

**2022 No. 239**

**CORPORATION TAX**

**CAPITAL GAINS TAX**

**The Disregard and Bringing into Account of Profit and Losses  
on Derivative Contracts Hedging Acquisitions and Disposals of  
Shares Regulations 2022**

<i>Made</i> - - - -	<i>7th March 2022</i>
<i>Laid before the House of Commons</i>	<i>9th March 2022</i>
<i>Coming into force</i> - -	<i>1st April 2022</i>

The Treasury, in exercise of the powers conferred by sections 598(1) and (4)(b) and 606(4) and (7)(b) of the Corporation Tax Act 2009(a), make the following Regulations:

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Disregard and Bringing into Account of Profit and Losses on Derivative Contracts Hedging Acquisitions and Disposals of Shares Regulations 2022 and come into force on 1st April 2022.

(2) Regulation 2 has effect in relation to derivative contracts entered into on or after 1st April 2022.

(3) Regulation 3 has effect in relation to disposals made on or after 1st April 2022.

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

2.—(1) The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004(b) are amended as follows.

(2) In regulation 2(5), for “or expense” substitute “, expense, forecast transaction or firm commitment”.

(3) In regulation 4, after paragraph (4B)(c) insert—

“(4C) This regulation does not apply to amounts in relation to a derivative contract which are excluded amounts under regulation 5ZA.”.

(4) After regulation 5 insert—

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(a) 2009 c. 4; section 606(4) was amended by paragraph 68 of Schedule 7 to the Finance (No. 2) Act 2015 (c. 33).  
(b) S.I. 2004/3256; relevant amending instruments are S.I. 2005/3374, 2009/1886 and 2015/1961.  
(c) Paragraph (4B) was inserted by S.I. 2005/3374.

## “Derivatives hedging acquisitions and disposals of shareholdings

**5ZA.**—(1) For the purposes of sections 598(1)(a) and 606(4) of CTA 2009, any relevant amount arising to a company in relation to a derivative contract is an excluded amount in an accounting period if and to the extent that—

- (a) the underlying subject matter of the contract includes currency, and
- (b) there is a relevant hedging relationship between the derivative contract (or part of the derivative contract) and a forecast transaction or firm commitment (“the hedged item”) relating to the anticipated future acquisition or disposal of a relevant shareholding (“the anticipated transaction”).

(2) There is a relevant hedging relationship if, and to the extent that—

- (a) the contract (or part of the contract) is intended to hedge the economic risk to the company in relation to—
  - (i) the anticipated acquisition cost, together with any incidental costs of the acquisition, of the anticipated transaction,
  - (ii) the disposal proceeds of, and any relevant dividend in relation to the relevant shareholding paid as part of, the anticipated transaction, or
  - (iii) where paragraph (3) applies, the subscription of shares in, or entering into a creditor relationship with, another company for the purpose of financing the anticipated acquisition cost, together with any incidental costs of the acquisition, of the anticipated transaction, and
- (b) the economic risk is attributable to fluctuations in exchange rates between the currency in which the forecast transaction or firm commitment is denominated and the company’s relevant currency or the currency in which the debt or equity financing relating to the anticipated transaction is denominated.

(3) This paragraph applies where the company entering into the hedging relationship has a substantial shareholding in the company making the anticipated acquisition or will have a substantial shareholding in that company before the anticipated acquisition.

(4) In paragraph (1)—

- (a) “relevant amount” means—
  - (i) where the derivative contract is an option<sup>(a)</sup> or a deal contingent forward contract, any profit or loss arising to the company in relation to the derivative contract, and
  - (ii) in any other case, any exchange gain or loss arising to the company in relation to the derivative contract;
- (b) “relevant shareholding” means—
  - (i) except where paragraph (ii) applies, a shareholding in another company which is, at the date the derivative contract is entered into, a substantial shareholding, and
  - (ii) where the company entering into the relevant hedging relationship is a qualifying asset holding company, a holding of qualifying shares within paragraph 53 of Schedule 2 to the Finance Act 2022<sup>(b)</sup>.

(5) In paragraph (2)(a)(ii), a dividend is a “relevant dividend” if it is exempt from corporation tax under Part 9A of CTA 2009<sup>(c)</sup> or would be exempt apart from an election under section 931R of CTA 2009.

(6) If there is a hedging relationship between part of the derivative contract and the hedged item, the proportion of the relevant amount in relation to the contract that is an

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(a) “Option” is defined in section 580 of the Corporation Tax Act 2009.

(b) 2022 c. 3.

(c) Part 9A was inserted by paragraph 1 of Schedule 14 to the Finance Act 2009 (c. 10).

excluded amount must be determined on a just and reasonable basis having regard to the proportion of the contract which is in the relevant hedging relationship.

(7) This regulation does not apply—

- (a) to a derivative contract which is entered into with a person (“A”) to whom the company is connected<sup>(a)</sup> unless—
  - (i) a person who is connected to the company enters into a derivative contract with a person who is not connected with the company, and
  - (ii) that contract confers rights or imposes liabilities which are equivalent to those of A under the contract which A entered with the company,
- (b) to a derivative contract that meets the accounting condition in section 579(1)(b) of CTA 2009,
- (c) where the anticipated transaction is between connected companies, or
- (d) where the company enters into a hedging relationship as part of a trade that consists of or includes dealing in shares or entering into creditor relationships.

(8) Section 466 of CTA 2009 (companies connected for an accounting period) applies for the purposes of paragraph (7)(c).

(9) In this regulation—

- “creditor relationship” has the same meaning as in section 302(5) of CTA 2009;
- “deal contingent forward contract” means a derivative contract which is contingent on completion of the anticipated transaction;
- “incidental costs” in relation to an acquisition mean incidental costs allowable under section 38(2) of TCGA 1992<sup>(b)</sup>;
- “qualifying asset holding company” is defined in section 14 of, and Schedule 2 to, the Finance Act 2022;
- “relevant currency” has the same meaning as in section 9C(2) and (3) of CTA 2010<sup>(c)</sup>;
- “substantial shareholding” has the same meaning as in paragraph 8 of Schedule 7AC to TCGA 1992<sup>(d)</sup>, but for the purposes of paragraph (3) paragraph 8(1) and (1)(a) of Schedule 7AC are to be read as if after “it”, in the first two places it appears, there were inserted “directly or indirectly” in both places.”.

(5) In regulation 7(5)(e)—

- (a) after “4” insert “or 5ZA”, and
- (b) for “exchange gains or losses” substitute “amount prescribed under regulation 4 or excluded under 5ZA”.

(6) In regulation 7A(f), after paragraph (7) insert—

“(7A) This regulation does not apply to amounts in relation to a derivative contract which are excluded amounts under regulation 5ZA.”.

### **Amendment of the Exchange Gains and Losses (Bringing into Account Gains or Losses) Regulations 2002**

**3.—**(1) The Exchange Gains and Losses (Bringing into Account Gains or Losses) Regulations 2002<sup>(g)</sup> are amended as follows.

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- (a) “Connected” is defined in section 1316 of the Corporation Tax Act 2009.
  - (b) 1992 c. 12; section 38(2) was amended by paragraph 5 of Schedule 18 to the Finance Act 2003 (c. 14).
  - (c) 2010 c. 4; section 9C was inserted by section 66(3) of the Finance Act 2013 (c. 29).
  - (d) Schedule 7AC was inserted by paragraph 1 of Schedule 8 to the Finance Act 2002 (c. 23), paragraph 8 was amended by paragraph 269(3) of Schedule 1 to the Corporation Tax Act 2010 and S.I. 2010/2902.
  - (e) Regulation 7(5) was inserted by S.I. 2015/1961.
  - (f) Regulation 7A was inserted by S.I. 2009/1886.
  - (g) S.I. 2002/1970, relevant amending instruments are S.I. 2004/3259 and 2010/809.

- (2) In regulation 3—
- (a) in paragraph (1), after “(1A)” insert “, (1B)”, and
  - (b) after paragraph (1A) insert—
    - “(1B) The circumstances prescribed by this paragraph are that—
      - (a) there is a disposal of an asset by a company, and
      - (b) in relation to a derivative contract of the company in a hedging relationship in respect of that asset, a profit or loss or an exchange gain or loss arose to the company which was an excluded amount under regulation 5ZA of the Disregard Regulations.”.
- (3) In regulation 5—
- (a) For paragraph (2) substitute—
    - “(2) The amount of any net gain or loss is to be calculated by finding the aggregate of any amounts representing—
      - (a) exchange gains or losses which accrued in relation to liabilities matched with the asset disposed of during the period in which the asset was held by the company disposing of it, and
      - (b) profits or losses or exchange gains or losses which accrued in relation to a derivative contract which were excluded amounts under regulation 5ZA of the Disregard Regulations.”, and
  - (b) after paragraph (3) insert—
    - “(3A) Where paragraph (2)(b) applies, in calculating the amount of any net gain or loss, amounts representing profits or losses or exchange gains or losses are not taken into account to the extent they accrued in relation to—
      - (a) a hedge in respect of a relevant dividend within regulation 5ZA(2)(a)(ii) of the Disregard Regulations, or
      - (b) a hedge in respect of a creditor relationship within regulation 5ZA(2)(a)(iii) of the Disregard Regulations.

(3B) Paragraph (3A)(a) does not apply to the extent that the relevant dividend has been taken into account in the calculation of any chargeable gain or allowable loss under sections 31(2)(a) or 176(4)(b) of the 1992 Act.”.

*Michael Tomlinson*  
*Rebecca Harris*

7th March 2022

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 (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (“the Disregard Regulations”) and the Exchange Gains and Losses (Bringing into Account Gains or Losses) Regulations 2002 (“the EGLBAGL Regulations”) to 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 citation, commencement and effect.

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(a) Section 31 of the Taxation of Chargeable Gains Act 1992 was substituted by paragraph 2 of Schedule 9 to the Finance Act 2011 (c. 11).

(b) Section 176(4) of the Taxation of Chargeable Gains Act 1992 was amended by paragraph 57 of Schedule 20 to the Finance Act 1996 (c. 8).

Regulation 2 amends the Disregard Regulations to extend the scope of the Regulations to derivative contracts which act as a hedge of a foreign exchange risk in relation to an anticipated future acquisition or disposal of certain shareholdings.

Regulation 2(2) amends the definition of a hedging relationship to include hedges of forecast transactions and firm commitments.

Regulation 2(3) amends regulation 4 of the Disregard Regulations to disapply this regulation to the extent that regulation 5ZA applies.

Regulation 2(4) inserts new regulation 5ZA which provides for an amount to be excluded from amounts brought into account in determining a company's profits and losses where it relates to a derivative contract which hedges a foreign exchange risk in relation to an anticipated future acquisition or disposal of a relevant shareholding. Paragraph (1) sets out the derivatives to which the provision applies. Paragraphs (2) and (3) set out the nature of the hedging relationship. Paragraph (4) provides for which amounts are to be excluded and the shareholdings to which the regulation applies. Paragraph (5) defines what type of dividend can be the subject of a hedging relationship. Paragraph (6) provides for an apportionment where only part of a derivative is used as a hedge, Paragraph (7) sets out cases where this regulation does not apply. Paragraph (8) and (9) are for interpretation and definitions.

Regulation 2(5) and (6) amend regulations 7 and 7A of the Disregard Regulations to disapply those regulations to the extent that regulation 5ZA applies.

Regulation 3 amends the EGLBAGL Regulations to provide for amounts that were not brought into account by virtue of the amendment to the Disregard Regulations to be brought into account on the eventual disposal of the shares to which the hedge related. Paragraph (2) amends regulation 3 of the EGLBAGL Regulations to provide for cases where amounts disregarded under regulation 5ZA of the Disregard Regulations are to be brought into account. Paragraph (3) amends regulation 5 of the EGLBAGL Regulations to make provision for the calculation of the amount to be brought into account.

A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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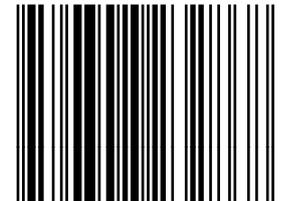




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