

*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 26

Section 83

#### 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))
- C2 Sch. 26 extended (retrospective to 30.9.2002) by Finance Act 2003 (c. 14), s. 177(4)(8)(11)
- C3 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)
- C4 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)
- C5 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
- C6 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
- C7 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
- C8 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

#### PART 1

##### INTRODUCTION

###### *Profits arising from derivative contracts*

- 1 (1) For the purposes of corporation tax all profits arising to a company from its derivative contracts shall be chargeable to tax as income in accordance with this Schedule.
- (2) Except where otherwise indicated, the amounts to be brought into account in accordance with this Schedule in respect of any matter are the only amounts to be brought into account for the purposes of corporation tax in respect of that matter.

#### PART 2

##### DERIVATIVE CONTRACTS

###### *Derivative contracts and relevant contracts*

- 2 <sup>F1</sup>(1) For the purposes of the Corporation Tax Acts, a company's derivative contracts are those of its relevant contracts—

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- (a) which satisfy any of the conditions in paragraphs (a) to (c) of paragraph 3(1), and
  - (b) which are not prevented from being derivative contracts by paragraph 4 or any other provision of the Corporation Tax Acts.]
- (2) For the purposes of this Schedule a “relevant contract” is—
- (a) an option,
  - (b) a future, or
  - (c) a contract for differences.
- [<sup>F2</sup>(3) Sub-paragraph (4) applies where a company, in accordance with generally accepted accounting practice, treats rights and liabilities under a contract to which it is party and which is not a loan relationship, as divided between—
- (a) rights and liabilities under one or more derivative financial instruments (“embedded derivatives”), and
  - (b) the remaining rights and liabilities (the “host contract”).
- (4) The company shall be treated for the purposes of Schedule 26 as—
- (a) party to a relevant contract whose rights and liabilities consist only of those of the embedded derivative, or
  - (b) if there is more than one embedded derivative, party to relevant contracts each of whose rights and liabilities consist only of those of one of the embedded derivatives.
- (5) Each relevant contract to which the company is treated as party under sub-paragraph (4) shall be treated as an option, a future or a contract for differences according to whether the rights and liabilities of the embedded derivative would be of that character if contained in a separate contract.]

**Textual Amendments**

**F1** Sch. 26 para. 2(1) 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 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), 3

**F2** Sch. 26 para. 2(3)-(5) 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), 3

*Contracts to satisfy accounting requirements etc*

- 3 (1) A relevant contract is not a derivative contract for the purposes of this Schedule for any accounting period unless—
- (a) it is treated for accounting purposes as a derivative financial instrument, [<sup>F3</sup>or]
  - <sup>F4</sup>(b) .....
  - (c) in the case of a relevant contract which [<sup>F5</sup>does not fall within] paragraph (a) <sup>F6</sup>..., it falls within sub-paragraph (2).
- (2) A relevant contract falls within this sub-paragraph if—
- (a) its underlying subject matter is commodities, or
  - [<sup>F7</sup>(b) it is a contract for differences whose underlying subject matter is—
    - (i) land (wherever situated),

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- (ii) tangible movable property, other than commodities which are tangible assets,
- (iii) intangible fixed assets,
- (iv) weather conditions, and
- (v) creditworthiness.]

(3) For the purposes of sub-paragraph (1)(a), a relevant contract of a company is treated for accounting purposes as a derivative financial instrument for an accounting period if, for that accounting period, it is so treated for the purposes of the relevant accounting standard used by the company for that accounting period (or would be so treated if the company were a company which used the relevant accounting standard in respect of the relevant contract).

<sup>F8</sup>(4) . . . . .

(5) For the purposes of [<sup>F9</sup>sub-paragraph (3)], the “relevant accounting standard” used by a company for an accounting period is—

(a) in relation to any accounting period [<sup>F10</sup>beginning before 1st January 2005] for which it is required or permitted to be used by the company, Financial Reporting Standard 13 issued in September 1998 by the Accounting Standards Board, as it has effect for periods of account ending on 31st December 2002, <sup>F11</sup>...

[<sup>F12</sup>(aa) in relation to any accounting period for which it is required or permitted to be used by the company, Financial Reporting Standard 25 issued in December 2004 by the Accounting Standards Board, or]

(b) in relation to any accounting period for which it is required or permitted to be used by the company, any subsequent accounting standard dealing with transactions which are derivative financial instruments <sup>F13</sup>... under Financial Reporting Standard [<sup>F14</sup>25], as from time to time amended.

#### Textual Amendments

- F3** Word in Sch. 26 para. 3(1)(a) 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 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **3(2)(a)**
- F4** Sch. 26 para. 3(1)(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), **3(2)(b)**
- F5** Words in Sch. 26 para. 3(1)(c) 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 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **4(b)**
- F6** Words in Sch. 26 para. 3(1)(c) 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), **3(2)(c)**
- F7** Sch. 26 para. 3(2)(b) substituted (with effect in accordance with art. 1(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), **4(c)**
- F8** Sch. 26 para. 3(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 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **4(d)**
- F9** Words in Sch. 26 para. 3(5) 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 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **4(e)(i)**

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- F10** Words in Sch. 26 para. 3(5)(a) 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), **3(3)(a)(i)**
- F11** Word in Sch. 26 para. 3(5)(a) 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), **3(3)(a)(ii)**
- F12** Sch. 26 para. 3(5)(aa) 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), **3(3)(b)**
- F13** Words in Sch. 26 para. 3(5)(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 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **4(e)(ii)**
- F14** Word in Sch. 26 para. 3(5)(b) 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 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **3(3)(c)**

*Contracts excluded by virtue of their underlying subject matter*

- 4 (1) A relevant contract is not a derivative contract for the purposes of this Schedule if its underlying subject matter consists wholly of any one or more of the excluded types of property or is treated as consisting wholly of such property.

<sup>F15</sup>(1A) .....

<sup>F16</sup>(2) For the purposes of this paragraph the excluded types of property are—

- (a) in relation to an option or future, intangible fixed assets; and
- (b) in relation to relevant contracts which satisfy the conditions specified in sub-paragraph (2A) or (2B)—
  - (i) shares in a company, or
  - (ii) rights of a unit holder under a unit trust scheme.

(2A) The conditions specified in this sub-paragraph are—

- (a) the relevant contract is entered into by a company carrying on life assurance business;
- (b) the relevant contract is an approved derivative for the purposes of Rule 4.3.5 of the Integrated Prudential Sourcebook; and
- (c) there is a hedging relationship between the relevant contract and shares or rights of a unit holder under a unit trust scheme held by the company as assets of its long-term insurance fund.

(2B) The conditions specified in this sub-paragraph are—

- (a) the relevant contract is entered into or acquired by a company otherwise than for the purposes of a trade carried on by it or the company is a mutual trading company, and
- (b) there is a hedging relationship between the contract and an asset of the company which consists of shares or rights of a unit holder under a unit trust scheme.]

<sup>F17</sup>(3) .....

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- (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 any one or more of the excluded types of property.

<sup>F18</sup>(5) .....

#### Textual Amendments

- F15** Sch. 26 para. 4(1A) 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), **4(2)**
- F16** Sch. 26 para. 4(2)(2A)(2B) substituted for Sch. 26 para. 4(2) (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), **4(3)**
- F17** Sch. 26 para. 4(3) 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), **4(4)**
- F18** Sch. 26 para. 4(5) 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), **4(4)**

#### *Contracts which become derivative contracts: chargeable assets*

[<sup>F19</sup>4A.(1) This paragraph applies to a company if the conditions in sub-paragraph (2) are satisfied in relation to a relevant contract.

- (2) The conditions are—
- (a) the company is a party to the relevant contract both immediately before and at 3.00 p.m. on 16th March 2005;
  - (b) the relevant contract—
    - (i) was not a derivative contract immediately before 3.00 p.m. on 16th March 2005, but
    - (ii) as from that time is a derivative contract; and
  - (c) the relevant contract was, immediately before 3.00 p.m. on 16th March 2005, a chargeable asset.
- (3) 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 ceased 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 3.00 p.m. on 16th March 2005, 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.
- (4) 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.)

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**Textual Amendments**

**F19** Sch. 26 para. 4A 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), **5**

F20<sup>5</sup> .....

**Textual Amendments**

**F20** Sch. 26 para. 5 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), **6**

F21<sup>5A</sup> .....

**Textual Amendments**

**F21** Sch. 26 para. 5A 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), **6**

F22<sup>6</sup> .....

**Textual Amendments**

**F22** Sch. 26 para. 6 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), **6**

F23<sup>7</sup> .....

**Textual Amendments**

**F23** Sch. 26 para. 7 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), **6**

F24<sup>8</sup> .....

**Textual Amendments**

**F24** Sch. 26 para. 8 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), **6**

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*Underlying subject matter which is subordinate or of small value disregarded*

- 9 (1) This paragraph applies in relation to a relevant contract which falls within any of [<sup>F25</sup>sub-paragraph (2) or (4)] .
- (2) A relevant contract falls within this sub-paragraph if its underlying subject matter consists of—
- (a) any one or more of the excluded types of property falling within paragraphs [<sup>F26</sup>(a) or (b)] of sub-paragraph (2) of paragraph (4) <sup>F27</sup> ..., and
  - (b) other underlying subject matter which is—
    - (i) subordinate in relation to any of the property referred to in paragraph (a), or
    - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- <sup>F28</sup>(3) .....
- (4) A relevant contract falls within this sub-paragraph if its underlying subject matter consists of—
- (a) any one or more of the excluded types of property falling within [<sup>F29</sup>paragraph (b)] of sub-paragraph (2) of paragraph 4, and
  - (b) other underlying subject matter which is—
    - (i) subordinate in relation to any of the property referred to in paragraph (a), or
    - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (5) Where this paragraph applies in relation to a relevant contract, its underlying subject matter shall be treated for the purposes of this Schedule as if it consisted wholly of—
- (a) in the case of a relevant contract falling within sub-paragraph (2), the excluded types of property referred to in paragraph (a) of that sub-paragraph, [<sup>F30</sup>or]
  - <sup>F31</sup>(b) .....
  - (c) in the case of a relevant contract falling within sub-paragraph (4), the excluded types of property referred to in paragraph (a) of that sub-paragraph.
- (6) For the purposes of this paragraph whether part of the underlying subject matter of a relevant 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 relevant contract.

**Textual Amendments**

- F25** Words in Sch. 26 para. 9(1) substituted (with effect in accordance with art. 1(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), **11(a)**
- F26** Words in Sch. 26 para. 9(2)(a) 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 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **7(2)(a)**
- F27** Words in Sch. 26 para. 9(2)(a) 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), **7(2)(b)**

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- F28** Sch. 26 para. 9(3) 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), **11(c)**
- F29** Words in Sch. 26 para. 9(4)(a) 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 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **7(3)**
- F30** Word in Sch. 26 para. 9(5)(a) inserted (with effect in accordance with art. 1(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), **11(e)(i)**
- F31** Sch. 26 para. 9(5)(b) 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), **11(e)(ii)**

<sup>F32</sup>10 .....

#### Textual Amendments

- F32** Sch. 26 para. 10 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), **8**

#### Meaning of “underlying subject matter”

- 11 (1) In this Part of this Schedule references to the underlying subject matter of a relevant contract are to be construed in accordance with this paragraph.
- (2) The underlying subject matter of an option is—
- the property which would fall to be delivered if the option were exercised, or
  - where the property which would so fall to be delivered is a derivative contract, the underlying subject matter of that derivative contract.
- (3) The underlying subject matter of a future is—
- the property which, if the future were to run to delivery, would fall to be delivered at the date and price agreed when the contract is made, or
  - where the property which would so fall to be delivered is a derivative contract, the underlying subject matter of that derivative contract.
- (4) The underlying subject matter of a contract for differences is—
- where the contract for differences relates to fluctuations in the value or price of property described in the contract, the property so described, or
  - where an index or factor is designated in the contract for differences, the matter by reference to which the index or factor is determined.
- (5) In the case of a contract for differences, its underlying subject matter may include—
- interest rates;
  - weather conditions;
  - creditworthiness.
- (6) Interest rates are not the underlying subject matter of a relevant contract in a case where, under the terms of that contract,—



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- (a) the date on which a party to that contract becomes subject to a duty to make a payment is a variable date, and
  - (b) the amount of that payment varies according to the date of payment,
- and the terms of the relevant contract refer to an interest rate or rates for the purpose only of establishing that amount.

[<sup>F33</sup>(7) Where the underlying subject matter of a relevant contract consists of or includes income from any of the following—

- (a) land (wherever situated),
- (b) shares in a company,
- (c) rights of a unit holder under a unit trust scheme,

the underlying subject matter shall not be treated, by reason only of that income, as being land or such shares or rights (as the case may be).]

#### **Textual Amendments**

**F33** Sch. 26 para. 11(7) added (with effect in accordance with art. 1(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), **12**

#### *Definition of terms relating to derivative contracts*

12 [<sup>F34</sup>(1) This paragraph defines the following expressions for the purposes of this Schedule—

- (a) a capital redemption policy (see sub-paragraph (2));
- (b) a contract for differences (see sub-paragraphs (3) to (5));

[<sup>F35</sup>(bb) designated (see sub-paragraph (13));]

- (c) a future (see sub-paragraphs (6), (7) and (10));

[<sup>F36</sup>(cc) hedging relationship between a relevant contract and an asset, in the case of any company (see sub-paragraph (14));]

- (d) intangible fixed assets (see sub-paragraph (11));

[<sup>F37</sup>(dd) Integrated Prudential Sourcebook (see sub-paragraph (15));]

- (de) long-term insurance fund (see sub-paragraph (16));]

- (e) an option (see sub-paragraphs (8) and (10));

- (f) shares in a company (see sub-paragraph (12));

- (g) a warrant (see sub-paragraph (9)).]

(2) A “capital redemption policy” is a contract effected in the course of capital redemption business (within the meaning of section 458 of the Taxes Act 1988).

(3) A “contract for differences” is a contract the purpose or pretended purpose of which is to make a profit or avoid a loss by reference to fluctuations in—

- (a) the value or price of property described in the contract, or
- (b) an index or other factor designated in the contract.

(4) For the purposes of sub-paragraph (3)(b) an index or factor may be determined by reference to any matter and, for those purposes, a numerical value may be attributed to any variation in a matter.

(5) None of the following is a contract for differences—

- (a) a future;
- (b) an option;

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- (c) a contract of insurance;
  - (d) a capital redemption policy;
  - (e) a contract of indemnity;
  - (f) a guarantee;
  - (g) a warranty;
  - (h) a loan relationship.
- (6) A “future” is a contract for the sale of property under which delivery is to be made—
- (a) at a future date agreed when the contract is made, and
  - (b) at a price so agreed.
- (7) For the purposes of sub-paragraph (6)(b) a price is to be taken to be agreed when the contract is made—
- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
  - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.
- (8) An “option” includes a warrant.
- (9) A “warrant” is an instrument which entitles the holder to subscribe for shares in a company or assets representing a loan relationship of a company; and for these purposes it is immaterial whether the shares or assets to which the warrant relates exist or are identifiable.
- (10) References to a future or option do not include references to a contract whose terms provide—
- (a) that, after setting off their obligations to each other under the contract, a cash payment is to be made by one party to the other in respect of the excess, if any, or
  - (b) that each party is liable to make to the other party a cash payment in respect of all that party’s obligations to the other under the contract,
- and do not provide for the delivery of any property.

Nothing in this sub-paragraph has effect to exclude, from references to a future or option, references to a future or option whose underlying subject matter is currency.

[<sup>F38</sup>(11) “Intangible fixed assets” has the same meaning as in Schedule 29 to this Act; and paragraphs 73 to 76 of that Schedule (and paragraph 72 of that Schedule so far as it relates to those paragraphs) have effect for the purposes of this Part as they have effect for the purposes of that Schedule.]

(12) “Share”, in relation to a company, means any share in the company under which an entitlement to receive distributions may arise.

[<sup>F39</sup>(13) “Designated” has the same meaning as for accounting purposes.

- (14) A company has a hedging relationship between a relevant contract on the one hand (“the hedging instrument”) and an asset on the other (“the hedged item”) if and to the extent that—
- (a) the hedging instrument and the hedged item are designated by the company as a hedge; or

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- (b) in any other case the hedging instrument is intended to act as a hedge of the exposure to changes in fair value of a hedged item which is a recognised asset or an identified portion of such an asset that is attributable to a particular risk and could affect profit or loss of the company.
- (15) “Integrated Prudential Sourcebook” means the Integrated Prudential Sourcebook made by the Financial Services Authority under the Financial Services and Markets Act 2000.
- (16) “Long-term insurance fund” has the meaning given in section 431(2) of the Taxes Act 1988.]

#### Textual Amendments

- F34** Sch. 26 para. 12(1) 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 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **13(2)**
- F35** Sch. 26 para. 12(1)(bb) 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), **9(2)(a)**
- F36** Sch. 26 para. 12(1)(cc) 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), **9(2)(b)**
- F37** Sch. 26 para. 12(1)(dd)(de) 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), **9(2)(c)**
- F38** Sch. 26 para. 12(11) 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 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **13(3)**
- F39** Sch. 26 para. 12(13)-(16) 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 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **9(3)**

#### [<sup>F40</sup>Power to amend paragraphs 2 to 12 and Part 9]

- 13 [<sup>F41</sup>(1) The Treasury may by order amend—
- (a) any of paragraphs 2 to 12, or
  - (b) Part 9 of this Schedule.]
- (2) The provision that may be made by an order under this paragraph includes provision—
- (a) adding to, or varying, the descriptions of contract which are derivative contracts within paragraph 2 or removing any such description of contract, or
  - (b) adding to, or varying, the descriptions of contracts which are excluded under paragraph 4 or removing any such description of contract.
- (3) The provision that may be made under sub-paragraph (2)(b), in relation to contracts which are excluded under paragraph 4, includes provision adding to, or varying, the provisions which qualify the exclusion of contracts under that paragraph or removing any such qualifying provision.
- [<sup>F42</sup>(4) An order under this paragraph may provide for any of its provisions to have effect in relation to accounting periods ending on or after the day on which the order comes into force (whenever beginning).]
- (5) The power to make an order under this paragraph includes power—

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- (a) to make different provision for different cases, and
- (b) to make such consequential, supplementary, incidental or transitional provisions, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under an enactment).

#### Textual Amendments

- F40** Sch. 26 para. 13 heading substituted (22.7.2004) by Finance Act 2004 (c. 12), Sch. 9 para. 2(4)
- F41** Sch. 26 para. 13(1) substituted (22.7.2004) by Finance Act 2004 (c. 12), Sch. 9 para. 2(2)
- F42** Sch. 26 para. 13(4) substituted (22.7.2004) by Finance Act 2004 (c. 12), Sch. 9 para. 2(3)

### 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, <sup>F43</sup>... 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

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- (b) all charges and expenses incurred by the company under or for the purposes of its derivative contracts and related transactions.

<sup>F44</sup>(2) .....

<sup>F45</sup>(3) .....

- (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.

<sup>F46</sup>(6) .....

- (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 [<sup>F47</sup>the following provisions of this Schedule].

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### Textual Amendments

- F43** Words in Sch. 26 para. 15(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), Sch. 10 para. 47(2), **Sch. 42 Pt. 2(6)**
- F44** Sch. 26 para. 15(2) repealed (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), Sch. 10 para. 47(3), **Sch. 42 Pt. 2(6)**
- F45** Sch. 26 para. 15(3) repealed (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), Sch. 10 para. 47(3), **Sch. 42 Pt. 2(6)**
- F46** Sch. 26 para. 15(6) repealed (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), Sch. 10 para. 47(3), **Sch. 42 Pt. 2(6)**
- F47** Words in Sch. 26 para. 15(9) substituted (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 10 para. 47(4)**

### *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.
- [<sup>F48</sup>(3) Sub-paragraph (1) does not apply to an exchange gain or loss of a company to the extent that it—
- (a) arises in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency, or
- (b) results from the translation from one currency to another of the profit or loss of part of the company's business,
- and is recognised in the company's statement of recognised gains and losses or statement of changes in equity.
- (3A) Sub-paragraph (1) above does not apply to 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.]
- <sup>F49</sup>(4) . . . . .
- <sup>F49</sup>(5) . . . . .
- <sup>F49</sup>(6) . . . . .
- <sup>F49</sup>(7) . . . . .
- (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) [<sup>F50</sup>or (3A)], 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).

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- (10) Any power to make regulations under this paragraph includes power to make different provision for different cases [<sup>F51</sup>and power to make provision subject to an election or to other prescribed conditions].

#### Textual Amendments

- F48** Sch. 26 para. 16(3)(3A) substituted for Sch. 26 para. 16(3) (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 48\(2\)](#)
- F49** Sch. 26 para. 16(4)-(7) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 48\(3\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F50** Words in Sch. 26 para. 16(8) inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 48\(4\)](#)
- F51** Words in Sch. 26 para. 16(10) added (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 48\(5\)](#)

## PART 4

### [<sup>F52</sup>COMPUTATION OF AMOUNTS TO BE BROUGHT INTO ACCOUNT]

#### Textual Amendments

- F52** Words in Sch. 26 Pt. 4 heading substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 49](#)

#### *Computation in accordance with generally accepted accounting practice*

- [<sup>F53</sup>17A(1) Subject to the provisions of this Schedule, the amounts to be brought into account by a company for any period for the purposes of this Schedule are those that, in accordance with generally accepted accounting practice, are recognised in determining the company's profit or loss for the period.
- (2) If a company does not draw up accounts in accordance with generally accepted accounting practice ("correct accounts")—
- the provisions of this Schedule apply as if correct accounts had been drawn up, and
  - the amounts referred to in this Schedule as being recognised for accounting purposes are those that would have been recognised if correct accounts had been drawn up.
- (3) If a company draws up accounts that rely to any extent on amounts derived from an earlier period of account for which the company did not draw up correct accounts, the amounts referred to in this Schedule as being recognised for accounting purposes in the later period are those that would have been recognised if correct accounts had been drawn up for the earlier period.
- (4) The provisions of sub-paragraphs (2) and (3) apply where the company does not draw up accounts at all as well as where it draws up accounts that are not correct.

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#### Textual Amendments

**F53** Sch. 26 paras. 17A-17C substituted for Sch. 26 paras. 17-20 (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 50](#)

#### *Amounts recognised in determining company's profit or loss*

- 17B (1) Any reference in this Schedule to an amount being recognised in determining a company's profit or loss for a period is to an amount being recognised for accounting purposes—
- (a) in the company's profit and loss account [<sup>F54</sup>or income statement],
  - (b) in the company's statement of recognised gains and losses or statement of changes in equity, or
  - (c) in any other statement of items brought into account in computing the company's profits and losses for that period.

[<sup>F55</sup>(2) An amount that in accordance with generally accepted accounting practice is shown as a prior period adjustment in any such statement as is mentioned in subparagraph (1) shall be brought into account for the purposes of this Schedule in computing the company's profits and losses for the period to which the statement relates.

This does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.]

#### Textual Amendments

**F53** Sch. 26 paras. 17A-17C substituted for Sch. 26 paras. 17-20 (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 50](#)

**F54** Words in Sch. 26 para. 17B(1)(a) inserted (17.4.2005) by [Finance Act 2005 \(c. 7\)](#), Sch. 4 para. 34(2)

**F55** Sch. 26 para. 17B(2) substituted (17.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 34\(3\)](#)

#### *Power to make further provision by regulations*

- 17C (1) The Treasury may by regulations make provision—
- (a) excluding amounts of a prescribed description from paragraph 17B(1);
  - (b) requiring amounts of a prescribed description that do not fall within paragraph 17B (1) (by virtue of regulations under paragraph (a) above or otherwise) to be brought into account in determining a company's profit or loss for a period in prescribed circumstances;
  - (c) as to the manner in which any such amounts are to be brought into account.
- (2) The regulations may (in particular) make provision by reference to the fact that amounts derive from or otherwise relate to amounts brought into account in a prescribed manner in a previous period of account.
- (3) The power to make regulations under this paragraph includes—
- (a) power to make different provision for different cases; and
  - (b) power to make provision subject to an election or to other prescribed conditions.



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- (4) Regulations under this paragraph may apply, exclude or modify any of the provisions of this Schedule in relation to cases for which provision is made by the regulations.]

**Textual Amendments**

**F53** Sch. 26 paras. 17A-17C substituted for Sch. 26 paras. 17-20 (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 50](#)

*Basis of accounting for contracts falling within paragraph 6, 7 or 8*

- 21 (1) This paragraph applies in relation to a contract which is a derivative contract for the purposes of this Schedule by virtue of—
- (a) paragraph (contracts producing a guaranteed return),
  - (b) paragraph (contracts where guaranteed amount payable on maturity), or
  - (c) paragraph (contracts to provide insurance benefits).

[<sup>F56</sup>(2) Where this paragraph applies the debits and credits to be brought into account for the purposes of this Schedule as respects the derivative contract must be determined on the basis of fair value accounting.]

**Textual Amendments**

**F56** Sch. 26 para. 21(2) substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 51](#)

**PART 5**

**SPECIAL PROVISION FOR [<sup>F57</sup>RELEASE OF LIABILITY]**

**Textual Amendments**

**F57** Words in Sch. 26 Pt. 5 heading substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 52](#)

*[<sup>F58</sup>Release of liability under derivative contract ]*

- 22 <sup>F59</sup>(1) . . . . .
- <sup>F59</sup>(2) . . . . .
- <sup>F59</sup>(3) . . . . .
- <sup>F59</sup>(4) . . . . .

- (5) Where—
- (a) in the case of a derivative contract of a company, a liability owed by the company to pay an amount under the contract is released, and
  - <sup>F60</sup>(b) . . . . .

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no credit in respect of the release shall be required to be brought into account in the case of the company if the release is part of a [<sup>F61</sup>statutory insolvency arrangement].

#### Textual Amendments

- F58** Sch. 26 para. 22 heading substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 53\(2\)](#)
- F59** Sch. 26 para. 22(1)-(4) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 53\(3\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F60** Sch. 26 para. 22(5)(b) and preceding word repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 53\(4\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F61** Words in Sch. 26 para. 22(5) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 19](#)

## PART 6

### SPECIAL COMPUTATIONAL PROVISIONS

#### *Deemed assignment of derivative contracts on company ceasing to be resident in UKetc*

[<sup>F62</sup>22A(1) This paragraph applies if at any time (“the relevant time”)—

- (a) a company ceases to be resident in the United Kingdom, or
- (b) in the case of a company not resident in the United Kingdom, the rights and liabilities of the company under a derivative contract to any extent cease to be held or owed for the purposes of a permanent establishment of the company in the United Kingdom in circumstances not involving a related transaction.

(2) In a case falling within sub-paragraph (1)(a), this Schedule shall have effect as if the company had—

- (a) immediately before the relevant time, assigned its rights and liabilities under its derivative contracts for a consideration of an amount equal to their fair value at that time, and
- (b) immediately reacquired them for a consideration of the same amount.

(3) Sub-paragraph (2) does not apply in relation to a derivative contract to the extent that, immediately after the relevant time, the company’s rights and liabilities under the contract are held or owed for the purposes of a permanent establishment of the company in the United Kingdom.

(4) In a case falling within sub-paragraph (1)(b), this Schedule shall have effect as if the company had—

- (a) immediately before the relevant time, assigned the rights and liabilities, so far as ceasing to be held or owed for the purposes of the permanent establishment, for a consideration of an amount equal to their fair value at that time, and
- (b) immediately reacquired them for a consideration of the same amount.

<sup>F63</sup>(5).....]

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

### Textual Amendments

- F62** Sch. 26 para. 22A and cross-heading inserted (with effect in accordance with Sch. 9 para. 3(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 9 para. 3\(1\)](#)
- F63** Sch. 26 para. 22A(5) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 54](#), [Sch. 42 Pt. 2\(6\)](#)

### *Derivative contracts for unallowable purposes*

- 23 (1) Where in any accounting period a derivative contract of a company has an unallowable purpose, this paragraph shall apply for the purpose of determining the credits and debits which fall, in the case of the company, to be brought into account for the purposes of this Schedule.
- (2) Subject to sub-paragraph (4), the credits to be brought into account in the case of the derivative contract for the accounting period shall not include so much of the exchange credits <sup>F64</sup>... as respects the contract as, on a just and reasonable apportionment, is referable to the unallowable purpose.
- (3) Subject to sub-paragraph (4), the debits to be brought into account in the case of the derivative contract for the accounting period shall not include so much of the debits <sup>F65</sup>... as respects the contract as, on a just and reasonable apportionment, is referable to the unallowable purpose.
- (4) If, in the case of the derivative contract,—
- the amount of the debits referable to the unallowable purpose, in accordance with sub-paragraph (3), for that accounting period, exceeds
  - the amount of the exchange credits referable to that purpose, in accordance with sub-paragraph (2), for that accounting period,
- the difference between the amounts (the “net loss”) may be brought into account as a debit to the extent permitted by sub-paragraph (5).
- (5) An amount of accumulated net losses may be brought into account for an accounting period if, and to the extent that, there is for that period an amount of accumulated credits (other than exchange credits).
- (6) For the purposes of sub-paragraph (5) the amount of accumulated net losses is, in relation to an accounting period,—
- the amount of any net loss arising, in the case of the derivative contract, for that accounting period or any earlier accounting period, in accordance with sub-paragraph (4), less
  - the amount of any such net loss as was brought into account in accordance with sub-paragraph (5) in any earlier accounting period.
- (7) For the purposes of sub-paragraph (5) the amount of accumulated credits (other than exchange credits) is, in relation to an accounting period,—
- the amount of any credits (other than exchange credits) arising, in the case of the derivative contract, for that accounting period or any earlier accounting period, less
  - an amount equal to <sup>F66</sup>—
    - so much of any debits arising, in the case of the derivative contract, for that accounting period or any earlier accounting period as is not,

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- in accordance with sub-paragraph (3), referable to the unallowable purpose, and
- (ii)] to the amount of any net loss, arising in the case of the derivative contract, which was brought into account in accordance with sub-paragraph (5) in any earlier accounting period.
- (8) Amounts which, by virtue of this paragraph, are not brought into account for the purposes of this Schedule as respects any matter are in consequence also amounts which, in accordance with paragraph 1(2), are not to be brought into account for the purposes of corporation tax as respects that matter apart from this Schedule.
- (9) For the purposes of this paragraph, a credit is an exchange credit, in the case of a company, to the extent that it is attributable to any exchange gains arising to the company which, by virtue of paragraph 16, are included in the reference to the profits arising to the company in paragraph 15(1)(a).
- (10) This paragraph is supplemented by paragraph 24.24

#### Textual Amendments

- F64** Words in Sch. 26 para. 23(2) repealed (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), Sch. 10 para. 55, Sch. 42 Pt. 2(6)
- F65** Words in Sch. 26 para. 23(3) repealed (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), Sch. 10 para. 55, Sch. 42 Pt. 2(6)
- F66** Words in Sch. 26 para. 23(7)(b)(i)(ii) inserted (with effect in accordance with Sch. 9 para. 4(2) of the amending Act) by Finance Act 2004 (c. 12), Sch. 9 para. 4(1)

#### *Derivative contracts for unallowable purposes: supplementary*

- 24 (1) For the purposes of paragraph 23 a derivative contract to which a company is party shall be taken to have an unallowable purpose in an accounting period where the purposes for which, at times during that period, the company—
- (a) is party to the contract, or
  - (b) enters into transactions which are related transactions by reference to that contract,
- include a purpose (“the unallowable purpose”) which is not amongst the business or other commercial purposes of the company.
- (2) For the purposes of this paragraph the business and other commercial purposes of a company do not include the purposes of any part of its activities in respect of which it is not within the charge to corporation tax.
- (3) For the purposes of this paragraph, where one of the purposes for which a company—
- (a) is party to a derivative contract at any time, or
  - (b) enters into a transaction which is a related transaction by reference to any derivative contract of the company,
- is a tax avoidance purpose, that purpose shall be taken to be a business or other commercial purpose of the company only where it is not the main purpose, or one of the main purposes, for which the company is party to the contract at that time or, as the case may be, for which the company enters into that transaction.

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- (4) The reference in sub-paragraph (3) to a tax avoidance purpose is a reference to any purpose that consists in securing a tax advantage (whether for the company or any other person).
- (5) In this paragraph “tax advantage” has the same meaning as in Chapter 1 of Part 17 of the Taxes Act 1988 (tax avoidance).

*Debits and credits treated as relating to capital expenditure*

- 25 (1) This paragraph applies where any debit or credit <sup>F67</sup>... for any accounting period in respect of a company’s derivative contract is allowed by generally accepted accounting practice to be treated, in the accounts of the company, as an amount brought into account in determining the value of a fixed capital asset or project.
- (2) Notwithstanding the application to it of the treatment allowed by generally accepted accounting practice, the debit or credit shall be brought into account for the purposes of corporation tax, for the accounting period for which it is given, in the same way as a debit or credit which, in accordance with generally accepted accounting practice, is brought into account in determining the company’s profit or loss for that period.
- (3) No debit may be brought into account by virtue of this paragraph if it is taken into account in arriving at the amount of expenditure in relation to which a debit may be given by Schedule 29 to this Act.
- [<sup>F68</sup>(4) Where a debit is brought into account by a company in accordance with sub-paragraph (1), no debit shall be brought into account in respect of—
- (a) the writing down of so much of the value of the fixed capital asset or project as is attributable to that debit, or
  - (b) so much of any amortisation or depreciation as represents a writing off of the interest component of the asset.]

**Textual Amendments**

**F67** Words in Sch. 26 para. 25(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 56\(2\)](#), [Sch. 42 Pt. 2\(6\)](#)

**F68** Sch. 26 para. 25(4) added (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 56\(3\)](#)

*Debits and credits recognised in equity or shareholders' funds*

- [<sup>F69</sup>25A Where in accordance with generally accepted accounting practice a debit or credit for a period in respect of a derivative contract of a company—
- (a) is recognised in equity or shareholders' funds, and
  - (b) is not recognised in any of the statements mentioned in [<sup>F70</sup>paragraph 17B(1)],
- the debit or credit shall be brought into account for that period for the purposes of this Chapter in the same way as a debit or credit that, in accordance with generally accepted accounting practice, is brought into account in determining the company's profit or loss for that period.]

*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

### Textual Amendments

- F69** Sch. 26 para. 25A inserted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 35](#)  
**F70** Words in Sch. 26 para 25A substituted (retrospective to 7.4.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), Sch. 6 para. 4(3)(6)

### *Transfers of value to connected companies*

- 26 (1) This paragraph applies where—
- (a) as a result of the expiry of an option of a company which, until its expiry, was a derivative contract of the company, there is a transfer of value by the company (“the transferor”) to a company which is a connected company in relation to it (“the transferee”), and
  - (b) the transferee is not chargeable to corporation tax, in respect of the derivative contract, under or by virtue of this Schedule.
- (2) In order to determine, for the purposes of sub-paragraph 1(a), whether there is a transfer of value, it shall be assumed that—
- (a) if there had not been a connection between the transferor and the transferee, the option would not have expired, and
  - (b) if there had not been such a connection, it would have been exercised on the date on which it expired.
- (3) Where this paragraph applies in relation to the expiry of the option of the transferor, the transferor shall bring the appropriate amount into account in accordance with paragraph 15 for the appropriate accounting period as a credit in respect of the derivative contract.
- (4) In sub-paragraph (3)—
- (a) the appropriate accounting period is the accounting period of the transferor in which the option expired, and
  - (b) the appropriate amount is the amount (if any) paid by the transferor to the transferee for the grant of the option by the transferee.
- (5) In this paragraph “option” has the same meaning as in paragraph 12, apart from sub-paragraph (10).
- (6) For the purposes of this paragraph, a company is a connected company in relation to another company if, in the accounting period in question, there is a connection between the company and that other company; and whether there is a connection between those companies shall be determined in accordance with sections 87(3) and (4) and 87A of the Finance Act 1996 (c. 8) (disregarding section 88 of that Act).

### *Exchange gains and losses where derivative contracts not on arm's length terms*

- 27 (1) Sub-paragraph (2) applies where—
- (a) a company is party to a derivative contract in an accounting period,
  - (b) as regards the derivative contract, an exchange gain or exchange loss arises to the company for the accounting period in question, and
  - (c) the profits and losses of the company fall by virtue of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) to be computed for tax purposes as if the company were not party to the derivative contract.

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*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

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- (2) Where this sub-paragraph applies, any exchange gains and losses which arise to the company from the derivative contract for the accounting period in question shall be left out of account in determining the credits and debits which are, in the case of the company, to be brought into account for the purposes of this Schedule.
- (3) Sub-paragraph (4) applies where—
- (a) a company is party to a derivative contract in an accounting period,
  - (b) as regards the derivative contract, an exchange gain or exchange loss arises to the company for the accounting period in question, and
  - (c) the profits and losses of the company fall by virtue of Schedule 28AA to the Taxes Act 1988 to be computed for tax purposes as if the terms of the derivative contract were those that would have been agreed by the company and the other party to the derivative contract had they been dealing at arm's length.
- (4) Where this sub-paragraph applies, the credits and debits which are, in the case of the company, to be brought into account for the purposes of this Schedule shall be determined on the assumption that, in the accounting period in question, the amount of any exchange gain or loss arising to the company from the derivative contract is the adjusted amount.
- (5) In sub-paragraph (4) the “adjusted amount” is the amount of an exchange gain or loss (including an exchange gain of nil) which would have arisen from the derivative contract if the terms of the contract were those that would have been agreed by the company and the other party to the derivative contract had they been dealing at arm's length.

#### *Transactions within groups*

- 28 (1) This paragraph applies where, as a result of any transaction or series of transactions falling within sub-paragraph (2), one of the companies there referred to (“the transferee company”) directly or indirectly replaces the other (“the transferor company”) as a party to a derivative contract.
- (2) The transactions or series of transactions referred to in sub-paragraph (1) are—
- (a) a related transaction between two companies that are—
    - (i) members of the same group, and
    - (ii) within the charge to corporation tax in respect of that transaction;
  - (b) a series of transactions having the same effect as a related transaction between two companies each of which—
    - (i) has been a member of the same group at any time in the course of that series of transactions, and
    - (ii) is within the charge to corporation tax in respect of the related transaction;
  - (c) a transfer between two companies of business consisting of the effecting or carrying out of contracts of long-term insurance which has effect under an insurance business transfer scheme; and
  - (d) any transfer between two companies which is a qualifying overseas transfer within the meaning [<sup>F71</sup>given by the definition treated as inserted into section 431(2) of the Taxes Act 1988 by paragraph 6(9) of Schedule 19AC to that Act] (transfer of business of overseas life insurance company).

*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

- (3) The credits and debits to be brought into account for the purposes of this Schedule in the case of the two companies shall be determined as follows—
- (a) the transaction, or series of transactions, by virtue of which the replacement takes place shall be disregarded except
    - [<sup>F72</sup>(i) for the purpose of determining the credits and debits to be brought into account in respect of exchange gains or losses and identifying the company which is to bring them into account, or
    - (ii) for the purpose of identifying the company in whose case any credit or debit not relating to that transaction, or those transactions, is to be brought into account; and
  - (b) the transferor company and the transferee company shall be deemed (except for [<sup>F73</sup>those purposes] ) to be the same company.
- [<sup>F74</sup>(3A) Where the debits or credits to be brought into account for the purposes of this Schedule in respect of any amounts fall to be determined in accordance with subparagraph (3), Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) does not apply in relation to those amounts.]
- [<sup>F75</sup>(4) References in this paragraph to one company replacing another as party to a derivative contract shall include references to a company becoming party to any derivative contract which—
- (a) confers rights or imposes liabilities, or
  - (b) both confers rights and imposes liabilities,
- where those rights or liabilities, or rights and liabilities, are equivalent to those of the other company under a derivative contract to which that other company has previously ceased to be party.]
- (5) In this paragraph “insurance business transfer scheme” means a scheme falling within section 105 of the Financial Services and Markets Act 2000 (c. 8), including an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section.
- (6) In this paragraph references to companies being members of the same group of companies shall be construed in accordance with section 170 of the Taxation of Chargeable Gains Act 1992 (c. 12).
- (7) This paragraph has effect subject to paragraphs 29 and 30.

#### Textual Amendments

- F71** Words in Sch. 26 para. 28(2)(d) substituted (with effect in accordance with reg. 1 of the amending S.I.) by [The Overseas Life Insurance Companies Regulations 2004 \(S.I. 2004/2200\)](#), regs. 1(1), **11(4)**
- F72** Words in Sch. 26 para. 28(3)(a) inserted (with effect in accordance with s. 179(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), s. **179(1)**
- F73** Words in Sch. 26 para. 28(3)(b) substituted (with effect in accordance with s. 179(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), s. **179(2)**
- F74** Sch. 26 para. 28(3A) inserted (with effect in accordance with s. 37 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 5 para. 15**
- F75** Sch. 26 para. 28(4) substituted (with effect in accordance with s. 179(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), s. **179(3)**



*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

**Modifications etc. (not altering text)**

- C9** Sch. 26 para. 28 modified by S.I. 1997/473, reg. 53G (as inserted (30.1.2003) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2003](#) (S.I. 2003/23), regs. 1(1), 10)

*Transactions within groups: exceptions relating to insurance*

- 29 (1) Paragraph 28 does not apply by virtue of sub-paragraph 2(a) or (b) of that paragraph in relation to any transfer of an asset, or of any rights or duties under or interest in an asset, where the asset was within one of the categories set out in section 440(4)(a) to (e) of the Taxes Act 1988 (assets held for certain categories of long term business) either immediately before the transfer or immediately afterwards.
- (2) Paragraph 28 does not apply by virtue of sub-paragraph 2(c) or (d) of that paragraph in relation to any transfer of an asset, or of any rights or duties under or interest in an asset, where the asset—
- (a) was an asset within one of the categories set out in section 440(4) of the Taxes Act 1988 immediately before the transfer, and
  - (b) is not an asset within that category immediately afterwards.
- (3) For the purposes of sub-paragraph (2) above, where one of the companies is an overseas life insurance company an asset shall be taken to be within the same category both immediately before the transfer and immediately afterwards if it—
- (a) was an asset within one category immediately before the transfer, and
  - (b) is an asset within the corresponding category immediately afterwards.
- (4) In this paragraph “overseas life insurance company” has the same meaning as in Chapter 1 of Part 12 of the Taxes Act 1988.

*Transactions within groups: [F76 fair value accounting]*

- [F7730 (1) Paragraph 28 does not apply where the transferor company uses [F78 fair value accounting] as respects the derivative contract in question, but in any such case—
- (a) the amount to be brought into account by the transferor company in respect of the transaction referred to in that paragraph, or in respect of the series of transactions there referred to, taken together, must be the fair value of the derivative contract as at the date of transfer to the transferee company; and
  - (b) the amount to be brought into account by the transferee company in respect of the transaction referred to in that paragraph, or in respect of the series of transactions there referred to, taken together, must be the same as the amount brought into account by the transferor company in respect of that transaction or, as the case may be, that series of transactions, taken together.
- (2) In this paragraph “transferor company” and “transferee company” have the same meaning as in paragraph 28.]

**Textual Amendments**

- F76** Words in Sch. 26 para. 30 heading substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 57\(a\)](#)

*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

- F77** Sch. 26 para. 30 substituted (with effect in accordance with s. 179(5) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 179\(4\)](#)
- F78** Words in Sch. 26 para. 30(1) substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 10 para. 57\(b\)](#)

### *Derivative contracts with non-residents*

- 31 (1) This paragraph applies in relation to a company where, as a result of any transaction,
- (a) the company and a non-resident both become party to a derivative contract,
  - (b) the company becomes party to a derivative contract to which a non-resident is party, or
  - (c) a non-resident becomes party to a derivative contract to which the company is party.
- (2) For each accounting period for any part of which the company and the non-resident are both party to a derivative contract, the credits and debits which fall, in the case of the company, to be brought into account for the purposes of this Schedule as respects the derivative contract shall not include, in a case where that contract makes provision for notional interest payments, any relevant debit arising in relation to that contract.
- (3) For the purposes of sub-paragraph (2) the amount of a relevant debit shall be computed by determining, as regards that accounting period, the amount (if any) by which—
- (a) the aggregate of any notional interest payments made by the company to the non-resident while the company and the non-resident are both party to the derivative contract, exceeds
  - (b) the aggregate of any notional interest payments made by the non-resident to the company during that time.
- (4) For the purposes of sub-paragraphs (2) and (3) a notional interest payment is any payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in a derivative contract, for a period so specified, a rate the value of which at all times is the same as that of a rate of interest so specified.
- (5) Sub-paragraph (2) shall not apply where the company is a bank, building society, financial trader or recognised clearing house and—
- (a) the company is party to the derivative contract solely for the purposes of a trade or part of a trade carried on by it in the United Kingdom, and
  - (b) it is party to the derivative contract otherwise than as agent or nominee of another person.
- (6) Sub-paragraph (2) shall not apply where—
- (a) the non-resident is party to the derivative contract solely for the purposes of a trade or part of a trade carried on by him in the United Kingdom through a branch or agency, and
  - (b) he is party to the derivative contract otherwise than as agent or nominee of another person.
- (7) Sub-paragraph (2) shall not apply where arrangements made in relation to the territory in which the non-resident is resident—
- (a) have effect by virtue of section 788 of the Taxes Act 1988, and

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- (b) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements).
- (8) Where the non-resident is party to the contract as agent or nominee of another person, sub-paragraph (7) shall have effect as if the reference to the territory in which the non-resident is resident were a reference to the territory in which that other person is resident.
- (9) In this paragraph—
  - “non-resident” means a person who is not resident in the United Kingdom;
  - “recognised clearing house” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (c. 8).

**Modifications etc. (not altering text)**

**C10** Sch. 26 para. 31(6)(a) modified (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(2\)\(d\)](#)

*Amounts imputed under Schedule 28AA to the Taxes Act 1988*

- [<sup>F79</sup>31A(1) This paragraph applies where, in pursuance of Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length), an amount falls to be treated as any of the following—
- (a) an amount of profits or losses (disregarding any charges or expenses) arising to a company from any of its derivative contracts or related transactions;
  - (b) charges or expenses incurred by a company under or for the purposes of any of its derivative contracts or related transactions.
- (2) That Schedule shall have effect<sup>F80</sup> ... so as to require credits or debits relating to the amount so treated to be brought into account for the purposes of this Chapter to the same extent as they would be in the case of an actual amount of—
- (a) profits or losses (disregarding any charges or expenses) arising to the company from the derivative contract or related transaction, or
  - (b) charges or expenses incurred under or for the purposes of the derivative contract or related transaction,
- as the case may be.]

**Textual Amendments**

**F79** Sch. 26 para. 31A inserted (with effect in accordance with s. 37 of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 5 para. 15\(3\)](#)

**F80** Words in Sch. 26 para. 31A(2) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 10 para. 58, Sch. 42 Pt. 2\(6\)](#)

*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

## PART 7

### COLLECTIVE INVESTMENT SCHEMES

#### *Authorised unit trusts: capital profits and losses*

32 (1) Where any profits or losses arising to an authorised unit trust from a derivative contract in an accounting period are capital profits or losses, they must not be brought into account as credits or debits for the purposes of this Schedule<sup>F81</sup>....

[<sup>F82</sup>(1A) For the purposes of this paragraph “capital profits, gains or losses”—

- (a) in the case of an authorised unit trust that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (2) to (4), and
- (b) in the case of an authorised unit trust that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.]

(2) [<sup>F83</sup>In the cases mentioned in sub-paragraph (1A)(a)], capital profits and losses arising from a derivative contract in an accounting period are such profits and losses arising from a derivative contract as fall to be dealt with under—

- (a) the heading “net gains/losses on investments during the period”, or
- (b) the heading “other gains/losses”,

in the statement of total return for the accounting period.

(3) For the purposes of sub-paragraph (2), the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the authorised unit trust which deals with the accounting period.

(4) For the purposes of sub-paragraph (3), the “Statement of Recommended Practice” used for an accounting period is—

- (a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Authorised Unit Trust Schemes issued by the Investment Management Regulatory Organisation Limited in January 1997, as from time to time modified, amended or revised, or
- (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent statement of recommended practice dealing with accounting requirements relating to authorised unit trust schemes, as from time to time modified, amended or revised.

#### Textual Amendments

- F81** Words in Sch. 26 para. 32(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 59\(2\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F82** Sch. 26 para. 32(1A) inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 59\(3\)](#)
- F83** Words in Sch. 26 para. 32(2) substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 59\(4\)](#)

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*Open-ended investment companies: capital profits and losses*

- 33 (1) Where any profits or losses arising to an open-ended investment company from a derivative contract in an accounting period are capital profits or losses, they must not be brought into account as credits or debits for the purposes of this Schedule<sup>F84</sup> ....

[<sup>F85</sup>(1A) For the purposes of this paragraph “capital profits, gains or losses”—

- (a) in the case of an open-ended investment company that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (2) to (4), and
- (b) in the case of an open-ended investment company that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.]

- (2) [<sup>F86</sup>In the cases mentioned in sub-paragraph (1A)(a)], capital profits and losses arising from a derivative contract in an accounting period are such profits and losses arising from a derivative contract as fall to be dealt with under—

- (a) the heading “net gains/losses on investments during the period”, or
- (b) the heading “other gains/losses”,

in the statement of total return for the accounting period.

- (3) For the purposes of sub-paragraph (2), the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the open-ended investment company which deals with the accounting period.

- (4) For the purposes of sub-paragraph (3), the “Statement of Recommended Practice” used for an accounting period is—

- (a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Open-Ended Investment Companies issued by the Financial Services Authority in November 2000, as from time to time modified, amended or revised, or
- (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent statement of recommended practice dealing with accounting requirements relating to open-ended investment companies<sup>F87</sup> ..., as from time to time modified, amended or revised.

**Textual Amendments**

**F84** Words in Sch. 26 para. 33(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 60\(2\)](#), [Sch. 42 Pt. 2\(6\)](#)

**F85** Sch. 26 para. 33(1A) inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 60\(3\)](#)

**F86** Words in Sch. 26 para. 33(2) substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 60\(4\)](#)

**F87** Words in Sch. 26 para. 33(4)(b) repealed (with effect in accordance with Sch. 9 para. 5(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 9 para. 5\(1\)](#), [Sch. 42 Pt. 2\(5\)](#)

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*Power to amend paragraphs 32 and 33*

- 34 (1) The Treasury may by order amend paragraph 32 or 33 or so as to alter the definition of capital profits or losses [<sup>F88</sup>in paragraph 32(2) to (4) or 33(2) to (4)] in consequence of the modification, amendment, revision or replacement of a Statement of Recommended Practice.
- (2) The power to make an order under this paragraph includes power—
- (a) to make different provision for different cases, and
  - (b) to make such consequential, supplementary, incidental or transitional provisions, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under an enactment).

**Textual Amendments**

**F88** Words in Sch. 26 para. 34(1) inserted (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 10 para. 61**

*Distributing offshore funds*

<sup>F89</sup>35 .....

**Textual Amendments**

**F89** Sch. 26 para. 35 repealed (with effect in accordance with Sch. 26 para. 2(3)-(6) of the amending Act) by Finance Act 2004 (c. 12), Sch. 26 para. 2(2), **Sch. 42 Pt. 2(18)** (with Sch. 26 para. 17)

**Modifications etc. (not altering text)**

**C11** Sch. 26 para. 35 saved by [The Offshore Funds Regulations 2004 \(S.I. 2004/2572\)](#), regs. 1(1)(2), **7(3)(b)**

**C12** Sch. 26 para. 35 saved by [The Offshore Funds Regulations 2004 \(S.I. 2004/2572\)](#), regs. 1(1)(2), **6(3)(b)**

*Contracts relating to holdings in unit trust schemes, open-ended investment companies and offshore funds*

- 36 (1) This paragraph applies in relation to a relevant contract to which a company is party in an accounting period if—
- (a) it is not a derivative contract for the purposes of this Schedule, and
  - (b) its underlying subject matter consists wholly or partly of a holding which is, in that period, a relevant holding.
- [<sup>F90</sup>(2) The Corporation Tax Acts have effect for that period (and any succeeding period in which the relevant contract is a relevant contract of the company) as if the relevant contract were a derivative contract.
- (2A) The debits and credits to be brought into account for the purposes of this Schedule as respects the company's relevant holdings must be determined on the basis of fair value accounting.]
- (3) For the purposes of this paragraph a person holds a relevant holding in an accounting period if, at any time in that period, he holds—
- (a) any rights under a unit trust scheme,

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- (b) any shares in an open-ended investment company, or
  - (c) any relevant interests in an offshore fund,
- and there is a time in that period when that scheme, company or fund fails to satisfy the non-qualifying investments test.
- (4) For the purposes of this paragraph—
- (a) “a relevant interest in an offshore fund” has the same meaning as in paragraph 7 of Schedule 10 to the Finance Act 1996 (c. 8), and
  - (b) a unit trust scheme, open-ended investment company or offshore fund fails to satisfy the non-qualifying investments test if it fails to satisfy the test in paragraph 8 of that Schedule.

#### Textual Amendments

**F90** Sch. 26 para. 36(2)(2A) substituted for Sch. 26 para. 36(2) (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 62](#)

#### *Contract which becomes contract to which paragraph 36 applies*

- 37 (1) This paragraph applies if the conditions in sub-paragraphs (2) and (3) are satisfied in relation to any relevant contract of a company.
- (2) The first condition is that—
- (a) the company is party to the relevant contract in two successive accounting periods (“the first and second accounting periods”), and
  - (b) paragraph 36 applies in relation to that relevant contract for the second accounting period but not the first.
- (3) The second condition is that the relevant contract was, immediately before the beginning of the second accounting period, a chargeable asset.
- (4) Where an opening valuation of the relevant contract falls to be made at the beginning of the second accounting period (for the purposes of bringing an amount into account for that period on a mark to market basis of accounting), the value of that contract at that time shall be taken for the purpose of the opening valuation to be equal to whatever, in relation to a disposal immediately before the end of the first accounting period, would have been taken to be the market value of that contract for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12).
- (5) When the company ceases to be a party to the relevant contract it shall bring into account, for the accounting period in which it ceased to be a party to that 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 the beginning of the second accounting period, and
  - (b) that the disposal had been for a consideration equal to the value (if any) given to the relevant contract in the accounts of the company at the end of the first accounting period.
- (6) 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

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under futures contracts which, by virtue of section 143 of that Act, are regarded as assets to the disposal of which that Act applies).

*Investment trusts: capital profits, gains or losses*

- [<sup>F91</sup>38 (1) Capital profits, gains or losses arising to an investment trust from a [<sup>F92</sup>derivative contract] must not be brought into account as credits or debits for the purposes of this Schedule.
- (2) For the purposes of this paragraph “capital profits, gains or losses”—
- (a) in the case of an investment trust that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (3) and (4), and
  - (b) in the case of an investment trust that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.
- (3) In the cases mentioned in sub-paragraph (2)(a) capital profits, gains or losses arising from a [<sup>F93</sup>derivative contract] in an accounting period are profits, gains or losses that are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice.
- (4) For the purposes of this paragraph the Statement of Recommended Practice is, for an accounting period for which it is required or permitted to be used—
- (a) the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2003, as from time to time modified, amended or revised, or
  - (b) any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.

**Textual Amendments**

- F91** Sch. 26 paras. 38, 38A substituted for Sch. 26 para. 38 (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 63](#)
- F92** Words in Sch. 26 para. 38(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 36](#)
- F93** Words in Sch. 26 para. 38(3) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 36](#)

*Venture capital trusts: capital profits, gains or losses*

- 38A (1) Capital profits, gains or losses arising to a venture capital trust from a [<sup>F94</sup>derivative contract] must not be brought into account as credits or debits for the purposes of this Schedule.
- (2) For the purposes of this paragraph “capital profits, gains or losses”—
- (a) in the case of a venture capital trust that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (3) and (4), and
  - (b) in the case of a venture capital trust that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.



*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

- (3) In the cases mentioned in sub-paragraph (2)(a) capital profits, gains or losses arising from a [<sup>F95</sup> derivative contract] in an accounting period are profits, gains or losses that are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice.
- (4) For the purposes of this paragraph the Statement of Recommended Practice is, for an accounting period for which it is required or permitted to be used—
- (a) the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2003, as from time to time modified, amended or revised, or
  - (b) any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.]

#### Textual Amendments

- F91** Sch. 26 paras. 38, 38A substituted for Sch. 26 para. 38 (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 63](#)
- F94** Words in Sch. 26 para. 38A(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), Sch. 4 para. 36
- F95** Words in Sch. 26 para. 38A(3) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 36](#)

#### *Investment trusts: approval for purposes of section 842 of the Taxes Act 1988*

- 39 (1) For the purpose of determining whether a company may be approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for any accounting period, the excess of any relevant credits arising in that period over any relevant debits so arising shall be treated for the purposes of that section as income derived from shares or securities.
- (2) For the purposes of this paragraph “relevant credits” and “relevant debits”, in relation to an accounting period, are credits and debits which are brought into account in respect of that period by virtue of paragraph 14(3) as if they were non-trading credits and 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.

#### *Venture capital trusts: approval for purposes of section 842AA of the Taxes Act 1988*

- 40 (1) For the purpose of determining whether a company may be approved for the purposes of section 842AA of the Taxes Act 1988 (venture capital trusts) for any accounting period, the excess of any relevant credits arising in that period over any relevant debits so arising shall be treated for the purposes of that section as income derived from shares or securities.
- (2) For the purposes of this paragraph “relevant credits” and “relevant debits”, in relation to an accounting period, are credits and debits which are brought into account in respect of that period by virtue of paragraph 14(3) as if they were non-trading credits and non-trading debits falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in respect of loan relationships of the company.

*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

**PART 8**

**INSURANCE AND MUTUAL TRADING COMPANIES**

*Application of Schedule to insurance and mutual trading companies*

- 41 (1) This Schedule shall apply in relation to insurance and mutual trading companies as it applies in relation to other companies.
- (2) Sub-paragraph (1) is subject to paragraphs 42 and 43.

*Application of Part 1 of Schedule 11 to the Finance Act 1996*

- 42 (1) Part 1 of Schedule 11 to the Finance Act 1996 (c. 8) (special provision with respect to loan relationships for insurance companies) shall have effect (subject to sub-paragraphs (2) to (4)) in relation to derivative contracts as it has effect in relation to loan relationships.
- (2) Any provision of that Part of that Schedule which applies only to debtor relationships<sup>F96</sup> ... shall not have effect in relation to derivative contracts for the purposes of sub-paragraph (1).
- (3) That Part of that Schedule shall have effect in its application in relation to derivative contracts as if—
  - (a) references to Chapter 2 of Part 4 of the Finance Act 1996 were references to this Schedule,
  - (b) references to section 80(5) of that Act were references to paragraph 1(2) of this Schedule,
  - (c) references to section 82(2) of that Act were references to paragraph 14(2) of this Schedule, and
  - (d) references to credits and debits given in respect of a loan relationship by Chapter 2 of Part 4 of that Act were references, respectively, to the credits and debits given in respect of a derivative contract by this Schedule.

<sup>F97</sup>(4) .....

**Textual Amendments**

- F96** Words in Sch. 26 para. 42(2) 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 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **18**
- F97** Sch. 26 para. 42(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 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **11**

<sup>F98</sup>43 .....

**Textual Amendments**

- F98** Sch. 26 para. 43 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), **12**

*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

## PART 9

### 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—
- (a) whose underlying subject matter consists, or is treated as consisting, wholly of—
    - (i) shares in a company [<sup>F99</sup>or] ,
    - (ii) rights of a unit holder under a unit trust scheme, <sup>F100</sup> ...
    - <sup>F101</sup>(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).

*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

### Textual Amendments

- F99** 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)**
- F100** 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)**
- F101** 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*

- <sup>F102</sup>45(A) 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);
  - (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.

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- (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

**F102** 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

#### *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—

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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,

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

**F102** 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);

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- (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);
  - (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**

**F102** 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—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

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- (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),
  - (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.



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- (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.

- [<sup>F103</sup>(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

- F102** 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**
- F103** 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**

#### 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.

*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

### Textual Amendments

**F102** 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—
- (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)),
  - <sup>F104</sup>(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.

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- (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 <sup>F105</sup>(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.]

#### Textual Amendments

- F102** 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
- F104** 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
- F105** 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.
- <sup>F106</sup>(e)
- (1A) The additional conditions are—

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

**Textual Amendments**

**F102** 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**

**F106** 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*

**F107** 45H. . . . .

**Textual Amendments**

**F102** 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**

**F107** 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**

*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

*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;
  - “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**

**F102** 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*

- [<sup>F108</sup>45(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,

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- (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,
  - <sup>F109</sup>(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—
- (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

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- (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

- F108** 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**
- F109** 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,

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- <sup>F110</sup>(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

**F108** 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**

**F110** 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**

#### *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

**F108** 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*

- [<sup>F111</sup>45M] This paragraph applies where—



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- (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 sub-paragraph (1)(c).]

#### **Textual Amendments**

**F111** 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 [F112(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).

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- (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**

**F112** 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*

**F113**47 .....

**Textual Amendments**

**F113** 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**

*Election to treat contract as two assets*

**F114**48 .....

**Textual Amendments**

**F114** 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*

[**F115**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**

**F115** 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**

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### *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—
- (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
  - <sup>[F116]</sup>(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.

*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26. (See end of Document for details)*

#### Textual Amendments

**F116** 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*

[<sup>F117</sup>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

**F117** 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*

[<sup>F118</sup>50(A)] This paragraph applies where—

- (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 [<sup>F120</sup>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 <sup>F121</sup>(3A) amounts recognised for accounting purposes in relation to the contract in respect of—

- (a) accrued amounts;

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- (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,

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.]

<sup>F122</sup>(4)] . . . . .

[<sup>F123</sup>(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

**F118** 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](#)

**F119** 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)

**F120** 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)

**F121** 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)

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- F122** 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)
- F123** 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.

## PART 10

### INTERPRETATION

#### *Statutory accounts*

<sup>F124</sup>52 .....

#### **Textual Amendments**

- F124** 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.
- (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 company ceases to be party to a derivative contract in an accounting period (the “cessation period”),
  - profits or losses arise to the company from the derivative contract or a related transaction in the cessation period, and
  - 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

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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—

<sup>F125</sup>  
...

“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;

“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);

[<sup>F126</sup>“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;

“exchange gain” and “exchange loss” shall be construed in accordance with sub-paragraphs (2) [<sup>F127</sup>, (2A)] and (3);

[<sup>F128</sup>“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—

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(a) the transfer of all the company's rights under the contract in respect of amounts which at that time are not yet due and payable, and

(b) the release of all the company's liabilities under the contract in respect of amounts which at that time are not yet due and payable;

“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;

“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;

“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;

“option” has the meaning given by paragraph 12;

“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;

<sup>F129</sup>  
...

“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.

[<sup>F130</sup>(2A) In a case where fair value accounting is used the valuation referred to in subparagraph (2) is the valuation that would be given by an amortised cost basis of accounting.]



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- (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.

#### Textual Amendments

- F125** 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\(6\)](#)
- F126** 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\(2\)](#)
- F127** 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\(5\)\(6\)](#)
- F128** 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\(b\)](#)
- F129** 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\(6\)](#)
- F130** Sch. 26 para. 54(2A) inserted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 37](#)

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 26.