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## STATUTORY INSTRUMENTS

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# 2004 No. 3256

## The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004

### Rules about fair value profits and losses

6.—(1) Regulations 7, 8 and 9 contain specific rules about excluding fair value profits and losses for the purposes of Schedule 26 to the Finance Act 2002.

(2) For the purposes of regulations 7, 8 and 9 it is immaterial that the hedging relationship is not an effective hedge for accounting purposes.

(3) A company may elect that—

(a) regulation 7 shall not apply to its currency contracts which satisfy the conditions contained in regulation 7(2); and

(b) regulation 8 shall not apply to its commodity contracts or debt contracts which satisfy the conditions contained in that regulation.

(4) Any election made under paragraph (3) shall apply to—

(a) all of the currency contracts entered into by the company which satisfy the conditions contained in regulation 7(2); and

(b) all of the commodity contracts or debt contracts entered into by the company which satisfy the conditions contained in regulation 8(1).

(5) A company may elect that regulation 9 shall not apply to its interest rate contracts which satisfy the conditions contained in that regulation and any election under this regulation shall apply to all of the interest rate contracts entered into by the company which satisfy the conditions contained in regulation 9(1).

(6) Subject to paragraph (7), an election under paragraph (3) or (5) shall be made before the start of a company's first accounting period to which these Regulations apply or, if later, before 31<sup>st</sup> March 2005 and has effect for that accounting period and all subsequent accounting periods unless revoked.

(7) In any case where a company is not a party to any contracts to which regulations 7 or 8, or regulation 9 apply immediately before the start of the company's first accounting period to which the Regulations apply, an election within paragraph (3) or (5) shall be made within 90 days of the company entering into its first contract to which regulation 7 or 8, or regulation 9 applies, as the case may be.

(8) A company may revoke an election under paragraph (3) or (5) with effect from the date on which notice is given of it, but contracts entered into before that date shall not be affected.

(9) An election under paragraph (3) or (5) shall be made, and may be revoked by the company which made it, by notice in writing to the Inland Revenue.

(10) If—

(a) a company ("the electing company") makes an election under paragraph (3) or (5) in relation to its contracts;

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- (b) any other company which is a party to a derivative contract to which the election applies is a member of the same group of companies as the electing company; and
- (c) that other company has not made an election under paragraph (3) or (5) in relation to the contract, as the case may be,

then the other company is to be treated as if it had made the election but only in relation to that contract.

(11) Paragraph (10) does not apply if the electing company, or the other company, entered into the contract in the ordinary course of a banking business or a business as a securities house.

(12) If a contract to which regulation 7, 8 or 9 applies is transferred by a company in circumstances to which paragraph 28 of Schedule 26 to the Finance Act 2002(1) would apply but for paragraph 30(2) of that Schedule—

- (a) paragraph 30 shall not apply (and accordingly paragraph 28 shall apply); and
- (b) the transferee company is to be treated as not having made the election under paragraph (3) or (5) as the case may be (“the relevant election”) in relation to that contract, if it has made a relevant election in relation to all of its contracts.

(13) If a company (“the electing company”) makes an election under paragraph (3) or (5) in relation to its contracts—

- (a) a contract to which the election applies is transferred to another company (“the transferee company”) in circumstances to which paragraph 28 of Schedule 26 to the Finance Act 2002 applies, or
- (b) would apply but for paragraph 30 of that Schedule,

and the transferee company has not made an election under paragraph (3) or (5) in relation to the contract as the case may be, then the transferee company is to be treated as if it had made the election but only in relation to that contract.

(14) In this Regulation—

“group of companies” shall be construed in accordance with section 170 of the Taxation of Chargeable Gains Act 1992(3); and

“securities house” means a person—

- (a) who is authorised for the purposes of the Financial Services and Markets Act 2000(4); and
- (b) whose business consists wholly or mainly of dealing as a principal in financial instruments within the meaning of section 349(5) and (6) of the Taxes Act 1988(5).

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#### Commencement Information

**II** Reg. 6 in force at 1.1.2005, see [reg. 1\(1\)](#)

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(1) Paragraph 28 was amended by section 179(1), (2), (3) and (5) of the Finance Act 2003 (c. 14) and section 30 of and paragraph 15(2) of Schedule 5 to the 2004 Act.

(2) Paragraph 30 was amended by section 179(4) and (5) of the Finance Act 2003 and section 52 of and paragraph 57 of Schedule 10 to the 2004 Act.

(3) 1992 c. 12.

(4) 2000 c. 8.

(5) Section 349(5) and (6) were added by section 95 of the Finance Act 2002.

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- reg 6 am by [S.I. 2005/3374 regs 27\(1\)-\(7\) \(9\)-\(12\)](#)
- reg 6 am by [S.I. 2006/3236 reg 3](#)
- reg 6 am by [S.I. 2009/1886 regs 34](#)
- reg 6 rev in pt by [S.I. 2005/3374 regs 27\(1\)\(8\)](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 2(3A) inserted by [S.I. 2011/2912 reg. 3](#)
- reg. 3(1A) omitted by [S.I. 2014/3188 reg. 3](#)
- reg. 3(1ZA) inserted by [S.I. 2011/2912 reg. 4\(1\)](#)
- reg. 3(5) words substituted by [S.I. 2013/2781 reg. 2\(3\)](#)
- reg. 3(5) words substituted by [S.I. 2014/3188 reg. 8\(3\)](#)
- reg. 3(5)(c) words substituted by [2019 c. 1 Sch. 20 para. 9\(3\)](#)
- reg. 3(5)(c) words substituted by [S.I. 2013/3209 reg. 10\(3\)](#)
- reg. 4(1A) inserted by [S.I. 2011/2912 reg. 5\(1\)](#)
- reg. 4(4A) words substituted by [S.I. 2013/2781 reg. 2\(3\)](#)
- reg. 4(4A) words substituted by [S.I. 2014/3188 reg. 8\(5\)](#)
- reg. 4(4A)(c) words substituted by [2019 c. 1 Sch. 20 para. 9\(4\)](#)
- reg. 4(4A)(c) words substituted by [S.I. 2013/3209 reg. 10\(3\)](#)
- reg. 4(4C) inserted by [S.I. 2022/239 reg. 2\(3\)](#)
- reg 4A added by [S.I. 2005/3374 regs 26](#)
- reg. 4A(7)-(7C) substituted for reg. 4A(7) by [S.I. 2014/3188 reg. 4\(2\)](#)
- reg. 4A(7) words inserted by [S.I. 2011/698 reg. 5\(2\)](#)
- reg. 4A(8)-(8B) omitted by [S.I. 2014/3188 reg. 4\(3\)](#)
- reg. 4A(8A)(8B) inserted by [S.I. 2011/698 reg. 5\(3\)](#)
- reg. 4A(9) second reg. 4A(6) renumbered as reg. 4A(9) by [S.I. 2011/698 reg. 5\(4\)](#)
- reg. 4A(9) words substituted by [S.I. 2014/3188 reg. 8\(6\)](#)
- reg. 4C substituted by [S.I. 2011/698 reg. 6](#)
- reg. 4C(1) words substituted by [S.I. 2014/3188 reg. 5](#)
- reg. 5(4) words substituted by [S.I. 2014/3188 reg. 8\(7\)\(a\)](#)
- reg. 5(4) words substituted by [S.I. 2014/3188 reg. 8\(7\)\(b\)](#)
- reg. 5(4) words substituted by [S.I. 2014/3188 reg. 8\(7\)\(c\)](#)
- reg. 5A inserted by [S.I. 2015/1961 reg. 4](#)
- reg. 5ZA inserted by [S.I. 2022/239 reg. 2\(4\)](#)
- reg. 6-6B substituted for reg. 6 by [S.I. 2014/3188 reg. 6](#)
- reg. 6(5A)(a) word omitted by [S.I. 2013/3209 reg. 10\(4\)\(a\)](#)
- reg. 6(5A)(c) and word inserted by [S.I. 2013/3209 reg. 10\(4\)\(b\)](#)
- reg. 6(5C)(a) word omitted by [S.I. 2013/3209 reg. 10\(4\)\(a\)](#)
- reg. 6(5C)(c) and word inserted by [S.I. 2013/3209 reg. 10\(4\)\(b\)](#)
- reg. 6A(3)(b) words substituted by [S.I. 2015/1961 reg. 5\(a\)](#)
- reg. 6A(4)(b) words substituted by [S.I. 2015/1961 reg. 5\(b\)](#)
- reg. 6A(5)(a) words substituted by [S.I. 2015/1961 reg. 5\(c\)\(i\)](#)
- reg. 6A(5)(b) words inserted by [2020 c. 14 Sch. 6 para. 8\(a\)](#)
- reg. 6A(5)(b) words substituted by [S.I. 2015/1961 reg. 5\(c\)\(ii\)](#)
- reg. 6A(6) inserted by [2020 c. 14 Sch. 6 para. 8\(b\)](#)

- reg. 6B-6D substituted for reg. 6B by S.I. 2015/1961 reg. 6
- reg. 7(4) omitted by S.I. 2015/1961 reg. 7(a)
- reg. 7(4) words substituted by S.I. 2014/3188 reg. 8(10)
- reg. 7(5) inserted by S.I. 2015/1961 reg. 7(b)
- reg. 7(5) words inserted by S.I. 2022/239 reg. 2(5)(a)
- reg. 7(5) words substituted by S.I. 2022/239 reg. 2(5)(b)
- reg 7A added (with transtl provns) by S.I. 2009/1886 regs 357
- reg. 7A(7A) inserted by S.I. 2022/239 reg. 2(6)
- reg. 9(2A) words inserted by S.I. 2015/1961 reg. 8(a)
- reg. 9(2A) words substituted by S.I. 2014/3188 reg. 8(11)
- reg 9A added by S.I. 2005/3374 regs 210
- reg 9A am by S.I. 2006/3236 reg 5
- reg. 9A cross-heading inserted by S.I. 2014/3188 reg. 7(1)
- reg. 9A omitted by S.I. 2015/1961 reg. 9
- reg. 9A(1) words substituted by S.I. 2014/3188 reg. 8(8)(d)
- reg. 9A(1)(c) substituted by S.I. 2014/3188 reg. 7(2)(a)
- reg. 9A(2) words substituted by S.I. 2014/3188 reg. 8(8)(d)
- reg. 9A(3) words substituted by S.I. 2014/3188 reg. 8(8)(d)
- reg. 9A(3A) substituted by S.I. 2014/3188 reg. 7(2)(b)
- reg. 10(3C) words substituted by S.I. 2014/3188 reg. 8(14)
- reg 10A added by S.I. 2009/1886 regs 36
- regs 1112 added by S.I. 2005/2012 regs 211
- reg 11 am by S.I. 2006/3236 reg 6
- reg. 11(1) words substituted by S.I. 2014/3188 reg. 8(17)(a)
- reg. 11(1A) words substituted by S.I. 2014/3188 reg. 8(17)(a)
- reg. 11(4) words substituted by S.I. 2014/3188 reg. 8(18)
- reg 12 am by S.I. 2006/3236 reg 7
- reg. 12(1) words substituted by S.I. 2014/3188 reg. 8(17)(b)
- reg. 12(1A) words substituted by S.I. 2014/3188 reg. 8(17)(b)
- reg. 12(3) words substituted by S.I. 2014/3188 reg. 8(18)
- reg. 12A inserted by S.I. 2014/3325 reg. 3(2)
- reg 13 added by S.I. 2009/1886 regs 37