STATUTORY INSTRUMENTS

2007 No. 3431

CORPORATION TAX

The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) (Amendment No. 2) Regulations 2007

Made - - - -	*5th December 2007*
Laid before the House of Commons	*6th December 2007*
Coming into force - -	*27th December 2007*

The Treasury make the following Regulations in exercise of the powers conferred by sections 84A(3A) of the Finance Act 1996(**a**) and paragraph 16(3A) of Schedule 26 to the Finance Act 2002(**b**):

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 No. 2) Regulations 2007 and shall come into force on 27th December 2007.

(2) These Regulations have effect in relation to accounting periods beginning on or after 1st January 2008.

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

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

(2) In regulation 2 (interpretation)—

(a) in paragraph (2) after "amortised cost" insert ", consolidated accounts",

(b) at the end insert—

"(6) For the purposes of regulations 3 to 5, where an asset referred to is shares in a company, the asset comprises all the shares held in that company whenever acquired.".

(3) In regulation 3 (exchange gains or losses arising from liabilities or assets hedging shares etc) in paragraph (4)(**d**)—

(**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**) S.I. 2004/3256, amended by S.I. 2005/2012, 2005/3374, 2006/3236 and 2007/948.

(**d**) Regulation 3(4) was amended by regulation 4 of S.I. 2005/2012.

(a) omit "at the time when the liability is entered into or, if later, when the asset is acquired",

(b) for "that time" substitute "the relevant time".

(4) In regulation 4 (exchange gains or losses arising from derivative contracts hedging shares etc) in paragraph (4)(**a**)—

(a) omit "at the time when the contract is entered into or, if later, when the asset is acquired", and

(b) for "that time" substitute "the relevant time".

(5) For regulation 4A (relevant value)(**b**) substitute—

"Relevant value

4A.—(1) For the purposes of regulations 3(7) and 4(5), "relevant value" means—

(a) in relation to shares held by the company in another company ("Company A"), where the company elects, the higher of—

(i) the net asset value underlying the shares in Company A, and

(ii) the value shown in the accounts of the company; and

(b) in any other case, the value shown in the accounts of the company.

(2) In paragraph (1)(a)(i) the net asset value underlying the shares in Company A is an amount equal to—

(a) the value of the assets, less

(b) the value of the liabilities

of Company A and any direct or indirect subsidiary of Company A denominated in the relevant currency.

This is subject to paragraph (6).

(3) The value of assets and liabilities referred to in paragraph (2) is the value at the relevant time shown in—

(a) a balance sheet of Company A, or

(b) where Company A has a direct or indirect subsidiary, a notional consolidated balance sheet of Company A prepared in the relevant currency.

(4) For the purposes of paragraph (3) in determining whether an asset or liability would be recognised in the balance sheet or notional consolidated balance sheet and, if so recognised the value that would be accorded to it, regard shall be had to the accounting treatment of the asset or liability—

(a) in any consolidated accounts prepared by the company, or

(b) where the company does not prepare consolidated accounts, in any consolidated accounts prepared by a company that directly or indirectly controls the company.

(5) Nothing in paragraphs (3) or (4) shall prevent an asset or liability, which might be eliminated in the preparation of any consolidated accounts, from being taken into account in paragraph (2).

(6) If the company does not directly hold the entire issued share capital in Company A, the net asset value underlying the shares in Company A shall be reduced by such amount as is just and reasonable having regard to—

(a) the proportion of the issued shares held by the company, and

(b) where there is more than one class of share, the rights attached to the shares held by the company.

(7) An election under paragraph (1)—

(**a**) Regulation 4(4) was amended by regulation 5 of S.I. 2005/2012.
(**b**) Regulation 4A was inserted by regulations 2 and 6 of S.I. 2005/3374 and amended by S.I. 2007/948.

(a) is irrevocable,

(b) applies to all the shareholdings held by the company which are matched in accordance with regulation 3(3)(b) or 4(3)(b),

(c) has effect from the beginning of the accounting period in which the election is made,

(d) must be made in writing to Her Majesty's Revenue and Customs within the time limit specified in paragraph (8), and

(e) must specify the review period.

(8) The time limit for making an election is—

(a) in relation to shares held on and before the start of the first accounting period beginning on or after 1st January 2008, the later of—

(i) 31st March 2008, and

(ii) 30 days from the start of that accounting period; and

(b) in any other case, within 30 days of shares being matched in accordance with regulation 3(3)(b) or 4(3)(b).

(6) In this regulation—

"relevant currency" means the currency which, as a result of exchange rate fluctuations, gives rise to the economic risk referred to in regulations 3(3) and 4(3);

"control" has the meaning given in section 840 of the Income and Corporation Taxes Act 1988(**a**).

Relevant time

4B.—(1) For the purposes of regulations 3(4), 4(4) and 4A(3) "relevant time" is determined as follows.

(2) In a case within regulation 4A(1)(a) (relevant value determined by net asset value) the relevant time is the start of each review period in an accounting period.

(3) In a case within regulation 4A(1)(b) (relevant value determined by accounts value), the relevant time is the time when the liability or contract is entered into or, if later, when the asset is acquired.

Review period

4C.—(1) For the purposes of regulations 4A(7)(f) and 4B(2) a review period is one of a series of successive periods of a length specified by a company making an election in accordance with regulation 4A(1)(a), but not exceeding 92 days.

This is subject to the provisions of this regulation.

(2) The first review period in an accounting period begins on the first day of the accounting period or, if later, when any liability or derivative contract first becomes matched with an asset consisting of shares in accordance with regulation 3(3)(b) or 4(3)(b).

(3) Where a company has matched an asset consisting of shares in accordance with regulation 3(3)(b) or 4(3)(b) ("the first asset"), the first review period in relation to shares which are subsequently matched—

(a) begins when the matching occurs, and

(b) ends at the same time as the review period which is current in relation to the first asset when the subsequent matching occurs.

(4) The last review period in an accounting period must end on or before the last day of the accounting period.".

(**a**) 1988 c. 1. Section 840 was amended by paragraph 224 of Schedule 1 to the Income Tax Act 2007 (c. 3).

Alan Campbell
Claire Ward

5th December 2007 — 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 (S.I. 2004/3256, as amended by S.I. 2005/2012, 2005/3374, 2006/3236 and 2007/948: "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.

Regulation 2 amends the Principal Regulations as follows.

Paragraphs (2) to (4) make amendments to regulation 2 (interpretation), regulation 3 (exchange gains or losses arising from liabilities or assets hedging shares etc) and regulation 4 (exchange gains or losses arising from derivative contracts hedging shares etc) which are consequent to the new regulations 4A, 4B and 4C inserted by paragraph (5).

New regulation 4A (relevant value) makes provision for a company to elect to match a liability or derivative contract with the value of net assets underlying a shareholding, in other cases the value to be matched is the value shown in the accounts of the company.

New regulation 4B (relevant time) makes provision for the relevant time to determine the value for matching purposes. Where a company has elected to match the underlying net asset value, the relevant time is the start of a review period. Where the value is determined by the accounts value, the relevant time is the time when the liability or contract is entered into or, if later, when the asset is acquired.

New regulation 4C (review period) defines the review period.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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