SCHEDULES

SCHEDULE 28

Section 83

DERIVATIVE CONTRACTS: TRANSITIONAL PROVISIONS ETC

Modifications etc. (not altering text)

C1 Sch. 28 extended (retrospective to 30.9.2002) by Finance Act 2003 (c. 14), **s. 177(6)-(8)(11)**

Anti-avoidance: change of accounting period

1 (1) This paragraph applies where—

(a) a company changes its accounting date in such a way that an accounting period of the company, which begins on or after 1st October 2001, ends before 30th September 2002; and

(b) the change of accounting date is or was made for the purpose, or for purposes which include the purpose, specified in sub-paragraph 2.

(2) The purpose is that of securing, in the case of any subsequent accounting period beginning before 1st October 2002,—

(a) that where an amount, or a bigger amount, would have fallen to be brought into account as a credit under Schedule 26 if that Schedule had had effect in relation to the period, no amount, or a smaller amount, falls to be brought into account in accordance with section 159 or 160 of the Finance Act 1994 (c. 9); or

(b) that where no amount, or a smaller amount, would have fallen to be brought into account as a debit under Schedule 26 if that Schedule had had effect in relation to the period, an amount, or a bigger amount, falls to be brought into account in accordance with section 159 or 160 of the Finance Act 1994 (c. 9).

(3) Where this paragraph applies, Schedule 26 shall have effect in relation to the subsequent accounting period mentioned in sub-paragraph 2 as if it were an accounting period beginning on or after 1st October 2002.

(4) For the purposes of this paragraph, references to Schedule 26 include references to—

(a) section 83(2), and

(b) any repeal of any enactment which is consequential on any provision made by or under that Schedule.

Qualifying contracts to which company ceases to be party before commencement day

2 (1) This paragraph applies if the conditions in sub-paragraphs (2) and (3) are satisfied in relation to any contract of a company.

(2) The first condition is that the company was a party to a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994) before its commencement day, but is not a party to it on that commencement day.

(3) The second condition is that, if the company had been a party to the contract on its commencement day, the contract would have been a derivative contract.

(4) To the extent that amounts have been brought into account in computing, in accordance with Chapter 2 of Part 4 of the Finance Act 1994, the profits or losses accruing to the company from the contract in an old period of the company, they shall not be brought into account again by the company as credits or debits given in respect of that contract for the first new period or any subsequent accounting period of the company by Schedule 26.

Qualifying contracts which become derivative contracts

3 (1) This paragraph applies if the conditions in sub-paragraphs (2) and (3) are satisfied in relation to any contract of a company.

(2) The first condition is that the company is a party to the contract immediately before and on its commencement day.

(3) The second condition is that the contract—
- (a) was a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994) immediately before the company's commencement day, and
- (b) as from that day is a derivative contract.

(4) If the sum of the amounts that would, on the assumptions in sub-paragraph (6)(a) and (b), have fallen to be brought into account as regards the contract in accordance with—
- (a) Chapter 2 of Part 2 of the Finance Act 1993 (c. 34), or
- (b) Chapter 2 of Part 4 of the Finance Act 1994,

for the purposes of computing corporation tax for an old period of the company is different from the sum of the amounts that would, on the assumption in sub-paragraph (6)(c), have fallen to be brought into account as regards the contract in accordance with Schedule 26 for those purposes (if that Schedule had had effect in relation to that period), sub-paragraph (5) shall apply as regards the amount of that difference.

(5) Where this sub-paragraph applies, the amount of the difference shall be brought into account—
- (a) as a credit under Schedule 26 in the company's first new period, if a greater profit or smaller loss would have been brought into account for the old period under that Schedule, or
- (b) as a debit under that Schedule in the company's first new period, if a smaller profit or greater loss would have been brought into account for the old period under that Schedule.

(6) The assumptions referred to in sub-paragraph (4) are that—
- (a) section 137 of the Finance Act 1993 (c. 34),
- (b) sections 165 to 168A of the Finance Act 1994 (c. 9), and
- (c) paragraphs 23 to 31 of Schedule 26,

would not have had effect in the case of the contract.

Contracts which become derivative contracts: chargeable assets

4 (1) This paragraph applies if the conditions in sub-paragraphs (2) to (4) are satisfied in relation to any contract of a company.

(2) The first condition is that the company is a party to the contract immediately before and on its commencement day.

(3) The second condition is that the contract—

(a) was not a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994) immediately before the company's commencement day, but

(b) as from that day is a derivative contract.

(4) The third condition is that the contract was, immediately before the company's commencement day, a chargeable asset.

(5) Where this paragraph applies, the company shall, when it ceases to be a party to the contract, bring into account, for the accounting period in which it ceases to be a party to the contract, the amount of any chargeable gain or allowable loss which would have been treated as accruing to the company on the assumption—

(a) that it had made a disposal of the asset immediately before its commencement day, and

(b) that the disposal had been for a consideration equal to the value (if any) given to the contract in the accounts of the company at the end of the company's accounting period immediately before its first new period.

(6) Sub-paragraph (5) has effect subject to sub-paragraph (7).

(7) The company may elect that a debit representing the amount of any allowable loss, which under sub-paragraph (5) is to be brought into account for the accounting period in which it ceases to be a party to the contract, shall be brought into account for that accounting period as if it were a non-trading debit 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 a loan relationship of the company.

(8) An election under sub-paragraph (7) may only be made within the period of two years following the end of the accounting period in which the company ceases to be a party to the contract.

(9) 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 (c. 12) (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).

(10) This paragraph has effect subject to paragraph 5.

Contracts: election to treat as two assets

5 (1) This paragraph applies if the conditions in sub-paragraphs (2) to (4) are satisfied in relation to any contract of a company.

(2) The first condition is that the company is a party to the contract immediately before and on its commencement day.

(3) The second condition is that the contract—
   (a) was not a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)) immediately before the company's commencement day, but
   (b) as from that day would, but for an election under sub-paragraph (5) of this paragraph, be a derivative contract to which paragraph 7 of Schedule 26 (contracts designed to secure guaranteed amount) applies.

(4) The third condition is that the contract was, immediately before the company's commencement day, a chargeable asset.

(5) Where this paragraph applies the company may elect that its contract shall be treated for the purposes of the Corporation Tax Acts as if it were—
   (a) a creditor relationship of the company which is a zero coupon bond (within the meaning of paragraph 48 of Schedule 26), and
   (b) an option of the company whose underlying subject matter is the same as the underlying subject matter of the contract to which this paragraph applies;

and sub-paragraphs (4) to (6) of that paragraph shall apply to a creditor relationship and an option arising under this sub-paragraph as they apply to a creditor relationship and an option arising under paragraph 48(2) of Schedule 26.

(6) An election under sub-paragraph (5) in relation to a contract—
   (a) may only be made within the period of two years following the end of the company's first new period;
   (b) has effect for the company's first new period and all subsequent accounting periods of the company; and
   (c) is irrevocable.

(7) Where an election under sub-paragraph (5) has been made by a company in relation to a contract, the company shall, when it ceases to be a party to the contract, bring into account, for the accounting period in which it ceases to be a party to the contract, the amount of any chargeable gain or allowable loss which would have been treated as accruing to the company on the assumption—
   (a) that it had made a disposal of the asset immediately before its commencement day, and
   (b) that the disposal had been for a consideration equal to the value (if any) given to the contract in the accounts of the company at the end of the company's accounting period immediately before its first new period.

(8) Sub-paragraph (7) has effect subject to sub-paragraph (9).

(9) The company may elect that a debit representing the amount of any allowable loss, which under sub-paragraph (7) is to be brought into account for the accounting period in which it ceases to be a party to the contract, shall be brought into account for that accounting period as if it were a non-trading debit 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 a loan relationship of the company.

(10) An election under sub-paragraph (9) may only be made within the period of two years following the end of the accounting period in which the company ceases to be a party to the contract.

(11) For the purposes of this paragraph references to an asset being a chargeable asset shall be construed in accordance with paragraph 4(9).

(12) In this paragraph "option" and "underlying subject matter" have the same meaning as in Schedule 26.

Contracts which become derivative contracts: contracts within Schedule 5AA to the Taxes Act 1988

6 (1) This paragraph applies if the conditions in sub-paragraphs (2) to (5) are satisfied in relation to any contract of a company.

(2) The first condition is that the company is a party to the contract immediately before and on its commencement day.

(3) The second condition is that the contract—

(a) was not a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)) immediately before the company's commencement day, but

(b) as from that day is a derivative contract.

(4) The third condition is that the contract was, immediately before the company's commencement day, a transaction to which Schedule 5AA to the Taxes Act 1988 applied.

(5) The fourth condition is that, on or after the company's commencement day, a relevant event occurs.

(6) For the purposes of this paragraph a relevant event is an event which would, if Schedule 5AA to the Taxes Act 1988 had continued to apply to the contract for the purposes of corporation tax, have given rise to an amount of profits falling to be charged under that Schedule.

(7) A credit representing that amount of profits ("a relevant credit") shall be brought into account by virtue of paragraph 14(3) of Schedule 26 for the accounting period in which the relevant event occurs as if it were a non-trading credit falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in respect of a loan relationship of the company.

(8) The amount of the relevant credit is the sum of—

(a) the amount of profits which would have been chargeable under Schedule 5AA to the Taxes Act 1988 if it had continued to apply to the contract, and

(b) the amount of any debits given by Schedule 26 in respect of the contract for the first new period and any subsequent accounting period ending with the accounting period in which the relevant event occurred,

less the amount of any credits given by Schedule 26 in respect of the contract for those accounting periods.

Interpretation

7 For the purposes of this Schedule—

(a) a company's commencement day is the first day of its first accounting period to begin on or after 1st October 2002,

(b) a company's first new period is its first accounting period to begin on or after that date, and

(c) an old period of the company is any accounting period of the company ending before the first day of its first new period.

Status:
Point in time view as at 01/10/2002.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 28.