

SCHEDULES

SCHEDULE 26

DERIVATIVE CONTRACTS

PART 3

METHOD OF TAXATION

Method of bringing amounts into account

- 14 (1) For the purposes of corporation tax the profits and losses arising from the derivative contracts of a company shall be computed in accordance with this paragraph using the credits and debits given for the accounting period in question by the following provisions of this Schedule.
- (2) To the extent that, in any accounting period, a derivative contract of a company is one to which the company is party for the purposes of a trade carried on by it, the credits and debits given in respect of that contract for that period shall be treated (according to whether they are credits or debits) either—
- (a) as receipts of that trade falling to be brought into account in computing the profits of that trade for that period; or
 - (b) as expenses of that trade which are deductible in computing those profits.
- (3) Where for any accounting period there are, in respect of the derivative contracts of a company, credits and debits that are not brought into account under sub-paragraph (2), they shall be brought into account for that accounting period as if they were non-trading credits or non-trading debits falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of loan relationships of the company.
- (4) Sub-paragraph (2), so far as it provides for any amount to be deductible as mentioned in paragraph (b) of that sub-paragraph, shall have effect notwithstanding anything in section 74 of the Taxes Act 1988 (allowable deductions).

Credits and debits brought into account

- 15 (1) The credits and debits to be brought into account in the case of any company in respect of its derivative contracts shall be the sums which, in accordance with an authorised accounting method and when taken together, fairly represent, for the accounting period in question—
- (a) all profits and losses of the company which (disregarding any charges or expenses) arise to the company from its derivative contracts and related transactions; and
 - (b) all charges and expenses incurred by the company under or for the purposes of its derivative contracts and related transactions.

Status: This is the original version (as it was originally enacted).

- (2) The reference in sub-paragraph (1)(a) to the profits and losses arising to a company does not include a reference to any amounts required to be transferred to the company's share premium account.
- (3) The reference in sub-paragraph (1)(a) to the profits and losses arising to a company includes—
- (a) a reference to any profits or losses which, in accordance with generally accepted accounting practice, are carried to or sustained by any reserve maintained by the company, and
 - (b) a reference to any forward premiums or discounts which arise from a derivative contract whose underlying subject matter consists wholly or partly of currency and which, in accordance with generally accepted accounting practice, are brought into account as profits or losses.
- (4) The reference in sub-paragraph (1)(b) to charges and expenses incurred for the purposes of a company's derivative contracts and related transactions does not include a reference to any charges or expenses other than those incurred directly—
- (a) in bringing any of those contracts into existence;
 - (b) in entering into or giving effect to any of those transactions;
 - (c) in making payments under any of those contracts or in pursuance of any of those transactions; or
 - (d) in taking steps for ensuring the receipt of payments under any of those contracts or in accordance with any of those transactions.
- (5) Where—
- (a) any charges or expenses are incurred by a company for purposes connected—
 - (i) with entering into a derivative contract or related transaction, or
 - (ii) with giving effect to any obligation that might arise under a derivative contract or related transaction,
 - (b) at the time when the charges or expenses are incurred, the contract or transaction is one into which the company may enter but has not entered, and
 - (c) if that contract or transaction had been entered into by that company, the charges or expenses would be charges or expenses incurred as mentioned in sub-paragraph (4),

those charges or expenses shall be treated for the purposes of this Schedule as charges or expenses in relation to which debits may be brought into account in accordance with sub-paragraph (1)(b) to the same extent as if the contract or transaction had been entered into.

- (6) Where—
- (a) different authorised accounting methods are used for the purposes of this Schedule as respects the same derivative contract for different parts of the same accounting period or for successive accounting periods, and
 - (b) an amount is brought into account for the purposes of the company's statutory accounts in respect of the change of method,

that amount shall be taken for the purposes of this Schedule to be included among the sums in respect of which credits and debits fall to be brought into account for the purposes of this Schedule in accordance with sub-paragraph (1)(a).

- (7) In this Schedule “related transaction”, in relation to a derivative contract, means any disposal or acquisition (in whole or in part) of rights or liabilities under the derivative contract.
- (8) The cases where there shall be taken for the purposes of sub-paragraph (7) to be a disposal or acquisition of rights or liabilities under a derivative contract shall include—
- (a) those where such rights or liabilities are transferred or extinguished by any sale, gift, surrender or release, and
 - (b) those where the contract is discharged by performance in accordance with its terms.
- (9) This paragraph has effect subject to paragraph 16.

Exchange gains and losses arising from derivative contracts

- 16 (1) The reference in paragraph 15(1)(a) to the profits and losses arising to a company from its derivative contracts and related transactions includes a reference to exchange gains and losses arising to the company from its derivative contracts.
- (2) Sub-paragraph (1) is subject to the following provisions of this paragraph.
- (3) Sub-paragraph (1) does not have effect in relation to—
- (a) so much of an exchange gain or loss arising to a company, in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency, as falls within sub-paragraph (4),
 - (b) so much of any exchange gain or loss arising to a company as results from any translation from one currency to another pursuant to section 93A(4) of the Finance Act 1993 (c. 34) of the profit or loss of part of the company’s business and falls within sub-paragraph (6), or
 - (c) so much of an exchange gain or loss arising to a company, in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency, as falls within a description prescribed for the purpose in regulations made by the Treasury.
- (4) For the purposes of sub-paragraph (3)(a), an exchange gain or loss falls within this sub-paragraph to the extent that in accordance with generally accepted accounting practice an amount representing the whole or part of it—
- (a) is carried to or sustained by a reserve maintained by the company; and
 - (b) is set off by or against an amount falling within sub-paragraph (5).
- (5) An amount falls within this sub-paragraph if—
- (a) it represents the whole or part of an exchange gain or loss arising to the company in relation to any asset of the company; and
 - (b) in accordance with generally accepted accounting practice it is carried to or sustained by the reserve mentioned in sub-paragraph (4).
- (6) For the purposes of sub-paragraph (3)(b), an exchange gain or loss falls within this sub-paragraph to the extent that, in accordance with generally accepted accounting practice, an amount representing the whole or part of it is carried to or sustained by a reserve maintained by the company.

Status: This is the original version (as it was originally enacted).

- (7) Where, by virtue of sub-paragraph (3), sub-paragraph (1) does not have effect in relation to an amount representing the whole or part of an exchange gain or loss, paragraph 15(3) shall not have effect in relation to that amount (but this sub-paragraph is subject to regulations under sub-paragraph (8)).
- (8) The Treasury may by regulations make provision for or in connection with bringing into account in prescribed circumstances amounts in relation to which sub-paragraph (1) does not, by virtue of sub-paragraph (3), have effect.
- (9) The reference in sub-paragraph (8) to bringing amounts into account is a reference to bringing amounts into account—
 - (a) for the purposes of this Schedule, as credits or debits arising to a company from its derivative contracts and related transactions; or
 - (b) for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12).
- (10) Any power to make regulations under this paragraph includes power to make different provision for different cases.