



HM Revenue
& Customs

**Corporation Tax: Corporate Debt and Derivative Contracts
Amendments to the Disregard Regulations 2004 and the
Change of Accounting Practice Regulations 2004**

Technical Note
7 August 2014

Introduction

At Budget 2013, the Government announced consultation on a package of proposals to modernise the corporation tax rules governing the taxation of corporate debt and derivative contracts, with a view to legislating in Finance Bill 2014 and Finance Bill 2015. This work supports the Government's aim of promoting a tax system which is efficient, competitive, predictable, simple and fair.

Over the next few years UK companies are likely to see changes to the accounting practice used to prepare financial statements. In particular, for periods commencing 1 January 2015 many UK companies will be required to apply one of EU-Endorsed IFRS, FRS 101 or FRS 102¹.

This technical paper sets out proposed changes to the corporate tax rules that apply to corporate debt and derivative contracts. The principal aim for introducing these rules is to ease the impact of the accountancy changes that become mandatory for many companies from 1 January 2015.

The proposed changes are set out in three sets of amending Regulations. The draft Regulations are now published for a short period of technical consultation which will close on 12 September 2014. Please direct any comments to the contact name below.

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¹ Further details of the accountancy changes and the potential tax impact for companies can be found at: www.hmrc.gov.uk/accounting-standards.

Overview of the amendments

1. The proposed changes are set out in three sets of amending Regulations. For each set of amending Regulations there are draft Regulations and Explanatory Note, a draft Explanatory Memorandum and a Tax Information and Impact Note (TIIN).

Amendments to the Disregard Regulations

2. The Disregard Regulations² provide detailed tax rules governing the tax treatment of particular instruments, especially in the context of loans and derivatives which are intended to hedge business risks. The amendments will address certain technical issues concerning the operation of the Disregard Regulations.
3. In particular, the key change is to streamline the ability of companies to make an election to choose which approach to take. The election will be to ‘elect-in’ to the computational rules, rather than being ‘elect-out’ as at present. In many cases companies should be able to simply follow the amounts recognised in their accounts. Where, however, companies prefer to apply the detailed computational provisions contained in the Disregard Regulations, they will be able to do so by election.
4. Companies will also have a longer period to make an election to allow them more time to assess which approach is most appropriate for them. It will also be possible to amend or revoke an election on a prospective basis, after an initial lock-in period of three years.
5. It is proposed that these amendments will take effect for periods of account commencing on or after 1 January 2015.
6. For companies that already apply fair value accounting in respect of derivatives which potentially fall within the scope of the Disregard Regulations, it is proposed that their current status under the Regulations will be preserved without any action being required. They will be able to revise their status on a prospective basis under the new rules.
7. It is also proposed to make minor changes to regulations 3 and 4A. The statutory references to primary legislation in the Disregard Regulations will be updated following the introduction of the Corporation Tax Act 2009.

² Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (S.I. 2004 / 3256)

Amendments to the Change of Accounting Practice Regulations

8. The Change in Accounting Practice Regulations³ provide detailed tax rules governing the tax treatment of loans and derivatives where there is a change in accounting practice.
9. The main effect of the amendment is to preserve the existing treatment in cases where distressed debt is modified as part of a corporate rescue. This will ensure that no taxable profit arises on transition, with a corresponding restriction on losses going forwards.
10. It is proposed that these amendments will take effect for periods of account commencing on or after 1 January 2015.
11. The statutory references to primary legislation in the Change of Accounting Practice Regulations will be updated following the introduction of the Corporation Tax Act 2009.

Amendments in respect of permanent-as-equity loans

12. It is intended to make changes through a third set of Regulations in respect of permanent-as-equity loans, made under the *vires* in section 465A of the Corporation Tax Act 2009. The effect of the amendment is to preserve the existing treatment of 'permanent-as-equity' loans.
13. It is proposed that the amendments in respect of permanent-as-equity debt, will apply to periods of account commencing on or after 1 October 2012 where there is a change in accounting treatment and, in the immediately preceding period, the company has treated loan receivables as 'permanent-as-equity' under Statement of Standard Accounting Practice 20 (SSAP 20).
14. This commencement date has been selected to cover companies and periods for which accounts may not yet have been finalised. This is an anti-forestalling provision, to prevent companies changing their accounting treatment for an earlier period in light of the draft Regulations to obtain a tax advantage. It is expected that very few, if any, companies will be affected by this use of an early commencement date. If any business has concerns with this approach please would you raise these with HMRC.

³ Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004 (S.I. 2004 / 3271)