
FINANCIAL ARRANGEMENTS AVOIDANCE

Who is likely to be affected?

1. Large companies involved in avoidance of corporation tax involving intra-group convertibles and derecognition of income from derivative contracts.

General description of the measure

2. Legislation will be introduced in Finance Bill 2009 to tackle two schemes that have been notified to HM Revenue & Customs (HMRC) under the avoidance disclosure rules.
3. In the first, intra-group finance is arranged under the terms of a bond that is highly likely to convert into shares of the issuing company. The debtor company accrues a deduction for a finance cost that is greater than the finance return that the creditor company brings into account.
4. In the second, a company “derecognises” in its accounts a derivative contract that is carried at fair value with the result that profits arising to the company on the contract fall out of account for tax purposes.

Operative date

5. The legislation has effect for debits and credits arising on or after 22 April 2009.

Current law and proposed revisions

6. Where a company borrows money from a fellow group member, the interest deduction claimed by the debtor company generally matches the credit brought into account by the creditor company.
7. In the scheme involving intra-group finance, the loan is structured so that this is not the case. The new legislation will require the creditor company to recognise additional credits (to match the debtor’s debits) in any case where:
 - the debt is convertible debt;
 - the debtor and creditor are connected (part of the same consolidated

- group); and
- the debtor has a larger tax deduction (excess deductions) in respect of the debt than the amount on which the creditor is chargeable.
8. The derivatives scheme will be blocked by requiring full tax recognition of profits and losses of a derivative contract even if not recognised in the company's accounts.

Further advice

9. If you have any questions about this change, please contact Richard Rogers on 020 7147 2625 (email: richard.rogers@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk