

2010 No. 3025

CORPORATION TAX

**The Tax Treatment of Financing Costs and Income (Correction
of Mismatches) Regulations 2010**

Made - - - - *21st December 2010*
Laid before the House of Commons *21st December 2010*
Coming into force - - *13th January 2011*

The Commissioners for Her Majesty's Revenue and Customs make the following regulations in exercise of the powers conferred by sections 336A(1), (4) and (5) and 353B of the Taxation (International and Other Provisions) Act 2010(a).

PART 1

PRELIMINARY MATTERS AND INTERPRETATION

Citation and commencement

1.—(1) These Regulations may be cited as the Tax Treatment of Financing Costs and Income (Correction of Mismatches) Regulations 2010 and come into force on 13th January 2011.

(2) These Regulations have effect in relation to periods of account beginning on or after 1st January 2010.

(3) But paragraph (2) is subject to regulations 17 (election that specified regulations are not to apply to the worldwide group) and 18 (election that these Regulations are not to apply to periods of account beginning before they are made).

Interpretation

2.—(1) In these Regulations—

“CTA 2009” means the Corporation Tax Act 2009(b);

“TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010;

“Part 7” means Part 7 of TIOPA 2010 (tax treatment of financing costs and income);

“accounting period” is to be read in accordance with Chapter 2 of Part 2 of CTA 2009 (accounting periods);

“debtor relationship” has the meaning given in section 302 of CTA 2009 (“loan relationship” and other definitions);

(a) 2010 c. 8. See section 353 for the definition of “Commissioners”. Sections 336A and 353B were inserted by paragraphs 28 and 33 respectively of Schedule 5 to the Finance (No. 3) Act 2010 (c.33).

(b) 2009 c. 4.

“deeply discounted security” has the meaning given in Chapter 8 of Part 4 of the Income Tax (Trading and Other Income) Act 2005(a) (profits from deeply discounted securities);

“fair value accounting” means a basis of accounting under which assets or liabilities are shown in the company’s balance sheet at their fair value;

“fair value adjustment” means—

- (a) an adjustment which brings into account a profit or loss in relation to an asset or liability representing a loan relationship where for the accounting period in question fair value accounting is used, or
- (b) where fair value accounting is used in relation to only part of an asset or a liability, an adjustment which brings into account a profit or loss in relation to that part,

and in either case includes an adjustment to bring into account a profit or loss recognised as a result of applying hedge accounting to a fair value hedge;

“fair value hedge” has the meaning for the time being given by international accounting standards;

“financing expense amount” in relation to a company means a financing expense amount of the company other than a financing expense amount that is treated by any provision within Chapter 7 of Part 7 (“financing expense amount” and “financing income amount”) as not being a financing expense amount;

“hedge accounting” has the meaning for the time being given by international accounting standards;

“loan relationship” has the meaning given in section 302 of CTA 2009;

“period of account” means a period of account of the worldwide group(b);

“relevant financial relationship” has the meaning given in paragraph (2).

(2) In these Regulations, “relevant financial relationship”, in relation to a company, means—

- (a) a loan relationship of the company where the company stands in the position of a debtor as respects the debt in question;
- (b) a relationship treated as a loan relationship by virtue of any provision of Part 6 of CTA 2009 (relationships treated as loan relationships, etc), where the company stands in the position of a debtor as respects the debt in question;
- (c) an arrangement treated by section 761(2) of the Corporation Tax Act 2010(c) (deemed loan relationship if borrower is a company) or section 762(2) of that Act (deemed loan relationship if borrower is partnership with corporate member) as if it were a loan relationship of the company or partnership, as the case may be, where the company stands in the position of a debtor as respects the debt in question, but excluding a money debt owed by or to a firm in relation to which the company is required to bring credits and debits into account in accordance with section 380(3) of CTA 2009 (partnerships involving companies).

(3) In regulations 14 and 16, the expressions “amortised cost” and “effective interest rate method” have the meaning for the time being given by international accounting standards;

(4) In these Regulations, in any case in which either of sections 347 and 348 of TIOPA 2010 (non-compliant and non-existent financial statements of the worldwide group) applies, references to “financial statements” are to those financial statements of the group by reference to which Part 7 is applied.

(a) 2005 c. 5.

(b) See section 346(3) of TIOPA 2010 which provides that references to a period of account of the worldwide group are to a period in respect of which financial statements of the worldwide group are drawn up.

(c) 2010 c. 4.

PART 2

CORRECTION OF MISMATCHES BETWEEN TAX TREATMENT AND ACCOUNTING TREATMENT

Fair value adjustments

3.—(1) This regulation applies if the conditions given in regulation 4 are satisfied for a period of account.

(2) In any case in which Amount A exceeds Amount B in relation to the same relevant financial relationship, there shall be excluded from the available amount the lower of—

- (a) the amount of the fair value adjustment made in relation to the relevant financial relationship, and
- (b) the amount of the excess.

(3) In any case in which Amount B exceeds Amount A in relation to the same relevant financial relationship, there shall be included in the available amount the lower of—

- (a) the amount of the fair value adjustment made in relation to the relevant financial relationship, and
- (b) the amount of the excess.

(4) In this regulation—

- (a) Amount A in relation to a relevant financial relationship of a relevant group company in an accounting period is the amount in respect of the relevant financial relationship which is disclosed in the financial statements of the worldwide group for a period of account and included in the available amount for that period of account, and
- (b) Amount B in relation to a relevant financial relationship of a relevant group company in an accounting period is the amount which would be brought into account for the purposes of Part 5 of CTA 2009 (loan relationships) in respect of the relevant financial relationship if that amount were calculated by deducting the total financing income amounts relating to the relevant financial relationship from the total financing expense amounts relating to the relevant financial relationship.

(5) In any case in which the accounting period of the relevant group company does not coincide with the period of account, it is assumed for the purposes of paragraph (4)(b) that the accounting period of the relevant group company is—

- (a) the same as the period of account, if the relevant group company is a member of the worldwide group throughout that period of account;
- (b) in any other case, that part of the period of account during which the relevant group company is a member of the worldwide group.

(6) In any case in which, but for this paragraph, Amount B would be a negative amount, Amount B is taken to be zero.

Conditions for the application of regulation 3

4.—(1) The first condition is that a relevant group company is a party to a relevant financial relationship in a relevant accounting period.

(2) The second condition is that a debit in respect of the relevant financial relationship is a financing expense amount of the company.

(3) The third condition is that an amount in respect of the relevant financial relationship is included in the available amount otherwise than by virtue of regulation 3.

(4) The fourth condition is that a fair value adjustment is made in relation to the relevant financial relationship by the relevant group company in the relevant accounting period.

Late interest treated as not accruing until paid

5.—(1) This regulation applies in relation to a debit in respect of interest payable under a debtor relationship of a relevant group company if the conditions given in regulation 6 are satisfied.

(2) In the period of account in which the interest to which the debit relates is paid, the amount of the debit shall be included in the available amount to the extent that it is not included in the available amount for that period by virtue of any other enactment.

Conditions for the application of regulation 5

6.—(1) The first condition is that the debit is to be brought into account in a relevant accounting period for the purposes of Part 5 of CTA 2009 by virtue of section 373 of that Act (late interest treated as not accruing until paid in some cases).

(2) The second condition is that the debit is a financing expense amount of the company in the period of account in which the interest to which the debit relates is paid.

(3) The third condition is that the debit would be brought into account for the purposes of Part 5 of CTA 2009 in an accounting period beginning on or after 1st January 2010 if section 373 of CTA 2009 did not apply.

Adjustment for period of account in which late interest would be a financing expense amount but for section 373 of CTA 2009

7.—(1) This regulation applies in relation to a debit in respect of interest which has accrued under a debtor relationship of a relevant group company if the conditions given in regulation 8 are satisfied.

(2) In the period of account in which the debit would be a financing expense amount of a company but for section 373 of CTA 2009, any amount in respect of the debit that would be included in the available amount but for this paragraph shall be excluded from the available amount.

Conditions for the application of regulation 7

8.—(1) The first condition is that but for section 373 of CTA 2009 the debit would be a financing expense amount of the company in a period of account.

(2) The second condition is that the debit would be brought into account for the purposes of Part 5 of CTA 2009 in an accounting period beginning on or after 1st January 2010 if section 373 of CTA 2009 did not apply.

Postponed debits in relation to deeply discounted securities

9.—(1) This regulation applies in relation to a debit in respect of a debtor relationship of a relevant group company if the conditions given in regulation 10 are satisfied.

(2) In the period of account in which the deeply discounted security to which the debit relates is redeemed, the amount of the debit shall be included in the available amount to the extent that it is not included in the available amount for that period by virtue of any other enactment.

Conditions for the application of regulation 9

10.—(1) The first condition is that either of sections 407 and 409(a) of CTA 2009 (postponement until redemption of debits for deeply discounted securities of connected companies

(a) Sections 407 and 409 were amended by paragraphs 6 and 7 respectively of Schedule 20 to the Finance Act 2009 (c. 10) with effect where the relevant period (within the meaning of sections 407(1) and 409(1) of CTA 2009) begins on or after 1st April 2009, subject to transitional provisions including a right of election postponing that effect. Section 407 was further amended by paragraph 130 of Schedule 8 to TIOPA 2010, with effect for corporation tax purposes for accounting periods ending on or after 1st April 2010.

and of close companies) requires the debit to be brought into account for the purposes of Part 5 of CTA 2009 in a relevant accounting period.

(2) The second condition is that the debit is a financing expense amount of the company in the period of account in which the deeply discounted security is redeemed.

(3) The third condition is that a debit in respect of the deeply discounted security would be brought into account for the purposes of Part 5 of CTA 2009 in an accounting period beginning on or after 1st January 2010 if neither of sections 407 and 409 of CTA 2009 applied.

Adjustment where debits in respect of deeply discounted securities would be brought into account but for either of sections 407 and 409 of CTA 2009

11.—(1) This regulation applies in relation to a debit in respect of a debtor relationship of a relevant group company if the conditions given in regulation 12 are satisfied.

(2) In the period of account in which the debit would be a financing expense amount of a company but for either of sections 407 and 409 of CTA 2009, any amount in respect of the debit that would be included in the available amount but for this paragraph shall be excluded from the available amount.

Conditions for the application of regulation 11

12.—(1) The first condition is that but for either of sections 407 and 409 of CTA 2009 the debit would be a financing expense amount of the company for a period of account.

(2) The second condition is that the debit would be brought into account for the purposes of Part 5 of CTA 2009 in an accounting period beginning on or after 1st January 2010 if neither of sections 407 and 409 of CTA 2009 applied.

Loan relationships with embedded derivatives

13.—(1) This regulation applies in relation to a debit if the conditions given in regulation 14 are satisfied.

(2) In the period of account in which the debit is brought into account by the relevant group company, the amount referred to in paragraph (3) shall be included in the available amount to the extent that it is not included in the available amount for that period of account by virtue of any other enactment.

(3) The amount is such part of the debit as is directly attributable to the requirement referred to in regulation 14(4).

Conditions for the application of regulation 13

14.—(1) The first condition is that a debit is brought into account under Part 5 of CTA 2009 in respect of a loan relationship to which section 415 of CTA 2009 (loan relationships with embedded derivatives) applies.

(2) The second condition is that the debit is a financing expense amount of the company.

(3) The third condition is that an amount in respect of the loan relationship is included in the available amount otherwise than by virtue of regulation 13.

(4) The fourth condition is that the debit is required by international accounting standards to be measured at amortised cost using the effective interest rate method.

Debt restructuring

15.—(1) This regulation applies in relation to a debit if the conditions given in regulation 16 are satisfied.

(2) In the period of account in which the debit is brought into account by the relevant group company, the amount referred to in paragraph (3) shall be included in the available amount to the

extent that it is not included in the available amount for that period of account by virtue of any other enactment.

(3) The amount is such part of the debit as is directly attributable to the requirement referred to in regulation 16(5).

Conditions for the application of regulation 15

16.—(1) The first condition is that a relevant group company is a party to a relevant financial relationship in a relevant accounting period.

(2) The second condition is that a debit in respect of the relevant financial relationship is a financing expense amount of the relevant group company.

(3) The third condition is that an amount in respect of the relevant financial relationship is included in the available amount otherwise than by virtue of regulation 15.

(4) The fourth condition is that under international accounting standards the relevant financial relationship has been recognised using fair value accounting in the accounts of the relevant group company, in the relevant accounting period or in a previous accounting period, as a new financial liability upon the occurrence of one of the following events—

(a) an exchange of the relevant financial relationship for an existing financial liability in substantially different terms, or

(b) a substantial modification of the terms of an existing financial liability or part of it,

where in either case the event is accounted for, in relation to the existing financial liability, as an extinguishment of that liability.

(5) The fifth condition is that after the initial recognition of the relevant financial relationship using fair value accounting, the debit is required by international accounting standards to be measured at amortised cost using the effective interest rate method.

PART 3

ELECTIONS

Election that specified regulations are not to apply to the worldwide group

17.—(1) A worldwide group may elect that one or more of the following regulations and pairs of regulations will not apply to it—

(a) 3;

(b) 5 and 7;

(c) 9 and 11;

(d) 13;

(e) 15.

(2) The election must specify to which regulations or pairs of regulations it relates.

(3) The election must comply with the requirements imposed by regulation 19.

(4) The election is irrevocable.

Election that these Regulations are not to apply to periods of account beginning before they are made

18.—(1) A worldwide group may elect that these Regulations are not to apply in relation to periods of account beginning before the date on which these Regulations are made.

(2) The election must comply with the requirements imposed by regulation 19.

(3) The election is irrevocable.

Election requirements

19.—(1) The election must be made by the later of—

- (a) 31st March 2011;
- (b) 12 months from the end of the first period of account that begins on or after 1st January 2010.

(2) The election must be made by the reporting body.

(3) The election must be signed by the appropriate person in relation to the reporting body.

(4) In this regulation the “appropriate person”, in relation to a company, means—

- (a) the proper officer of the company, or
- (b) such other person as may have the express, implied or apparent authority of the company to act on its behalf for the purposes of these Regulations.

(5) Subsections (3) and (4) of section 108 of the Taxes Management Act 1970^(a) (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this regulation as they apply for the purposes of that section.

(6) An election which does not comply with the conditions set out in this regulation is of no effect.

(7) In this regulation, “the reporting body” has the meaning given by section 277 of TIOPA 2010 (meaning of “the reporting body”).

Mike Eland
Steve Lamey

21st December 2010

Two of the Commissioners for Her Majesty’s Revenue and Customs

(a) 1970 c. 9. Section 108(3) was amended and subsection (4) inserted by paragraph 2 of Schedule 41 to the Finance Act 2003 (c. 14) with effect for companies which enter administration (whether under the Insolvency Act 1986 (c. 45) or otherwise) on or after the commencement of section 248 of the Enterprise Act 2002 (c. 40). Section 248 came into force on 15th September 2003.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 7 of the Taxation (International and Other Provisions) Act 2010 (“TIOPA 2010”) applies to groups of companies. It provides for the disallowance for corporation tax purposes of net financing deductions of the UK members of a group to the extent that the total of those deductions exceeds the “available amount.” The available amount is the sum of the amounts disclosed in the financial statements of the worldwide group for the relevant period of account in respect of matters specified in section 332(1) of TIOPA 2010 or in regulations made under that section.

A mismatch may occur if the amount disclosed in the financial statements of the worldwide group in respect of a liability differs from the amount accounted for in respect of the same liability by the UK member of the worldwide group. These Regulations are made for the purposes of altering the way in which the available amount is calculated in cases where there is a mismatch.

Under the power conferred by section 336A(4) of TIOPA 2010, these Regulations have effect in relation to periods of account beginning on or after 1st January 2010. But a worldwide group may elect for any (or all) of certain regulations or pairs of regulations not to apply to it or for the Regulations as a whole to have effect only for periods of account beginning on or after the day on which they are made.

Regulations 3 and 4 deal with cases where a mismatch arises as a result of the use of fair value accounting or hedge accounting. Regulation 3 applies for a period of account of a worldwide group if the conditions given in regulation 4 are met for that period of account, and provides for an adjustment of the available amount where defined Amounts A and B differ.

Amount A is the amount in respect of the relevant financial relationship that is disclosed in the financial statements of the worldwide group and included in the available amount in accordance with section 332 of TIOPA 2010 or any regulations made under that section.

Amount B is the amount that would be brought into account by the relevant group company in respect of the relevant financial relationship for the purposes of Part 5 (loan relationships) of the Corporation Taxes Act 2009 (“CTA 2009”) on the assumptions set out in the regulation. Amount B is treated as zero if as a result of the application of regulation 3 it would otherwise be a negative amount.

If Amount A exceeds Amount B in respect of the same relevant financial relationship (as defined in regulation 2), the available amount is decreased by the fair value adjustment made or the excess, whichever is lower. If Amount B exceeds Amount A, the available amount is increased by the fair value adjustment or the excess, whichever is lower.

Regulations 5 to 8 provide for the correction of mismatches which occur where interest is treated for the purposes of Part 5 of CTA 2009 as not accruing until it is paid.

Regulation 5 provides that if the conditions in regulation 6 are satisfied, an amount in respect of a debit relating to interest so treated is included in the available amount in the period of account in which it is paid to the extent that it is not included in that amount under another provision.

Regulation 7 deals with the case in which an amount in respect of accrued interest is included in the available amount in the period of account in which it accrues rather than that in which it is paid. The regulation provides that if the conditions in regulation 8 are satisfied, the amount in respect of the accrued interest is excluded from the available amount in that period of account.

Regulations 9 to 12 provide for the correction of mismatches which may occur where a debit in respect of a debtor relationship which is represented by a deeply discounted security is brought into account in the period in which the security is redeemed.

Regulation 9 provides that if the conditions in regulation 10 are satisfied, an amount in respect of such a debit is included in the available amount to the extent that it is not included in that amount under another provision.

Regulation 11 deals with the case in which an amount in respect of a debtor relationship represented by a deeply discounted security is included in the available amount in the period of account other than that in which it is redeemed. The regulation provides that if the conditions in regulation 12 are satisfied, the amount is excluded from the available amount in that period of account.

Regulation 13 deals with loan relationships with embedded derivatives. The regulation provides that if the conditions in regulation 14 are satisfied, such part of the debit as is directly attributable to the requirement that it be measured at amortised cost shall be included in the available amount to the extent that it is not included in that amount under another provision.

Regulation 15 deals with debt restructuring. The regulation provides that if the conditions given in regulation 16 are satisfied, an amount equal to such part of the debit as is directly attributable to the requirement that it be measured at amortised cost shall be included in the available amount to the extent that it is not included in that amount under another provision.

Regulation 17 provides that if the worldwide group makes an election for the purpose, any or all of the regulations or pairs of regulations specified in the election will not apply to it. The election is irrevocable. It must comply with the requirements in regulation 19.

Regulation 18 provides that if the worldwide group makes an election for the purpose, the Regulations as a whole will apply to the worldwide group for periods of account beginning on or after the date on which the Regulations are made. The election is irrevocable. It must comply with the requirements in regulation 19.

Regulation 19 lays down the requirements which must be met for an election under regulation 17 or 18 to be effective. The election must be made within a year of the end of the first period of account of the worldwide group beginning on or after 1st January 2010, or by 31st March 2011 if later, and must be made by the reporting body and signed by the appropriate person in relation to the reporting body. The terms “reporting body” and “appropriate person” are defined.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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