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 will address certain technical issues concerning the operation of the Disregard Regulations[1], principally in connection with the elections that companies can make under these Regulations.

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 for periods of account commencing on or after 1 January 2015.

Current law

The Disregard Regulations provide detailed rules that were introduced in 2004 following the introduction of international accounting standards. In particular:

Regulations 3 to 5 provide rules to exclude exchange movements from tax where a company is party to a loan relationship or derivative contract to hedge the exchange risk from holding ships, shares or aircraft. Regulation 4A provides companies with an option to irrevocably elect to use an alternative basis for calculating the value of the hedged asset.

Regulations 7, 8 and 9 provide rules where a company is party to a derivative contract as part of a hedging relationship. Fair value movements on the derivative are 'disregarded' and are instead brought into account in-line with the hedged risk. Regulation 6 provides companies with certain options to irrevocably elect-out of regulations 7, 8 and 9. Where a company makes an election, regulation 9A may apply to provide an alternative basis for dealing with designated cash flow hedges.

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

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 achieve the following revisions to the law.
The elections under regulation 6 will be substantially modified as follows:

- There will now be a single election which companies can make. This election will be to ‘elect-in’ to the computational rules in regulations 7, 8 and 9, rather than the ‘elect-out’ approach as at present.

- Where a company adopts fair value accounting for the first time in a period of account commencing on or after 1 January 2015, they will have a longer period in which to make the election. This will be six months from the start of the period for very large companies or twelve months from the end of the period for other companies. These companies will then be subject to an initial lock-in period of three years.

- Thereafter, and for companies that have already apply fair value accounting in respect of affected instruments, the company will be able to make, amend or revoke an election at any time. This will have effect for derivative contracts entered into on or after the date specified in the election or notice, but this cannot be before the date of the election or notice.

- There will be an anti-avoidance provision to prevent companies claiming relief for fair value losses in cases where they would not be taxable on corresponding fair value profits. In these circumstances, regulation 7, 8 or 9 will apply to the affected derivatives.

The restriction in regulation 3(1A) will be removed. This will mean that where a company holds a non-lending money debt as an intended hedge of holding ships, shares and aircraft, it will be afforded the same treatment as with loan relationships and derivative contracts.

The election under regulation 4A will be modified. Companies will be able to make and revoke elections under regulation 4A at any time. These will have effect from the time specified in the elections or revocation, but this cannot be before the date the election or revocation is made.

The statutory references to primary legislation in the Disregard Regulations will be updated following the introduction of the Corporation Tax Act 2009.

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).

Further details of the accounting changes and the corporation tax implications can be found at www.hmrc.gov.uk/accounting-standards.

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.