HM Revenue
& Customs

Taxation of Corporate Debt and Derivative Contracts Amendments to the Disregard Regulations 2004

Who is likely to be affected?

Companies which are subject to the corporation tax rules on loan relationships and derivative contracts.

General description of the measure

The measure amends the operation of the Disregard Regulations[1]. This is to preserve the existing tax treatment for loans treated as permanent-as-equity under previous accounting standards.

Policy objective

This measure supports the Government's objective of establishing a simpler, more certain and more robust tax system. This measure looks to ease the impact of accountancy changes that become mandatory for many companies from 1 January 2015.

Background to the measure

At Budget 2013 the Government announced a review of the legislation governing the taxation of corporate debt and derivative contracts. On 6 June 2013 a consultation document *Modernising the taxation of corporate debt and derivative contracts* was published, and informal consultation has continued since then. The Government's response to the consultation was published on 10 December 2013. The Government published a technical note on 8 April 2014.

Detailed proposal

Operative date

This measure will have effect where there is a relevant change in accounting policy for a period commencing on or after 1 October 2012.

Current law

Part 5 of the Corporation Tax Act 2009 contains provision which govern how companies are taxed on their loan relationships. The tax treatment is heavily based on the accounting treatment adopted by the company in respect of its loan relationships. Changes in the accounting treatment can therefore have a significant effect on how a company is taxed.

Where, as a result of a change in accounting policy, there is a change in the carrying value of a loan relationship this adjustment is generally taxed or relieved. The Change of Accounting Practice Regulations[2] provide rules which govern the treatment of these transitional adjustments. In particular, certain adjustments are excluded from being brought into account and certain other adjustments are spread over a period of ten years.

[1] The Loan Relationship and Derivative Contract (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (S.I. 2004 / 3256)
[2] The Loan Relationship and Derivative Contract (Change of Accounting Practice) Regulations 2004 (S.I. 2004 / 3271)

Section 328 of the Corporation Tax Act 2009 specifies the treatment of exchange gains and losses from loan relationships. Ordinarily, a company is taxable on exchange movements that are recognised in profit or loss. Where, however, a company recognises exchange movements to the Statement of Total Recognised Gains and Losses (STRGL), these are not immediately brought into account for tax. In respect of a loan asset, these amounts will instead be brought into account at the time where the company disposes of the loan.

The Disregard Regulations provide detailed rules that were introduced in 2004 following the introduction of international accounting standards. They provide specific treatment to alter the amounts brought into account in respect of particular instruments.

Proposed revisions

This measure is being introduced through secondary legislation in advance of the main changes arising from the review, which will be included in Finance Bill 2015.

The Disregard Regulations will be amended by statutory instrument to preserve the treatment that arises under current accounting standards in the following circumstances.

Permanent as equity debt

Where a company holds a loan receivable which it had previously treated under SSAP 20 as permanent-as-equity and the company adopts the new accounting standards it may be required to adjust the carrying value of debt on transition in its accounts. In addition, under the new accounting standards the company will be required to translate the loan using the prevailing exchange rate at each period end with exchange gains and losses recognised to profit or loss.

Where the loan was previously held at historic cost or translated with the resulting exchange gains and losses recognised in the STRGL the existing treatment will be preserved. As such, the company will be excluded from bringing a credit or debit into account on transition. In addition, the company will not bring into account exchange gains and losses on such instruments that are recognised to profit or loss. These amounts will instead be brought into account on the disposal of the loan asset.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	negligible	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer.				
Economic impact	The measure is not expected to have any significant economic impacts.				
Impact on individuals and households	No impact on individuals or households has been identified. The measure is concerned with corporate taxpayers only.				
Equalities impacts	No impact on equalities has been identified.				

Impact on business including civil society organisations	This measure looks to ease the impact of accountancy changes that become mandatory for many companies from 1 January 2015.
Operational impact (£m) (HMRC or other)	The measure is not expected to have any significant impact.
Other impacts	Small and micro business assessment: no material impact is anticipated on small companies, whose current interaction with the loan relationships/derivative contracts regimes is generally straightforward. Other impacts have been considered and none have been identified.

Monitoring and evaluation

The measure will be monitored through information received from company tax returns and tax administrative data and through regular communication with affected businesses.

Further advice

If you have any questions about this change, please contact Richard Daniel on 03000 569408 (email: richard.daniel@hmrc.gsi.gov.uk).

Declaration

David Gauke MP, Financial Secretary to the Treasury has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.