
STATUTORY INSTRUMENTS

2022 No. 239

**The Disregard and Bringing into Account of Profit
and Losses on Derivative Contracts Hedging
Acquisitions and Disposals of Shares Regulations 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⁽¹⁾ 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)(2) 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—

“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

(1) [S.I. 2004/3256](#); relevant amending instruments are [S.I. 2005/3374](#), [2009/1886](#) and [2015/1961](#).

(2) Paragraph (4B) was inserted by [S.I. 2005/3374](#).

(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⁽³⁾ 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⁽⁴⁾.

(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⁽⁵⁾ 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 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⁽⁶⁾ 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).

⁽³⁾ “Option” is defined in section 580 of the Corporation Tax Act 2009.

⁽⁴⁾ 2022 c. 3.

⁽⁵⁾ Part 9A was inserted by paragraph 1 of Schedule 14 to the Finance Act 2009 (c. 10).

⁽⁶⁾ “Connected” is defined in section 1316 of the Corporation Tax Act 2009.

(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(7);

“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(8);

“substantial shareholding” has the same meaning as in paragraph 8 of Schedule 7AC to TCGA 1992(9), 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)(10)—

(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(11), 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.”.

(7) 1992 c. 12; section 38(2) was amended by paragraph 5 of Schedule 18 to the Finance Act 2003 (c. 14).

(8) 2010 c. 4; section 9C was inserted by section 66(3) of the Finance Act 2013 (c. 29).

(9) 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.

(10) Regulation 7(5) was inserted by S.I. 2015/1961.

(11) Regulation 7A was inserted by S.I. 2009/1886.