

Status: Point in time view as at 30/12/2006.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 10. (See end of Document for details)

SCHEDULES

SCHEDULE 26 **U.K.**

DERIVATIVE CONTRACTS

Modifications etc. (not altering text)

- C1** Sch. 26 modified by 1996 c. 8, s. 86(3C) (as inserted (24.7.2002 with effect as mentioned in s. 82(2) of the amending Act) by 2002 c. 23, s. 82, **Sch. 25 Pt. 1 para. 6(3)**)
- C1** Sch. 26 modified by 1996 c. 8, s. 94A (as inserted (with effect in accordance with s. 52(3) of the amending Act) by **Finance Act 2004 (c. 12)**, **Sch. 10 para. 13**)
- C1** Sch. 26 applied by 1988 c. 1, s. 440(2B) (as amended (with effect in accordance with s. 52(3) of the amending Act) by **Finance Act 2004 (c. 12)**, **Sch. 10 para. 70**)
- C1** Sch. 26 applied (with modifications) (5.10.2004) by **Energy Act 2004 (c. 20)**, s. 198(2), **Sch. 9 para. 12** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1
- C1** Sch. 26 applied (with modifications) (5.10.2004) by **Energy Act 2004 (c. 20)**, s. 198(2), **Sch. 9 para. 24** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1
- C1** Sch. 26 modified (8.6.2005) by **Railways Act 2005 (c. 14)**, s. 60(2), **Sch. 10 para. 7**; S.I. 2005/1444, art. 2(1), Sch. 1
- C1** Sch. 26 modified (8.6.2005) by **Railways Act 2005 (c. 14)**, s. 60(2), **Sch. 10 para. 19**; S.I. 2005/1444, art. 2(1), Sch. 1
- C1** Sch. 26 modified (19.7.2006) by **Finance Act 2006 (c. 25)**, s. 136(2)(e)
- C1** Sch. 26 extended (retrospective to 30.9.2002) by **Finance Act 2003 (c. 14)**, s. 177(4)(8)(11)

PART 10 U.K.

INTERPRETATION

Statutory accounts

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Textual Amendments

- F1** Sch. 26 para. 52 repealed (with effect in accordance with s. 52(3) of the amending Act) by **Finance Act 2004 (c. 12)**, **Sch. 10 para. 68**, **Sch. 42 Pt. 2(6)**

Derivative and relevant contracts of person

- 53 (1) For the purposes of this Schedule references to a relevant contract of a person are references to a relevant contract entered into or acquired by a person; and references to a person's being party to a relevant contract shall be construed accordingly.

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- (2) For the purposes of sub-paragraph (1), a relevant contract is acquired by a person if that person becomes entitled to the rights, and subject to the liabilities, under the relevant contract whether by assignment or otherwise.
- (3) Where—
- (a) a company ceases to be party to a derivative contract in an accounting period (the “cessation period”),
 - (b) profits or losses arise to the company from the derivative contract or a related transaction in the cessation period, and
 - (c) the credits or debits brought into account for the purposes of this Schedule for the cessation period do not include credits or debits which represent the whole of those profits or losses,
- credits or debits in respect of so much of those profits or losses as are not represented by credits or debits brought into account for the cessation period shall continue to be brought into account under this Schedule over one or more subsequent accounting periods (“post-cessation periods”) as in the case of a derivative contract to which the company is party in those periods and sub-paragraphs (4) and (5) shall apply.
- (4) In any case falling within sub-paragraph (3), any question—
- (a) whether, in a post-cessation period, the company is, or is to any extent, party to the contract for the purposes of a trade carried on by it, or
 - (b) whether, in a post-cessation period, the contract is to any extent referable to a particular business, or a particular class, category or description of business, carried on by the company,
- shall be determined by reference to the circumstances immediately before the company ceased to be party to the contract instead of the circumstances in the post-cessation period.
- (5) In any case falling within sub-paragraph (3), any question—
- (a) whether the contract has to any extent a particular purpose in a post-cessation period, or
 - (b) whether there is a connection between the company and any other person for a post-cessation period,
- shall be determined by reference to the circumstances in the cessation period instead of the circumstances in the post-cessation period.
- (6) For the purposes of the Corporation Tax Acts references to a person’s derivative contracts and to a person’s being party to a derivative contract shall be construed accordingly.

General interpretation

- 54 (1) In this Schedule—

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“bank” means any of the following—

- (a) the Bank of England;
- (b) any person falling within section 840A(1)(b) of the Taxes Act 1988;
and
- (c) any firm falling within section 840A(1)(c) of that Act;

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[^{F3}“carrying value” in relation to a contract, shall be construed in accordance with sub-paragraphs (3A) and (3B) of paragraph 50A;]

“contract for differences” shall be construed in accordance with paragraph 12;

“contract of insurance” has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);

[^{F4}“creditor relationship” has the meaning given by section 103(1) of the Finance Act 1996;

“debtor relationship” has the meaning given by section 103(1) of the Finance Act 1996;]

“derivative contract” shall be construed in accordance with paragraph 2;

^{F5}
.....

“exchange gain” and “exchange loss” shall be construed in accordance with sub-paragraphs (2) [^{F6}, (2A)] and (3);

[^{F7}“fair value” , in relation to a derivative contract of a company, means the amount which, at the time as at which the value falls to be determined, is the amount that the company would obtain from or, as the case may be, would have to pay to an independent person for—

(a) the transfer of all the company’s rights under the contract ^{F8} ..., and

(b) the release of all the company’s liabilities under the contract ^{F8} ...;

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

“future” has the meaning given by paragraph 12;

[^{F3}“hybrid derivative” shall be construed in accordance with paragraph 2B;]

“insurance company” means a company which effects or carries out contracts of insurance;

“intangible fixed assets” has the meaning given by paragraph 12;

“investment trust” is a company approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for an accounting period;

“life assurance business” has the same meaning as in section 431 of the Taxes Act 1988;

“long-term insurance business” means business which consists of the effecting and carrying out of contracts which fall within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and “contract of long-term insurance” means any contract which falls within that Part of that Schedule;

[^{F3}“nested derivative” shall be construed in accordance with paragraph 2B(1)(b)(i);]

“non-life mutual business” means any mutual trading, or any mutual insurance or other mutual business, which (in either case) is not life assurance business;

[^{F9}“open-ended investment company” has the meaning given by section 468A(2) of the Taxes Act 1988;]

“option” has the meaning given by paragraph 12;

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[^{F3}“plain vanilla contract” shall be construed in accordance with paragraph 2(2B);]

[^{F3}“quasi-derivative host contract” shall be construed in accordance with paragraph 2B(1)(b)(ii);]

“related transaction” has the meaning given by paragraph 15;

“relevant contract” has the meaning given by paragraph 2;

“shares”, in relation to a company, has (except in paragraphs 39 and 40) the meaning given by paragraph 2;

[^{F3}“TCGA 1992” means the Taxation of Chargeable Gains Act 1992.]

^{F10}
.....

“UK company” means a company incorporated or formed under the law of a part of the United Kingdom;

“underlying subject matter” has the meaning given by paragraph 11;

“warrant” has the meaning given by paragraph 12.

(2) References in this Schedule to exchange gains or exchange losses, in the case of any company, are references respectively to—

- (a) profits or gains, or
- (b) losses,

which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the company in another currency on an asset or liability of the company.

If the result of such a comparison is that neither an exchange gain nor an exchange loss arises, then for the purposes of this Schedule an exchange gain of nil shall be taken to arise in the case of that comparison.

[^{F11}(2A) The Treasury may make provision by regulations as to the manner in which—

- (a) exchange gains or losses, and
- (b) any other profits or gains or losses,

are to be calculated for the purposes of sub-paragraph (2) in a case where fair value accounting is used by the company.

Any such regulations may be made so as to apply to periods of account beginning before the regulations are made, but not earlier than the beginning of the calendar year in which they are made.]

(3) A reference to an exchange gain or loss from a company’s derivative contract is a reference to an exchange gain or loss arising to a company in relation to a derivative contract of the company.

(4) In this Schedule “financial trader” means—

- (a) any person who—
 - (i) falls within section 31(1)(a), (b) or (c) of the Financial Services and Markets Act 2000 (c. 8), and
 - (ii) has permission under that Act to carry on one or more of the activities specified in Article 14 and, in so far as it applies to that Article, Article 64 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544); or
- (b) any person not falling within paragraph (a) who is approved by the Board for the purposes of this paragraph.

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Textual Amendments

- F2** Words in Sch. 26 para. 54(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 69\(a\)](#), **Sch. 42 Pt. 2(6)**
- F3** Words in Sch. 26 para. 54(1) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, \(Parts 2 and 9\) \(Amendment\) Order 2006 \(S.I. 2006/3269\)](#), arts. 1, **29(2)**
- F4** Words in Sch. 26 para. 54(1) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **19(2)**
- F5** Words in Sch. 26 para. 54(1) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, \(Parts 2 and 9\) \(Amendment\) Order 2006 \(S.I. 2006/3269\)](#), arts. 1, **29(3)**
- F6** Word in Sch. 26 para. 54(1) inserted (retrospective to 7.4.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 6 para. 4(5)(6)**
- F7** Words in Sch. 26 para. 54(1) substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 10 para. 69(b)**
- F8** Words in Sch. 26 para. 54(1) repealed (with effect in accordance with Sch. 6 para. 24(3)(4) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 6 para. 24\(2\)](#), **Sch. 26 Pt. 3(12)**
- F9** Words in Sch. 26 para. 54(1) inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **15**
- F10** Words in Sch. 26 para. 54(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 69\(c\)](#), **Sch. 42 Pt. 2(6)**
- F11** Sch. 26 para. 54(2A) substituted (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 6 para. 11**

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