

Status: Point in time view as at 06/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (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 extended (retrospective to 30.9.2002) by **Finance Act 2003 (c. 14), s. 177(4)(8)(11)**

PART 9 U.K.

MISCELLANEOUS

Derivative contracts ceasing to be held for purposes of trade

- 44 (1) This paragraph applies where—
- (a) a company is party to a relevant contract which is a derivative contract by virtue of paragraph (contracts entered into or acquired by a company for the purposes of a trade carried on by it), and
 - (b) the purposes for which the company entered into or acquired the relevant contract cease at any time (“the relevant time”) to be the company’s purposes in relation to that relevant contract, but
 - (c) the company continues to be party to the relevant contract after the relevant time.
- (2) Where this paragraph applies, the company shall be deemed—
- (a) to have disposed of the relevant contract immediately before the relevant time for a consideration of an amount equal to the fair value of the contract at the relevant time, and
 - (b) to have reacquired it immediately after that time for the same consideration.

Contracts becoming held for purposes of trade

- 45 (1) This paragraph applies where a relevant contract of a company—

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- (a) whose underlying subject matter consists, or is treated as consisting, wholly of—
- (i) shares in a company [^{F1}or],
 - (ii) rights of a unit holder under a unit trust scheme, ^{F2}...
 - ^{F3}(iii)
- (b) which is a chargeable asset, and
- (c) which was entered into or acquired by the company otherwise than for the purposes of a trade carried on by it,
- is at any time appropriated by the company for the purposes of a trade carried on by it.
- (2) Where this paragraph applies—
- (a) section 161 of the Taxation of Chargeable Gains Act 1992 (c. 12) (appropriations to and from stock) shall have effect in relation to the appropriation of that contract, but
 - (b) the company may not make an election under subsection (3) of that section in relation to that appropriation.
- (3) For the purposes of this paragraph an asset is a chargeable asset if any gain accruing on the disposal of the asset by the company would be a chargeable gain for the purposes of the Taxation of Chargeable Gains Act 1992 (and includes any obligations under futures contracts which, by virtue of section 143 of that Act, are regarded as assets to the disposal of which that Act applies).
- (4) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of the property referred to in sub-paragraph (1)(a).

Textual Amendments

- F1** Word in Sch. 26 para. 45(1)(a)(i) 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 2005 \(S.I. 2005/646\)](#), arts. 1(1), **14(2)**
- F2** Word in Sch. 26 para. 45(1)(a)(ii) 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 2005 \(S.I. 2005/646\)](#), arts. 1(1), **14(3)**
- F3** Sch. 26 para. 45(1)(a)(iii) 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 2005 \(S.I. 2005/646\)](#), arts. 1(1), **14(4)**

Derivative contracts which are to be taxed on a chargeable gains basis

- [^{F4}45A(1) This paragraph applies to a derivative contract of a company for an accounting period if any of the following provisions applies to the derivative contract for the period—
- (a) paragraph 45C (derivative contracts relating to land or certain tangible movable property);
 - (b) paragraph 45D (creditor relationship with embedded derivative which is an option relating to qualifying ordinary shares or mandatorily convertible preference shares);

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- (c) paragraph 45F (creditor relationship with embedded derivative which is an exactly tracking contract for differences whose subject matter is land or qualifying ordinary shares);
 - (d) paragraph 45G (property based total return swaps).
- (2) Where this paragraph applies to a derivative contract for an accounting period—
- (a) paragraph 14(3) (non-trading credits and debits) shall not apply to the relevant credits and debits, but
 - (b) sub-paragraph (4) shall apply to them instead.
- (3) For the purposes of this paragraph the relevant credits and debits—
- (a) in the case of a derivative contract falling within any of paragraphs (a) to (c) of sub-paragraph (1), are the credits and debits given in relation to the contract for the accounting period by paragraph 15;
 - (b) in the case of a derivative contract falling within paragraph (d) of that sub-paragraph, are the credits and debits described in sub-paragraph (2) of paragraph 45G.
- (4) For the purposes of corporation tax on chargeable gains—
- (a) if C exceeds D, a chargeable gain equal in amount to the amount of the excess shall be treated as accruing to the company in the accounting period,
 - (b) if D exceeds C, a loss equal in amount to the amount of the excess shall be treated as accruing to the company in the accounting period,
- but this is subject to sub-paragraph (6).
- (5) In sub-paragraph (4)—
- C means the sum of the relevant credits for the accounting period in respect of the derivative contract;
 - D means the sum of the relevant debits for the accounting period in respect of the derivative contract.
- (6) Sub-paragraph (4) does not apply in the case of a derivative contract falling within sub-paragraph (1)(b) (embedded option) if, on the assumption that—
- (a) the rights and liabilities that fall to be treated as comprised in the derivative contract by virtue of section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) had been contained in a separate contract,
 - (b) that separate contract were an actual option,
 - (c) that option were disposed of at the end of the accounting period, and
 - (d) a gain accrued for the purposes of corporation tax on chargeable gains to the company on the disposal,
- paragraph 2 of Schedule 7AC to the Taxation of Chargeable Gains Act 1992 (substantial shareholding exemptions: disposal of asset related to shares) would apply to that gain.

Textual Amendments

- F4** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) 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), 15

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Carry back of net losses on derivative contracts to which paragraph 45A applies

45B. (1) This paragraph applies in the case of a company if the following conditions are satisfied—

- (a) there is a net amount of paragraph 45A losses (see sub-paragraph (5)(a)) for an accounting period (the “loss period”),
- (b) there is a net amount of paragraph 45A gains (see sub-paragraph (5)(b)) for a previous accounting period (the “gains period”),
- (c) the gains period falls wholly or partly within the period of 24 months immediately preceding the start of the loss period,
- (d) within 2 years after the end of the loss period the company makes a claim for the purpose in respect of the whole or a part of the net amount of paragraph 45A losses for the loss period.

(2) In any such case—

- (a) the net amount of paragraph 45A gains for the gains period, and
- (b) the net amount of paragraph 45A losses for the loss period,

shall each be reduced (but not below nil) by the amount in respect of which the claim is made.

(3) For the purposes of sub-paragraph (2)—

- (a) the net amount of paragraph 45A gains for a later period must be reduced so far as possible before the net amount of paragraph 45A gains for an earlier period, and
- (b) where a gains period falls partly before the start of the 24 month period referred to in sub-paragraph (1), only the appropriate fraction of the net amount of paragraph 45A gains for the gains period may be reduced.

(4) For the purposes of sub-paragraph (3), the “appropriate fraction” is—

AB

where—

A is the number of days in the gains period that fall within the 24 month period,
and

B is the number of days in the gains period.

(5) For the purposes of this paragraph—

- (a) where for any accounting period L exceeds G, there is a net amount of paragraph 45A losses for that period of an amount equal to that excess,
- (b) where for any accounting period G exceeds the sum of L and N, there is a net amount of paragraph 45A gains for that period of an amount equal to that excess.

(6) In the application of sub-paragraph (5) in relation to any accounting period of a company—

G is the sum of the amounts of any chargeable gains treated as accruing to the company in the period under paragraph 45A(4)(a) in respect of derivative contracts of the company (“paragraph 45A gains”),

L is the sum of the amounts of any allowable losses treated as accruing to the company in the period under paragraph 45A(4)(b) in respect of derivative contracts of the company,

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N is the sum of the amounts of any non-paragraph 45A losses that would fall to be deducted in the period from paragraph 45A gains, on the assumption in sub-paragraph (7).

(7) The assumption is that, as respects the accounting period, non-paragraph 45A losses are treated as being deducted from non-paragraph 45A gains, so far as possible, before any remainder is deducted from paragraph 45A gains.

(8) In this paragraph—

“deducted” means deducted in accordance with section 8(1) of the Taxation of Chargeable Gains Act 1992;

“non-paragraph 45A gains” means any chargeable gains accruing to the company in the accounting period, other than paragraph 45A gains;

“non-paragraph 45A losses” means any allowable losses of the company that may be deducted in the accounting period, other than losses accruing in the period under paragraph 45A(4)(b).

Textual Amendments

F4 Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) 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), 15

Derivative contracts relating to land or certain tangible movable property

45C. (1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—

- (a) the derivative contract is not one to which the company is party at any time in the accounting period for the purposes of a trade carried on by the company (but see sub-paragraph (2)),
- (b) the company is not a body falling within sub-paragraph (3);
- (c) the underlying subject matter of the derivative contract falls within sub-paragraph (4);
- (d) paragraph 45F (embedded derivative which is an exactly tracking contract for differences whose subject matter is land) does not apply to the derivative contract.

(2) The condition in sub-paragraph (1)(a) does not apply if the company—

- (a) is party to the derivative contract for the purposes of life assurance business,
or
- (b) is a mutual trading company.

(3) The bodies that fall within this sub-paragraph are—

- an authorised unit trust;
- an investment trust;
- an open-ended investment company;
- a venture capital trust.

(4) The underlying subject matter of a derivative contract falls within this sub-paragraph if it consists of either or both of the following—

- (a) land (wherever situated);

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- (b) tangible movable property, other than commodities which are tangible assets.

This sub-paragraph is subject to the following qualification.

- (5) Where the underlying subject matter of a derivative contract includes income from property of either or both of the types described in sub-paragraph (4) and that income is—
- (a) subordinate in relation to so much of the underlying subject matter of the derivative contract as consists of property of either or both of those types, or
 - (b) of small value in comparison with the value of the underlying subject matter as a whole,
- that income shall be left out of account in determining for the purposes of sub-paragraph (1)(c) whether the underlying subject matter of the derivative contract falls within sub-paragraph (4).
- (6) For the purposes of sub-paragraph (5) whether part of the underlying subject matter of a derivative contract of a company is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the contract.

Textual Amendments

- F4** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) 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), 15

Creditor relationships: embedded derivatives which are options

- 45D. (1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—
- (a) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) has effect in relation to a creditor relationship of the company,
 - (b) the derivative contract is the relevant contract, or one of the relevant contracts, to which the company is treated under subsection (2)(b) of that section as party in the case of that creditor relationship,
 - (c) that relevant contract is treated by virtue of subsection (3) of that section as an option,
 - (d) the additional conditions in sub-paragraph (2) are satisfied.
- (2) The additional conditions are—
- (a) the company is not party to the creditor relationship at any time in the accounting period for the purposes of a trade carried on by it (but see sub-paragraph (3)),
 - (b) the derivative contract is not one to which any of paragraphs 6 to 8 applies,
 - (c) the underlying subject matter of the derivative contract—
 - (i) is qualifying ordinary shares (see sub-paragraph (4)), or
 - (ii) is mandatorily convertible preference shares (see sub-paragraph (4)),
 - (d) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc),

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- (e) this paragraph is not prevented from applying to the derivative contract for the accounting period by paragraph 45E.
- (3) The condition in sub-paragraph (2)(a) does not apply if the company—
- (a) is party to the creditor relationship for the purposes of life assurance business, or
 - (b) is a mutual trading company.
- (4) In this paragraph—
- “mandatorily convertible preference shares” means shares—
- (a) which represent the creditor relationship,
 - (b) which are not qualifying ordinary shares, and
 - (c) which are issued upon terms that stipulate that they must be converted into, or exchanged for, qualifying ordinary shares by a relevant time, and for this purpose “relevant time” means a time no more than 24 hours after the acquisition of the shares by a person who, immediately before that acquisition, had the creditor relationship;
- “qualifying ordinary shares” means shares in a company (the “relevant company”) which satisfy the Conditions in sub-paragraphs (5) and (6).
- (5) Condition 1 is that the shares are shares representing some or all of the issued share capital (by whatever name called) of the relevant company, other than—
- (a) capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of that company, or
 - (b) capital the holders of which have no right to a dividend of any description nor any other right to share in the profits of that company.
- (6) Condition 2 is that the shares—
- (a) are listed on a recognised stock exchange, or
 - (b) are shares in a holding company or a trading company.
- (7) In sub-paragraph (6)—
- “holding company” has the meaning given in paragraph 22(1) of Schedule A1 to the Taxation of Chargeable Gains Act 1992;
- “trading company” has the meaning given by paragraph 22A of that Schedule.
- [^{F5}(8) A loan relationship which is one to which sub-paragraph (1) applies, shall not be treated as a qualifying corporate bond by virtue of section 117(A1) of the Taxation of Chargeable Gains Act 1992, if this paragraph applies to the embedded derivative contract.]

Textual Amendments

- F4** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) 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), **15**
- F5** Sch. 26 para. 45D(8) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), **6**

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Exclusions from paragraph 45D

- 45E. (1) Paragraph 45D does not apply to a derivative contract of a company for an accounting period if any of the following Conditions is satisfied in the case of the derivative contract in the period.
- (2) In this paragraph “the original asset” means the asset that represents the creditor relationship mentioned in paragraph 45D(1).
- (3) Condition 1 is that the rights and liabilities that fall to be treated as comprised in the derivative contract are such that the extent to which shares may be acquired in accordance with them is to be determined using a cash value—
- (a) which is specified in the contract for the original asset, or
 - (b) which is or will be ascertainable by reference to that contract.
- (4) Condition 2 is that the rights and liabilities that fall to be treated as comprised in the derivative contract are such that—
- (a) the company is entitled or obliged to receive a payment instead of the shares which are the underlying subject matter of the derivative contract, and
 - (b) the amount of that payment differs by more than an insignificant amount from the value of the shares which the company would be entitled to acquire in accordance with those rights and liabilities at the time it became entitled or obliged to receive the payment.
- (5) Condition 3 is that there is for the accounting period a connection (within the meaning of section 87(3) of the Finance Act 1996) between—
- (a) the company, and
 - (b) the company that issued the original asset,
- and the original asset is not one in relation to which, by virtue only of subsection (5) (b) of section 73, the amendments made by that section do not have effect.

Textual Amendments

- F4** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) 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), 15

Creditor relationships: embedded derivatives which are exactly tracking contracts for differences

- 45F. (1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—
- (a) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) has effect in relation to a creditor relationship of the company,
 - (b) the derivative contract is the relevant contract, or one of the relevant contracts, to which the company is treated under subsection (2)(b) of that section as party in the case of that creditor relationship,
 - (c) that relevant contract is treated by virtue of subsection (3) of that section as a contract for differences,
 - (d) the additional conditions in sub-paragraph (2) are satisfied.
- (2) The additional conditions are—

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- (a) the creditor relationship is not one to which the company is party at any time in the accounting period for the purposes of a trade carried on by the company (but see sub-paragraph (3)),
 - ^{F6}(b)
 - (c) the underlying subject matter of the derivative contract—
 - (i) is land (wherever situated), or
 - (ii) is qualifying ordinary shares listed on a recognised stock exchange,
 - (d) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc),
 - (e) the derivative contract is an exactly tracking contract (see sub-paragraphs (4) to (6)).
- (3) The condition in sub-paragraph (2)(a) does not apply if the company—
- (a) is party to the creditor relationship for the purposes of life assurance business, or
 - (b) is a mutual trading company.
- (4) For the purposes of this paragraph “an exactly tracking contract” is a contract for differences where D is equal to the amount determined by applying R% to C, where—
- D is the amount that must be paid to discharge the rights and liabilities that fall to be treated as comprised in the contract;
 - R% is a relevant percentage change in the value of the underlying subject matter of the contract (see sub-paragraph (5));
 - C is the amount falling for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 to be regarded in accordance with generally accepted accounting practice as the initial cost of the asset which represents the creditor relationship.
- (5) In sub-paragraph (4), the reference to a relevant percentage change in the value of the underlying subject matter of the contract is a reference to the percentage change (if any) over the relevant period in—
- (a) the value of the assets which are the underlying subject matter of the contract,
 - (b) or any index of the value of those assets.
- (6) In sub-paragraph (5) “the relevant period” means—
- (a) the period between—
 - (i) the date when the asset representing the creditor relationship came into existence, and
 - (ii) the date when the corresponding debtor relationship comes to an end; or
 - (b) any other period in which almost all of that period is comprised, and which differs from that period exclusively for purposes connected with giving effect to a valuation in relation to rights or liabilities under the asset representing the creditor relationship.
- (7) In this paragraph “qualifying ordinary shares” means shares which satisfy Condition 1 in paragraph 45D(5).
- [A loan relationship which is one to which sub-paragraph (1) applies, shall not be
- ^{F7}(8) treated as a qualifying corporate bond by virtue of section 117(A1) of the Taxation of Chargeable Gains Act 1992, if this paragraph applies to the embedded derivative contract.]

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Textual Amendments

- F4** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) 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), **15**
- F6** Sch. 26 para. 45F(2)(b) 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 2005 \(S.I. 2005/646\)](#), arts. 1(1), **15**
- F7** Sch. 26 para. 45F(8) added (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), **7**

Property based total return swaps

45G. (1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—

- (a) the derivative contract is a contract for differences,
- (b) one or more indices are designated in the contract,
- (c) at least one index so designated (the “capital value index”) is an index of changes in the value of land (wherever situated),
- (d) the underlying subject matter of the derivative contract also includes interest rates.

[the additional conditions in sub-paragraph (1A) are satisfied.
F8(e)

(1A) The additional conditions are—

- (a) the derivative contract is not one to which the company is party at any time in the accounting period for the purposes of a trade carried on by the company (but see sub-paragraph (1B)), and
- (b) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc).

(1B) The condition in sub-paragraph (1A)(a) does not apply if the company—

- (a) is party to the derivative contract for the purposes of life assurance business, or
- (b) is a mutual trading company.]

(2) In any such case, the relevant credits and debits for the purposes of paragraph 45A(3)

(b) are those which—

- (a) are given in relation to the derivative contract for the accounting period by paragraph 15, and
- (b) fall within sub-paragraph (3).

(3) The credits and debits are those found for the period by applying R% to N, where—

N is the amount which is the notional principal amount in the case of the derivative contract;

R% is the percentage change (if any) in the capital value index over the relevant period.

(4) In sub-paragraph (3) “the relevant period” means—

- (a) the accounting period, if the company is party to the derivative contract throughout that period;

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- (b) in any other case, any part of the accounting period throughout which the company is party to the derivative contract.

Textual Amendments

- F4** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) 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), **15**
- F8** Sch. 26 para. 45G(1)(e), (1A)(1B) 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 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), **8**

Paragraph 45D: treatment of net gains and losses on terminal exercise of option

^{F9}45H.

Textual Amendments

- F4** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) 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), **15**
- F9** Sch. 26 para. 45H 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 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), **9**

Index-linked gilt-edged securities with embedded contracts for differences

- 45I. (1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—
- (a) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) has effect in relation to a creditor relationship of the company,
 - (b) that creditor relationship is an index-linked gilt-edged security,
 - (c) the credits and debits which fall to be brought into account for the accounting period for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in respect of the equivalent deemed loan relationship are non-trading credits and non-trading debits,
 - (d) the derivative contract is the relevant contract to which the company is treated under subsection (2)(b) of section 94A of the Finance Act 1996 as party in the case of the creditor relationship,
 - (e) that relevant contract is treated by virtue of subsection (3) of that section as a contract for differences.
- (2) The credits and debits that would, apart from this paragraph, fall to be brought into account under this Schedule in respect of the derivative contract for the accounting period shall not be so brought into account.
- (3) In this paragraph—
- “the equivalent deemed loan relationship” is the loan relationship to which, in the case of the creditor relationship, the company is treated as party under section 94A(2)(a) of the Finance Act 1996;

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“gilt-edged security” has the meaning given by section 103(1) of the Finance Act 1996;

“index-linked gilt-edged security” means any gilt-edged security the amount of the payments under which is determined wholly or partly by reference to the retail prices index;

“the retail prices index” has the same meaning as in the Income Tax Acts (see section 833(2) of the Taxes Act 1988).]

Textual Amendments

- F4** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) 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), **15**

Issuers of securities with embedded derivatives: deemed options

[^{F10}45J(1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—

- (a) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) has effect in relation to a debtor relationship of the company,
- (b) the derivative contract is the relevant contract, or one of the relevant contracts, to which the company is treated under subsection (2)(b) of that section as party in the case of that debtor relationship,
- (c) that relevant contract is treated by virtue of subsection (3) of that section as an option,
- (d) the additional conditions in sub-paragraph (2) are satisfied,

(2) The additional conditions are—

- (a) at the time when the company became party to the debtor relationship—
 - (i) it was not carrying on a banking business or a business as a securities house, or
 - (ii) if it was carrying on such a business, it did not become party to the debtor relationship in the ordinary course of that business,

^{F11}(b)

- (c) the underlying subject matter of the derivative contract is shares,
- (d) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc).

(3) Where this paragraph applies to a derivative contract for an accounting period—

- (a) paragraph 14(3) (non-trading credits and debits) shall not apply to the credits and debits given in relation to the contract for the accounting period by paragraph 15, but
- (b) sub-paragraph (5), (7) or (9) (as the case may be) of this paragraph shall, subject to sub-paragraph (4), apply instead.

(4) Sub-paragraphs (5), (7) and (9) do not apply where the company is a party to the debtor relationship mentioned in sub-paragraph (1) immediately before the first accounting period to which this paragraph applies.

(5) This paragraph applies if—

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Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

- (a) the option mentioned in sub-paragraph (1)(c) is exercised at any time in an accounting period, and
- (b) shares are issued or transferred in fulfilment of the obligations under the option (the “relevant disposal”)

and where it applies, section 144(2) of Taxation of Chargeable Gains Act 1992 (exercise of options) applies to the relevant disposal as if the amount treated in accordance with section 94A(2) of the Finance Act 1996 as the carrying amount of the option at the time the company became party to the loan relationship (the “initial carrying amount”) was the consideration for the grant of the option.

- (6) Sub-paragraph (7) applies if—
 - (a) the option mentioned in sub-paragraph (1)(c) is exercised at any time in an accounting period,
 - (b) there is no relevant disposal, and
 - (c) an amount is paid in fulfilment of the obligations under the option.
- (7) Where this sub-paragraph applies—
 - (a) if E exceeds F, a chargeable gain equal in amount to the amount of the excess shall be treated as accruing to the company in the accounting period,
 - (b) if F exceeds E, an allowable loss equal in amount to the amount of the excess shall be treated as accruing to the company in the accounting period,
- (8) In sub-paragraph (7)—
 - E is the initial carrying amount of the option;
 - F is the amount paid in fulfilment of the obligations under the option reduced by the aggregate of—
 - (a) the initial carrying amount of the option and
 - (b) the carrying amount of the host contract (within the meaning of section 94A of the Finance Act 1996) at the time the company became party to the loan relationship.
- (9) This paragraph applies if the debtor relationship comes to an end at a time when the option mentioned in sub-paragraph (1)(c) has not been exercised, and where it applies the company is treated for the purposes of corporation tax on chargeable gains as having disposed of the option for a consideration equal to the initial carrying amount.
- (10) In this paragraph—
 - “option” has the same meaning as in paragraph 12, apart from sub-paragraph (10);
 - “securities house” means a person—
 - (a) who is authorised for the purposes of the Financial Services and Markets Act 2000, and
 - (b) whose business consists wholly or mainly of dealing as a principal in financial instruments within the meaning of section 349(5) and (6) of the Taxes Act 1988.

Textual Amendments

F10 Sch. 26 paras. 45J-45L 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 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), **10**

Status: Point in time view as at 06/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

F11 Sch. 26 para. 45J(2)(b) 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 2005 \(S.I. 2005/646\)](#), arts. 1(1), 16

Issuers of securities with embedded derivatives: deemed contracts for differences

45K. (1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—

- (a) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) has effect in relation to a debtor relationship of the company,
- (b) the derivative contract is the relevant contract, or one of the relevant contracts, to which the company is treated under subsection (2)(b) of that section as party in the case of that debtor relationship,
- (c) the relevant contract is treated by virtue of subsection (3) of that section as a contract for differences (other than one which falls within paragraph 45J), and
- (d) the derivative contract is an exactly tracking contract within the meaning of paragraph 45F, and
- (e) the additional conditions in sub-paragraph (2) are satisfied.

(2) The additional conditions are—

- (a) at the time when the company became party to the debtor relationship—
 - (i) it was not carrying on a banking business or a business as a securities house, or
 - (ii) if it was carrying on such a business, it did not become party to the debtor relationship in the ordinary course of that business,

^{F12}(b)

- (c) the underlying subject matter of the derivative contract is land (wherever situated) or shares,
- (d) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc).

(3) Where this paragraph applies to a derivative contract for an accounting period, paragraph 14(3) (non-trading credits and debits) shall not apply to credits and debits given in relation to the contract for the accounting period by paragraph 15.

(4) In this paragraph “securities house” has the same meaning as in paragraph 45J (see sub-paragraph (10) of that paragraph).

Textual Amendments

F10 Sch. 26 paras. 45J-45L 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 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), 10

F12 Sch. 26 para. 45K(2)(b) 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 2005 \(S.I. 2005/646\)](#), arts. 1(1), 17

Status: Point in time view as at 06/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

Derivatives not embedded in a loan relationship

- 45L. (1) Where—
- (a) a company is treated under paragraph 2(4) as party to a derivative contract, and
 - (b) regulation 9 of the Disregard Regulations (interest rate contracts) does not apply to the contract,
- paragraph 14(3) (non-trading credits and debits) shall not apply to credits and debits given in relation to the fair value profits and losses arising on the contract.
- (2) Where paragraph (1) applies, then notwithstanding paragraph 1(2) of this Schedule, profits and losses are to be brought into account in relation to the host contract for the purposes of the Corporation Tax Acts as if the derivative contract embedded in the host contract were treated for accounting purposes as closely related to the host contract.
- (3) In this paragraph “the Disregard Regulations” means the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004.]

Textual Amendments

F10 Sch. 26 paras. 45J-45L 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 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), **10**

Treatment of host contract as a loan relationship

- [^{F13}45M(1)] This paragraph applies where—
- (a) a company is treated under paragraph 2(4) as party to a derivative contract,
 - (b) that contract is (within the meaning of paragraph 3(3)) treated for accounting purposes as a derivative financial instrument, and
 - (c) the underlying subject matter of that contract consists, or is treated as consisting, wholly of—
 - (i) shares in a company, or
 - (ii) rights of a unit holder under a unit trust scheme.
- (2) Where this paragraph applies—
- (a) the host contract shall be treated for the purposes of the Corporation Tax Acts as if it were a creditor relationship of the company which is a zero coupon bond, and
 - (b) the derivative contract shall be treated as satisfying the conditions in paragraph 4(2A).
- (3) For the purposes of this paragraph a “zero coupon bond” is a security—
- (a) whose issue price is less than the amount payable on redemption, and
 - (b) which does not provide for any amount to be payable by way of interest.
- (4) Paragraph 9 applies for the purpose of determining whether the underlying subject matter is to be treated as consisting wholly of property referred to in subparagraph (1)(c).]

Status: Point in time view as at 06/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

Textual Amendments

F13 Sch. 26 para. 45M 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 2005 \(S.I. 2005/646\)](#), arts. 1(1), **18**

Contracts where part of underlying subject matter of excluded type

- 46 (1) This paragraph applies to a relevant contract of a company—
- (a) which is an option or future,
 - (b) which satisfies the requirements of paragraph (accounting requirements etc), and
 - (c) whose underlying subject matter falls within sub-paragraph (2).
- (2) The underlying subject matter of a relevant contract falls within this sub-paragraph if it consists of—
- (a) any one or more of the excluded types of property falling within paragraphs [F14(a) and (b)] of sub-paragraph (2) of paragraph 4, and
 - (b) underlying subject matter other than that referred to in paragraph (a).
- (3) Where this paragraph applies to a relevant contract of a company, it shall be treated for the purposes of the Corporation Tax Acts as if it were two separate contracts, namely—
- (a) a relevant contract of the company whose underlying subject matter consists of the excluded types of property referred to in sub-paragraph (2)(a), and
 - (b) a relevant contract of the company whose underlying subject matter consists of the underlying subject matter referred to in sub-paragraph (2)(b).
- (4) For the purposes of giving effect to sub-paragraph (3) all such apportionments as are just and reasonable shall be made.
- (5) This paragraph does not apply to a relevant contract if it is determined in accordance with paragraph 9 that the underlying subject matter of the relevant contract in question is to be treated as consisting wholly of any one or more of the excluded types of property referred to in sub-paragraph (2)(a).

Textual Amendments

F14 Words in Sch. 26 para. 46(2)(a) substituted (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 2005 \(S.I. 2005/646\)](#), arts. 1(1), **19**

Contracts where underlying subject matter of different excluded types

F15⁴⁷

Textual Amendments

F15 Sch. 26 para. 47 omitted (with effect in accordance with art. 1(3)(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **17**

Status: Point in time view as at 06/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

Election to treat contract as two assets

^{F16}48

Textual Amendments

F16 Sch. 26 para. 48 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 2005 \(S.I. 2005/646\)](#), arts. 1(1), **20**

Embedded derivatives in connected party loans

[^{F17}48A. Where in any accounting period—

- (a) a company is party as a creditor to a loan relationship falling within section 94A(1) of the Finance Act 1996, and
- (b) the loan relationship is one to which section 87 of that Act applies (accounting methods where parties have a connection),

no loss arising in that period to the company from the derivative contract, or any of the derivative contracts, to which in the case of that loan relationship the company is treated as party by virtue of section 94A(2)(b) of the Finance Act 1996 gives rise to a debit for the purposes of this Schedule.]

Textual Amendments

F17 Sch. 26 para. 48A 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 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), **11**

Partnerships involving companies

49 (1) This paragraph applies where—

- (a) a trade, profession or business is carried on by persons in partnership (“the firm”);
- (b) any of those persons is a company (a “company partner”); and
- (c) the firm is party to a contract which is a derivative contract or would be a derivative contract if the firm were a company.

(2) In any such case—

- (a) in computing the profits and losses of the trade, profession or business for the purposes of corporation tax in accordance with section 114(1) of the Taxes Act 1988 (computation as if the partnership were a company) no credits or debits shall be brought into account under this Schedule in respect of the contract; but
- (b) credits and debits shall be brought into account under this Schedule in respect of the contract in accordance with the following provisions of this paragraph by each company partner for each of its accounting periods in which the conditions in sub-paragraph (1) are satisfied.

(3) The credits and debits to be brought into account as mentioned in sub-paragraph (2) (b) shall be determined separately in the case of each company partner.

(4) For the purpose of determining those credits and debits in the case of any particular company partner—

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- (a) the contract entered into or acquired by the firm shall be treated as if it were instead entered into or acquired by that company partner, for the purposes of the trade, profession or business which that company partner carries on,
- (b) anything done by or in relation to the firm in connection with the contract shall be treated as done by or in relation to the company partner, and
- [^{F18}(c) to the extent that any exchange gains or losses arising from the contract are recognised in the firm’s statement of recognised gains and losses or statement of changes in equity, the exchange gains or losses shall to that extent be treated as if they had been recognised in the corresponding statement of the company partner.]
- and credits and debits (the “gross credits and debits”) shall be determined accordingly.
- (5) The credits and debits to be brought into account under this Schedule pursuant to sub-paragraph (2)(b) in the case of any particular company partner shall be that company partner’s appropriate share of the gross credits and debits determined in accordance with sub-paragraph (4) in the case of that company partner.
- (6) For the purposes of sub-paragraph (5), the “appropriate share”, in the case of a company partner, is the share that would be apportioned to that company partner if—
- (a) the gross credits and debits determined in accordance with sub-paragraph (4) in the case of that company partner fell to be apportioned between the partners; and
- (b) the apportionment fell to be made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 would be apportioned between them under subsection (2) of that section.

Textual Amendments

F18 Sch. 26 para. 49(4)(c) substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 65](#)

Partnerships involving companies: use of fair value accounting

- [^{F19}50 (1) Where the company partner uses fair value accounting in relation to its interest in the firm, the debits and credits to be brought into account under paragraph 49 by that company must be determined on the basis of fair value accounting.
- (2) In this paragraph “company partner” and “firm” have the same meaning as in paragraph 49.]

Textual Amendments

F19 Sch. 26 para. 50 substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 66](#)

Adjustment on company changing to international accounting standards

- [^{F20}50A (1) This paragraph applies where—

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- (a) there is a change of accounting policy in drawing up a company's accounts from one period of account (the "earlier period") to the next (the "later period"), and
 - (b) the approach in each of those periods accorded with the law and practice applicable in relation to that period.
- (1A) This paragraph applies, in particular, where—
- (a) the company prepares accounts for the earlier period in accordance with UK generally accepted accounting practice and for the later period in accordance with international accounting standards, or
 - (b) the company prepares accounts for the earlier period in accordance with international accounting standards and for the later period in accordance with UK generally accepted accounting practice.]
- (2) For the purposes of this paragraph the "carrying value" of a contract includes amounts recognised for accounting purposes in relation to the contract in respect of—
— If there is a difference between—
- (a) the accounting value of a derivative contract of the company at the end of the earlier period, and
 - (b) the accounting value of that contract at the beginning of the later period,
- a corresponding debit or credit (as the case may be) shall be brought into account for the purposes of this Schedule in the later period.
- (3) In sub-paragraph (2) "accounting value" means [^{F22}subject to paragraph (3B),] the carrying value of the contract recognised for accounting purposes.
- [For the purposes of this paragraph the "carrying value" of a contract includes
- ^{F23}(3A) amounts recognised for accounting purposes in relation to the contract in respect of—
- (a) accrued amounts;
 - (b) amounts paid or received in advance;
 - (c) impairment losses (including provisions for bad or doubtful debts).
- (3B) In determining the profits, gains and losses to be recognised in determining the carrying value of the contract for the purposes of this paragraph, the following provisions—
- (a) section 94A(2) of the Finance Act 1996(2) (loan relationships with embedded derivatives), and
 - (b) paragraphs 21 and 28 of this Schedule
- apply as they apply for the purposes of determining the credits and debits to be brought into account under this Schedule.
- (3C) Where—
- (a) a company has ceased to be a party to a derivative contract,
 - (b) paragraph 53(3) of this Schedule (credits and debits to be brought into account in respect of profits and losses arising in the cessation period) applied to the cessation, and
 - (c) there is a difference between—
 - (i) the amount outstanding in respect of the derivative contract at the end of the earlier period, and
 - (i) the amount outstanding in respect of the derivative contract at the beginning of the later period,

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a debit or credit (as the case may be) corresponding to that difference shall be treated as a debit or credit falling within sub-paragraph (2).

(3D) In sub-paragraph (3C), “the amount outstanding”, in respect of a derivative contract, means so much of the amount recognised as deferred income or deferred loss in the company’s balance sheet, in accordance with generally accepted accounting practice, in respect of the profits, gains or losses that arose from that relationship or a related transaction in the cessation period (within the meaning of section 103(6)) as has not been represented by debits or credits brought into account under this Schedule.]

^{F24}(4)]

[^{F25}(5) This paragraph does not apply if or to the extent that such a debit or credit as is mentioned in sub-paragraph (2) falls to be brought into account apart from this paragraph]

Textual Amendments

- F20** Sch. 26 para. 50A inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 67](#)
- F21** Sch. 26 para. 50A(1)(1A) substituted for Sch. 26 para. 50A(1) (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 No. 2) Order 2004 ([S.I. 2004/3270](#)), art. 12(2)
- F22** Words in Sch. 26 para. 50A(3) inserted (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 No. 2) Order 2004 ([S.I. 2004/3270](#)), art. 12(3)
- F23** Sch. 26 para. 50A(3A)-(3D) inserted (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 No. 2) Order 2004 ([S.I. 2004/3270](#)), art. 12(4)
- F24** Sch. 26 para. 50A(4) 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 No. 2) Order 2004 ([S.I. 2004/3270](#)), art. 12(5)
- F25** Sch. 26 para. 50A(5) inserted (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 No. 2) Order 2004 ([S.I. 2004/3270](#)), art. 12(6)

Prevention of deduction of tax

- 51 Notwithstanding anything in section 349 of the Taxes Act 1988 or any other provision of the Tax Acts, where the profits and losses arising from a derivative contract of a company are computed in accordance with this Schedule, the company shall not be required, on making a payment under the contract, to deduct out of it any sum representing an amount of income tax on it.

Status:

Point in time view as at 06/04/2005.

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 2002, Part 9.