(1)(c) of the Corporation Tax Act 2009 is nil in a case where—

- (a) no exchange loss arises to the company on the termination of the derivative contract;
- (b) there is more than one derivative contract to which regulation 7A applies in relation to the same hedged item and no aggregate net exchange loss arises to the company on the termination of those contracts; or
- (c) there is more than one derivative contract to which regulation 7A applies in relation to the same hedged item and no aggregate net exchange loss would have arisen to the company in relation to those contracts had an accounting period ended on 9th March 2009.”.

Tony Cunningham

Frank Roy

14th July 2009

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 2004 Regulations”) and allow certain debits and credits from currency derivative contracts to be left out of account and, in certain circumstances, to be brought back into account.

Regulation 1 provides for citation, commencement and effect. Section 598(6) of the Corporation Tax Act 2009 provides authority for these Regulations to have effect in relation to accounting periods beginning before the date on which the Regulations are made, but not earlier than the beginning of the calendar year in which they are made.

Regulation 2 provides for interpretation.

Regulation 3 introduces the amendments to the 2004 Regulations.

Regulation 4 amends regulation 6 to insert references to the new regulation 7A at the appropriate places.

Regulation 5 inserts a new regulation 7A, which excludes exchange gains and losses arising from currency derivative contracts which are used for hedging the anticipated or future proceeds from announced or proposed rights issues or open offers of shares from an accounting period for the purposes of section 597 of the Corporation Tax Act 2009.

Regulation 6 inserts a new regulation 10A, which makes provision for the gains excluded by the new regulation 7A to be brought into account.

Regulation 7 inserts a new regulation 13, which makes transitional provision for the losses excluded by regulation 7A to be brought into account. The provision applies in relation to derivative contracts which are made on or after 1st January 2009 and which performed a hedging function up to and including 10th March 2009.

An Impact Assessment has not been produced for this instrument as it has a negligible impact on business, charities or voluntary bodies.

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