

2008 No. xxxx

CORPORATION TAX

The Loan Relationships and Derivative Contracts (Change of Accounting Practice) (Amendment) Regulations 2008

<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 sections 85B(3) and (5) of, and paragraph 19B of Schedule 9 to, the Finance Act 1996(a), paragraph 17C of Schedule 26 to the Finance Act 2002(b) and paragraphs 52(1) and (2) of Schedule 4 to the Finance Act 2005(c).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Loan Relationships and Derivative Contracts (Change of Accounting Practice) (Amendment) Regulations 2008 and shall come into force on xx xxxxxxx 200X.

(2) Regulation 3 has effect in relation to any period of account beginning on or after 1st January 2008 and ending on or after the date that these Regulations are made.

(3) Regulation 4 has effect for periods of account beginning on or after 1st January 2009.

Amendment to the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004

2. The Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004(d) are amended as follows.

Amendment of regulation 2

3. In regulation 2 (interpretation) at the appropriate place insert—

““exchange gains or losses” —

- (a) in relation to a loan relationship has the meaning given by section 103 of Finance Act 1996(e); and
- (b) in relation to a derivative contract has the meaning given by paragraph 54 of Schedule 26 to Finance Act 2002”.

(a) 1996 c. 8; section 85B was inserted by paragraph 3 of Schedule 10 to the Finance Act 2004 (c. 12). Paragraph 19B was inserted by paragraph 36 of that Schedule.
(b) 2002 c. 23; paragraph 17C was inserted by paragraph 50 of Schedule 10 to, the Finance Act 2004.
(c) 2005 c. 7.
(d) S.I. 2004/3271, amended by S.I. 2004/3347, 2005/3383, 2006/3238, 2007/950 and 2007/3432.
(e) Section 103 was relevantly amended by paragraph 7 of Schedule 23 to Finance Act 2002.

Amendment of regulation 3A

4.—(1) Regulation 3A(a) (prescribed debits and credits brought into account over prescribed period) is amended as follows.

(2) In paragraph (2) insert at the beginning “Subject to paragraphs (7A) and (7B),”.

(3) In paragraph (5) insert at the beginning “Subject to paragraphs (7A) and (7B),”.

(4) After paragraph (7) insert—

“(7A) To the extent that the applicable amounts (or fractions of applicable amounts) represent debits or credits to which sub-paragraph (ca) or (da) of regulation 3C(2) would apply if those sub-paragraphs had been in force at the time that the debits or credits arose—

(a) those amounts shall not be brought into account under paragraph (2) or (5) in relation to any period of account beginning on or after 1st January 2009;

(b) the relevant fraction of those amounts shall not be brought in under paragraph (2) or (5) in relation to any period of account beginning on or after 1st January 2008 and ending on or after the date that these Regulations are made.

(7B) In paragraph (7A)(b) the relevant fraction is—

$$1 - \frac{A}{B}$$

Where—

A is the number of days in the period of account up to, and including, 31 December 2008, and

B is the total number of days in the period of account.”

Amendment of regulation 3C

5.—(1) Regulation 3C (prescribed debits and credits not brought into account)(b) is amended as follows.

(2) In paragraph (2)—

(a) after sub-paragraph (c) insert—

“(ca) debits and credits in relation to a derivative contract the underlying subject matter of which consists wholly or partly of a currency, to the extent that—

(i) those debits or credits represent the reversal of exchange gains and losses arising to the company in any period of account before the later period, and

(ii) those exchange gains and losses have not been brought into account for the purposes of corporation tax by virtue of paragraph 16(3) of Schedule 26 to Finance Act 2002(c) or regulations 4 to 11 of the Alternative Method of Calculation Regulations(d);”;

(b) after sub-paragraph (d) insert—

“(da) debits and credits in relation to a loan relationship which is denominated in a currency which is not, or was not, the company’s functional currency, to the extent that—

(i) those debits or credits represent the reversal of exchange gains and losses arising to the company in any period of account before the later period, and

(ii) those exchange gains and losses have not been brought into account for the purposes of corporation tax by virtue of section 84A(3) of the Finance Act

(a) Regulation 3A was inserted by S.I. 2005/3383 and amended by S.I. 2007/3432.

(b) Regulation 3C was inserted by S.I. 2005/3383 and amended by S.I. 2006/3238 and 2007/950.

(c) Paragraph 16(3) was substituted by paragraph 48 of Schedule 10 to, the Finance Act 2004.

(d) S.I. 1994/3227 was relevantly amended and modified by S.I. 1996/1347, 2000/3315 and 2002/1969.

1996 or regulations 4 to 11 of the Alternative Method of Calculation Regulations;”.

(3) In paragraph (4) insert at the end—

““the Alternative Method of Calculation Regulations” means the Exchange Gains and Losses (Alternative Method of Calculation of Gain or Loss) Regulations 1994;

““underlying subject matter” has the meaning given in paragraph 11 of Schedule 26 to the Finance Act 2002(a).”.

ABC

DEF

December 2008

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 (Change of Accounting Practice) Regulations 2004 (S.I. 2004/3271, as amended by S.I. 2005/3383, 2006/3238, 2007/950 and 2007/3432, “the principal Regulations”) which make provision for certain debits and credits not to be brought into account in the first accounting period of a company beginning on or after 1st January 2005, and for those debits and credits instead to be brought into account over a ten year period (beginning with the first period of account on or after 1st January 2006), or not to be brought into account for any period. These Regulations amend the principal Regulations to provide that debits and credits arising on a change of accounting policy which represent the reversal of foreign exchange gains or losses which were not taxed or relieved in earlier periods of account (as a result of the application of provisions matching those gains or losses to opposite gains or losses) are no longer to be brought into account.

Regulation 1 provides for citation, commencement and effect. Authority for the retrospective effect of these Regulations is given by paragraph 52(2) of Schedule 4 to the Finance Act 2005.

Regulation 2 introduces the amendments to the principal Regulations.

Regulation 3 amends regulation 2 of the principal Regulations (interpretation).

Regulation 4 amends regulation 3A of the principal Regulations (prescribed debits and credits brought into account over prescribed period). It deals with the case where debits and credits are currently being brought into account over a ten year period and provides that if those debits and credits would not be brought into account if the amendments made by regulation 5 (which extends the class of credits and debits which are not to be brought into account) had applied then, those debits and credits are not to be brought into account for any period of account beginning on or after 1st January 2009. It also provides for a time based apportionment in relation to the period of account in which these Regulations come into force.

Regulation 5 amends regulation 3C of the principal Regulations (prescribed debits and credits not brought into account) to extend the classes of specified debits and credits which are not to be brought into account in determining a company’s profit or loss for any period.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen..

(a) Paragraph 11 was amended by S.I. 2005/2082 and 2005/2201.