

2009 No.

CORPORATION TAX

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

<i>Made</i>	- - - -	***
<i>Laid before the House of Commons</i>		***
<i>Coming into force</i>	- -	***

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 17C of Schedule 26 to the Finance Act 2002(a) and paragraph 52 of Schedule 4 to the Finance Act 2005(b):

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 xx/xx/09.

(2) These Regulations have effect in relation to currency derivative contracts—

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

Interpretation

2.—(1) In these Regulations—

“relevant hedging relationship” means a hedging relationship of the type referred to in inserted regulation 7A(2) (regulation 4); and

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

Amendment of regulation 6

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

(a) 2002 c. 23. Paragraphs 17A to 17C were substituted for former paragraphs 17 to 20 by paragraph 50 of Schedule 10 to the Finance Act 2004 (c. 12), with effect for periods of account beginning after 1st January 2005.
(b) 2005 c. 7.
(c) 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.

Insertion of regulation 7A

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

“Exchange gains or losses arising from derivative contracts hedging proceeds from rights issues of shares

7A.—(1) For the purposes of paragraph 17C(1)(a) of Schedule 26 to the Finance Act 2002 there is prescribed an exchange gain or loss arising to a company in an accounting period in relation to a derivative contract whose underlying subject matter consists wholly of currency if there is a relevant hedging relationship between the contract or part of the contract and the proceeds from a proposed rights issue of shares of the company as described in section 561 of the Companies Act 2006(a).

(2) For the purposes of this regulation, a company has a relevant hedging relationship between a derivative contract on the one hand (“the hedging instrument”) and the proceeds of its rights issue of shares on the other if, and to the extent that, the hedging instrument is intended to act as a hedge of the economic risk to future capital raised under that rights issue of shares which is attributable to fluctuations in exchange rates between the currency in which the rights issue is denominated and the company’s functional currency.

(3) Paragraph (1) shall not apply to a derivative contract which is entered into with a person (“person A”) who is connected (within the meaning of section 87(3) of the Finance Act 1996(b)) to the company which has a relevant hedging relationship within the meaning of paragraph (2) (“person B”) unless any person who is connected to person B enters into a derivative contract with another person (who is not connected to person B) which—

- (a) confers rights or imposes liabilities; or
- (b) both confers rights and imposes liabilities,

which are equivalent to those of person A under the derivative contract with person B.

(4) A derivative contract to which this regulation applies may act as a hedge of the proceeds from a proposed rights issue of shares only to the extent that the value of the obligation under the derivative contract (within the meaning of regulation 4(5) of the 2004 Regulations) does not exceed the proceeds from the share issue that, but for this contract, would not be hedged.

(5) Paragraphs 16(3) and 16(3A) of Schedule 26 to the Finance Act 2002 do not apply to any regulation 7A exchange gain or loss.”.

Insertion of regulation 10A

5. After regulation 10 of the 2004 Regulations, insert—

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

10A.—(1) For the purposes of paragraph 17C(1)(c) of Schedule 26 to the Finance Act 2002 there is prescribed the amount equivalent to so much of any gain arising in respect of the derivative contract where—

- (a) the derivative contract is or was a hedging contract to which regulation 7A applies or applied; and
- (b) the gain referred to above has been distributed to the shareholders of the company.

(2) The amount prescribed under paragraph (1) is to be brought into account for the accounting period in which the distribution occurs.”.

(a) 2006 c. 46.

(b) 1996 c. 8. Subsection (3) was amended by paragraphs 1 and 7 of Schedule 25, and Part 3 of Schedule 40, to the Finance Act 2002 (c. 23).

Insertion of regulation 13

6. After regulation 12 of the 2004 Regulations, insert—

“Transitional provision - losses

- 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 had the contract been terminated on 9th March 2009.
- (2) Subject to paragraph (3), for the purposes of paragraph 17C(1)(c) of Schedule 26 to the Finance Act 2002^(a) there is prescribed an amount which is the lower of—
- (a) the exchange loss arising to the company which is incurred on the termination of the contract; or
 - (b) the exchange loss which would have arisen to the company had the contract been terminated on 9th March 2009.
- (3) If no loss arises on the termination of the contract under paragraph (2)(a), the prescribed amount for the purposes of paragraph 17C(1)(c) of Schedule 26 to the Finance Act 2002 is zero.”

Two of the Lords Commissioners of Her Majesty's Treasury

April 2009

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 the citation, commencement and effect.

Regulation 2 provides for the interpretation.

Regulation 3 amends regulation 6 of the 2004 Regulations to insert references to the new regulation 7A at the appropriate places.

Regulation 4 inserts a new regulation 7A into the 2004 Regulations, which prescribes exchange gains and losses arising from currency derivative contracts which are used for hedging the proceeds from future rights issues of shares to be disregarded for the purposes of paragraph 17B of Schedule 26 to the Finance Act 2002.

Regulation 5 inserts a new regulation 10A into the 2004 Regulations, which makes provision for the gains prescribed by the new regulation 7A to be brought into account.

(a) 2002 c. 23. Paragraphs 17A to 17C were substituted for former paragraphs 17 to 20 by paragraph 50 of Schedule 10 to the Finance Act 2004 (c. 12).

Regulation 6 inserts a new regulation 13 into the 2004 Regulations, which makes transitional provision for currency derivative contracts which are made after 1st January 2009 and which performed a hedging function as of 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.