

2006 No. 3236

CORPORATION TAX

The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) (Amendment) Regulations 2006

<i>Made</i>	- - - -	<i>6th December 2006</i>
<i>Laid before the House of Commons</i>		<i>6th December 2006</i>
<i>Coming into force</i>	- -	<i>27th December 2006</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 84A(3A), 85B(3)(a) and (5)(b) of the Finance Act 1996(a), paragraphs 16(3A) and 17C(1) and (3)(b) of Schedule 26 to the Finance Act 2002(b) and paragraph 52 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 (Disregard and Bringing into Account of Profits and Losses) (Amendment) Regulations 2006 and shall come into force on 27th December 2006.

(2) These Regulations have effect in relation to periods of account beginning on or after 1st January 2006 and ending on or after 27th December 2006.

Amendment to the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004

2. Amend the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004(d) as follows.

3.—(1) Amend regulation 6 (rules about fair value profits and losses)(e) as follows.

(2) After paragraph (3) insert—

“(3A) A company may elect that regulation 9A shall apply to—

(a) its currency contracts which satisfy the conditions contained in regulation 7(1), and

(a) 1996 c. 8. Section 84A was inserted by paragraph 3 of Part 1 of Schedule 23 to the Finance Act 2002 (c. 23) and subsection (3A) was substituted by paragraph 2(2) of Schedule 10 to the Finance Act 2004 (c. 12). Section 85B was substituted and inserted by paragraph 3 of Schedule 10 to the Finance Act 2004 and amended by section 80 of, and paragraph 26 of Schedule 4 to, the Finance Act 2005.

(b) 2002 c. 23. Paragraph 16(3A) was substituted by paragraph 48(2), and paragraphs 17C(1) and 17C(3)(b) were substituted by paragraph 50, of Part 2 of Schedule 10 to the Finance Act 2004.

(c) 2005 c.7.

(d) S.I. 2004/3256, amended by S.I. 2005/2012 and 2005/3374.

(e) Regulation 6 was amended by regulations 2 and 7 of S.I. 2005/2012 and regulations 2 and 7 of S.I. 2005/3374.

- (b) its commodity or debt contracts which satisfy the conditions contained in regulation 8(1).”.
- (3) In paragraph (4) after “(3)” insert “or (3A)”.
- (4) In paragraph (5A)(ii) after “risks” insert “, in relation to which the contract was intended to act as a hedge,”.
- (5) After paragraph (5A) insert—
- “(5B) Subject to paragraph (5C), a company may elect that regulation 9 shall not apply to its interest rate contracts which satisfy the conditions contained in that regulation but that regulation 9A shall apply, 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).
- (5C) An election under paragraph (5B) has no effect in relation to interest rate contracts—
- (a) where the conditions in paragraph (5A)(a) are met; or
- (b) where the hedged item is an asset representing a loan relationship—
- (i) to which section 87(1) of the Finance Act 1996 applies, and
- (ii) in relation to which the company uses fair value accounting.”.
- (6) In paragraphs (6A) and (7) for “(3) or (5)” substitute “(3), (3A), (5) or (5A)”.
- (7) After paragraph (7) insert—
- “(7A) An election under paragraph (3A) or (5B)—
- (a) must be made before the later of—
- (i) 1st April 2007, and
- (ii) the date determined by paragraph (6A) or (7) as the date before which an election must be made;
- (b) must be made in writing to Her Majesty’s Revenue and Customs;
- (c) is irrevocable; and
- (d) applies in relation to accounting periods beginning on or after 1st January 2006.
- (7B) An election—
- (a) under paragraph (3A) revokes any previous election under paragraph (3);
- (b) under paragraph (5B) revokes any previous election under paragraph (5).”.
- (8) In paragraph (9) omit “the”.
- (9) In paragraph (9A) at the end insert “except where revoked by an election made under paragraph (5B)”.
- (10) In—
- (a) paragraph (10)(a) and (c),
- (b) paragraph (12)(b) and
- (c) paragraph (13) (in both places),
- for “(3) or (5)” substitute “(3), (3A), (5) or (5B)”.
- (11) In paragraph (12)(a) for “(3A)” substitute “(3B)”.
- 4.** In regulation 9 (profits or losses arising from derivative contracts which are interest rate contracts) in paragraph (1)(b) after “risks” insert “, in relation to which the contract was intended to act as a hedge,”.
- 5.—(1)** Amend regulation 9A(a) as follows.

(a) Regulation 9A was inserted by regulation 10 of S.I. 2005/3374.

- (2) In paragraph (1)—
- (a) for “an interest rate contract” substitute “a currency contract, a commodity contract, a debt contract or an interest rate contract (as the case may be)”, and
 - (b) in subparagraph (c) for “6(5)” substitute “6(3A), 6(5) or 6(5B) (as the case may be)”.

(3) In paragraph (2)(b) at the end insert “where the profit or loss for corporation tax purposes in relation to that asset or liability will not fall to be computed in accordance with generally accepted accounting practice”.

(4) In paragraph (3) after “(2)(a)” insert “or (b)”.

(5) After paragraph (3) insert—

“(3A) Where—

- (a) amounts in respect of a currency contract, a commodity contract or a debt contract are brought into account differently as a result of an election under regulation 6(3A), or
- (b) an interest rate contract ceases to be a contract to which regulation 9 applies as a result of an election under regulation 6(5B),

the amount to be brought into account for the purposes of paragraph 17C(1)(b) of Schedule 26 to the Finance Act 2002 is such amount as is just and reasonable in the circumstances and with regard to whether as a result of the change any amounts cease to be brought into account or are brought into account more than once, and that amount shall be brought into account on the first day of the first accounting period beginning on or after 1st January 2006.”.

6.—(1) Amend regulation 11 as follows.

(2) For paragraph (1) substitute—

“(1) For the purposes of section 85B(3) of the Finance Act 1996 (amounts recognised in determining company’s profits and loss) the amounts described in paragraph (2) are prescribed in relation to a company which is party to a creditor relationship to which—

- (a) either—
 - (i) section 92 (convertible securities etc: creditor relationships)(a), or
 - (ii) section 93 (relationships linked to the value of chargeable assets)(b),
 of the Finance Act 1996 applied immediately before the start of the first accounting period of the company to begin on or after 1st January 2005, and
- (b) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives)(c) applies in the first accounting period of the company to begin on or after 1st January 2005.

(1A) Where paragraph (1) does not apply, for the purposes of section 85B(3) of the Finance Act 1996 the amounts described in paragraph (3) are prescribed in relation to a company which is party to a creditor relationship to which—

- (a) section 92, or
- (b) section 93,

of the Finance Act 1996 applies immediately before the start of the first accounting period of the company to begin on or after 1st January 2005.”.

(3) In paragraph (2)(b) at the beginning insert “where paragraph (1)(a)(i) applies,”.

- (a) Section 92 was amended by section 65 of the Finance Act 1999 (c. 16), sections 72, 73(1), 82 and 141 of, and paragraphs 1 and 5 of Schedule 23 and Part 3(8) and (10) of Schedule 40 to, the Finance Act 2002, section 882(1) of, and paragraphs 485 and 486 of Schedule 1 to, the Income Tax (Trading and Other Income) Act 2005 (c. 5) and was repealed by sections 52 and 326 of, and paragraph 9 of Schedule 10 and Part 2(6) of Schedule 42 to, the Finance Act 2004.
- (b) Section 93 was amended by sections 75 and 141 of, and Part 3(8) of Schedule 40 to, the Finance Act 2002 and was repealed by sections 52 and 326 of, and paragraph 11(1) of Schedule 10 and Part 2(6) of Schedule 42 to, the Finance Act 2004.
- (c) Section 94A was inserted by section 52 of, and paragraph 13 of Schedule 10 to, the Finance Act 2004 and amended by section 80 of, and paragraph 28(1) and (2) of Schedule 4 to, the Finance Act 2005.

(4) In paragraph (3)(b) at the beginning insert “where paragraph (1A)(a) applies,”.

7.—(1) Amend regulation 12 as follows.

(2) For paragraphs (1) and (2) substitute—

“(1) For the purposes of section 85B(3) of the Finance Act 1996 the amounts described in paragraph (2) are prescribed in relation to a company which is party to a debtor relationship to which—

(a) either—

(i) section 92A (convertible securities etc: debtor relationships)(a), or

(ii) section 93,

of the Finance Act 1996 applies immediately before the start of the first accounting period of the company to begin on or after 1st January 2005, and

(b) section 94A of the Finance Act 1996 applies in the first accounting period of the company to begin on or after 1st January 2005.

This is subject to paragraph (4).

(1A) Where paragraph (1) does not apply, for the purposes of section 85B(3) of the Finance Act 1996 the amounts described in paragraph (2A) are prescribed in relation to a company which is party to a debtor relationship to which—

(a) section 92A, or

(b) section 93,

of the Finance Act 1996 applies immediately before the start of the first accounting period of the company to begin on or after 1st January 2005.

This is subject to paragraph (4).

(2) The prescribed amounts are—

(a) where paragraph (1)(a)(i) applies, debits to the extent that they are within section 92A(3) of the Finance Act 1996;

(b) where paragraph (1)(a)(ii) applies, all debits and credits in respect of the host contract save for debits in relation to interest accruing in respect of the debtor relationship without regard to the amounts given by the effective interest method.

(2A) The prescribed amounts are—

(a) where paragraph (1A)(a) applies, debits to the extent that they are within section 92A(3) of the Finance Act 1996;

(b) where paragraph (1A)(b) applies, all debits and credits in respect of the host contract save for debits in relation to interest.”.

Claire Ward

Dave Watts

6th December 2006

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) Section 92A was inserted by section 76 of the Finance Act 2002, amended by sections 83(1)(b) and (3) and 141 of, and paragraphs 17 and 18 of Schedule 27 and Part 3(13) of Schedule 40 to, that Act and was repealed by sections 52 and 326 of, and paragraph 9 of Schedule 10 and Part 2(6) of Schedule 42 to, the Finance Act 2004.

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 (S.I. 2004/3256, as amended by S.I. 2005/2012 and S.I. 2005/3374: “the Principal Regulations”) which allow certain profits and losses from loan relationships and derivative contracts to be left out of account, to be brought into account in a different way or to be brought into account at a later date.

Regulation 1 provides for citation, commencement and effect. Authority for the limited retrospective effect of these Regulations is given by paragraph 52 of Schedule 4 to the Finance Act 2005 (c. 7).

Regulation 2 introduces the amendments to the Principal Regulations.

Regulation 3 amends regulation 6 (rules about fair value profits and losses) of the Principal Regulations to make provision for companies to elect that regulations 7, 8 or 9 (as the case may be) shall not apply to a currency contract, a commodity contract, a debt contract or an interest rate contract (as the case may be), but that regulation 9A shall apply instead.

Regulation 4 amends regulation 9 (profits or losses arising from derivative contracts which are interest rate contracts) to identify an accounting mismatch when fair value profits or losses are not brought into account on the hedged item in respect of the risk that is being hedged.

Regulation 5 makes consequential amendments to regulation 9A of the Principal Regulations and inserts a transitional provision.

Regulations 6 and 7 amend regulations 11 and 12 of the Principal Regulations in relation to loan relationships to which section 93 (relationships linked to the value of chargeable assets) of the Finance Act 1996 (c.8) applied immediately before the start of the first accounting period of a company to begin on or after 1st January 2005 so that credits and debits in respect of exchange gains and losses are disregarded. Regulation 4 also inserts a new paragraph (2A) which prescribes amounts to be disregarded in cases where section 94A does not apply in the first accounting period of the company to begin on or after 1st January 2005.

These Regulations impose no new costs on business.

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Regulations 2006

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