

*Status: Point in time view as at 14/08/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 6. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 26 **U.K.**

#### DERIVATIVE CONTRACTS

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

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

### **PART 6** **U.K.**

#### SPECIAL COMPUTATIONAL PROVISIONS

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

[<sup>F1</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.

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- (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>F2</sup>(5).....]

#### Textual Amendments

- F1** 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\(1\)](#)
- F2** 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>F3</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>F4</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,—
- (a) the amount of the debits referable to the unallowable purpose, in accordance with sub-paragraph (3), for that accounting period, exceeds
  - (b) 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).

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- (6) For the purposes of sub-paragraph (5) the amount of accumulated net losses is, in relation to an accounting period,—
- (a) 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
  - (b) 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,—
- (a) 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
  - (b) an amount equal to <sup>F5</sup>—
    - (i) 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, 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 <sup>F6</sup>....
- (10) This paragraph is supplemented by paragraph 24.24

#### Textual Amendments

- F3** 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)
- F4** 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)
- F5** 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)
- F6** Words in Sch. 26 para. 23(9) repealed (with effect in accordance with Sch. 11 Pt. 2(6) Note 3 of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 11 Pt. 2(6)

#### *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

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- (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.
- (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).
- [<sup>F7</sup>(5) In this paragraph “tax advantage” has the meaning given by section 840ZA of the Taxes Act 1988.]

#### Textual Amendments

- F7** Sch. 26 para. 24(5) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 422\(2\)](#) (with [Sch. 2](#))

#### *Debits and credits treated as relating to capital expenditure*

- 25 (1) This paragraph applies where any debit or credit <sup>F8</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>F9</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.]

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#### Textual Amendments

- F8** 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\(6\)](#)
- F9** 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>F10</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>F11</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.]

#### Textual Amendments

- F10** Sch. 26 para. 25A inserted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 35](#)
- F11** 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 [<sup>F12</sup>the failure to exercise in full all the rights under an option of a company which, until that failure,] 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, [<sup>F13</sup>all the rights under the option would have been exercised in full], and
  - (b) if there had not been such a connection, [<sup>F14</sup>all those rights would have been exercised in full on the latest date on which they were exercisable].
- (3) Where this paragraph applies in relation to [<sup>F15</sup>an 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)—

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- (a) the appropriate accounting period is the accounting period of the transferor in which the option expired [<sup>F16</sup>or would have expired if none of the rights under it had been exercised], and
- [<sup>F17</sup>(b) the appropriate amount—
- (i) if the option expired, is the amount (if any) paid by the transferor to the transferee for the grant of the option by the transferee, and
- (ii) if any rights under the option were exercised (in whole or in part), is the amount (if any) so paid less so much of it as is referable, on a just and reasonable basis, to the rights which have been so exercised.]
- (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).

#### Textual Amendments

- F12** Words in Sch. 26 para. 26(1)(a) substituted (with effect in accordance with Sch. 5 para. 19(6) to the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 19\(2\)](#)
- F13** Words in Sch. 26 para. 26(2)(a) substituted (with effect in accordance with Sch. 5 para. 19(6) to the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 19\(3\)\(a\)](#)
- F14** Words in Sch. 26 para. 26(2)(b) substituted (with effect in accordance with Sch. 5 para. 19(6) to the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 19\(3\)\(b\)](#)
- F15** Words in Sch. 26 para. 26(3) substituted (with effect in accordance with Sch. 5 para. 19(6) to the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 19\(4\)](#)
- F16** Words in Sch. 26 para. 26(4)(a) inserted (with effect in accordance with Sch. 5 para. 19(6) to the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 19\(5\)\(a\)](#)
- F17** Sch. 26 para. 26(4)(b) substituted (with effect in accordance with Sch. 5 para. 19(6) to the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 19\(5\)\(b\)](#)

#### *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.
- (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,

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- (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>F18</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).
- [<sup>F19</sup>(3) For the purpose of determining the credits and debits to be brought into account for the purposes of this Schedule in respect of the derivative contract—
- (a) for the accounting period in which the transaction or, as the case may be, the first of the series of transactions takes place, the transferor company shall be treated as having entered into that transaction for a consideration equal to the notional carrying value of the contract; and

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- (b) for any accounting period in which it is a party to the contract, the transferee company shall be treated as if it had acquired the contract for a consideration equal to its notional carrying value.

For the purposes of this sub-paragraph the notional carrying value is the amount that would have been the carrying value of the derivative contract in the accounts of the transferor company if a period of account had ended immediately before the date when the company ceased to be party to the contract.]

[<sup>F20</sup>(3ZA) In any case where a discount (within the meaning given by section 100(3A) of the Finance Act 1996) arises in respect of the transaction or the series of transactions, the consideration for the purposes of sub-paragraph (3)(a) is to be increased by the amount of the discount.]

[<sup>F21</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 sub-paragraph (3), Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) does not apply in relation to those amounts.]

[<sup>F22</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.]

<sup>F23</sup>(5) .....

(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

- F18** 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)**
- F19** Sch. 26 para. 28(3) substituted (with effect in accordance with Sch. 7 para. 22(4)-(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 7 para. 22(2)**
- F20** Sch. 26 para. 28(3ZA) inserted (with effect in accordance with Sch. 6 para. 22(3)(4) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 6 para. 22(2)**
- F21** 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**
- F22** 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)**
- F23** Sch. 26 para. 28(5) repealed (with effect in accordance with Sch. 9 para. 17(1) to the amending Act) by [Finance Act 2007 \(c. 11\)](#), Sch. 9 para. 1(2)(g), **Sch. 27 Pt. 2(9)**



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

- C1** 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**)
- C2** Sch. 26 para. 28 excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Taxation of Securitisation Companies Regulations 2006](#) (S.I. 2006/3296), regs. 1(1), **20**

*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 [F<sup>24</sup>440(4) (a), (d) and (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.

**Textual Amendments**

- F24** Words in Sch. 26 para. 29(1) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007](#) (c. 11), [Sch. 7 para. 75\(3\)](#) (with [Sch. 7 Pt. 2](#))

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

- C3** Sch. 26 para. 29 modified by S.I. 2005/2014, reg. 44A (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2007](#) (S.I. 2007/2134), regs. 1(1), **34**)

*Transactions within groups: [F<sup>25</sup>fair value accounting]*

- [F<sup>26</sup>30 (1) Paragraph 28 does not apply where the transferor company uses [F<sup>27</sup>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

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[<sup>F28</sup>(b) for any accounting period in which it is a party to the contract, the transferee company shall be treated for the purpose of determining the credits and debits to be brought into account for the purposes of this Schedule in respect of the contract as if it had acquired the contract for a consideration equal to the amount mentioned in paragraph (a) (but on the assumption that sub-paragraph (1A) is omitted).]

[<sup>F29</sup>(1A) In any case where a discount (within the meaning given by section 100(3A) of the Finance Act 1996) arises in respect of the transaction or the series of transactions, the amount to be brought into account by virtue of sub-paragraph (1)(a) is to be increased by the amount of the discount.]

(2) In this paragraph “transferor company” and “transferee company” have the same meaning as in paragraph 28.]

#### Textual Amendments

- F25** 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\(a\)](#)
- F26** 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\(4\)](#)
- F27** 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\(b\)](#)
- F28** Sch. 26 para. 30(1)(b) substituted (with effect in accordance with Sch. 6 para. 23(4)(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 6 para. 23\(2\)](#)
- F29** Sch. 26 para. 30(1A) inserted (with effect in accordance with Sch. 6 para. 23(4)(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 6 para. 23\(3\)](#)

#### *Transferee leaving group after replacing transferor as party to derivative contract*

[<sup>F30</sup>30A(1) This paragraph applies in any case where—

- (a) paragraph 28 applies—
  - (i) by virtue of sub-paragraph (2)(a) of that paragraph (“case A”), or
  - (ii) by virtue of sub-paragraph (2)(b) of that paragraph (“case B”), but
- (b) before the end of the relevant 6 year period, the transferee company ceases to be a member of the relevant group.

(2) In any such case, this Schedule shall have effect as if the transferee company had—

- (a) immediately before that cessation, assigned its rights and liabilities under the relevant derivative contract 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, but only if Condition 1 or 2 is satisfied and sub-paragraph (5) does not apply.

(3) Condition 1 is that if sub-paragraph (2) has effect, a credit would in consequence of paragraph (a) of that sub-paragraph fall to be brought into account for the purposes of this Schedule by the transferee company.

(4) Condition 2 is that—

- (a) Condition 1 is not satisfied,
- (b) the company has a hedging relationship between the relevant derivative contract and a creditor relationship, and

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- (c) in consequence of paragraph 12A(2)(a) of Schedule 9 to the Finance Act 1996, a credit falls to be brought into account by the transferee company for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in respect of the creditor relationship.
- (5) Where the transferee company ceases to be a member of the relevant group by reason only of an exempt distribution (see sub-paragraph (8))—
- (a) sub-paragraph (2) does not have effect, but
  - (b) if there is chargeable payment within 5 years after the making of the exempt distribution, sub-paragraph (6) applies.
- (6) Where this sub-paragraph applies, this Chapter shall have effect as if—
- (a) the transferee company had, immediately before the making of the chargeable payment, assigned its rights and liabilities under the relevant derivative contract,
  - (b) the assignment had been for a consideration of an amount equal to the fair value of those rights and liabilities immediately before the transferee company ceased to be a member of the relevant group, and
  - (c) the transferee company had immediately reacquired those rights and liabilities for a consideration of the same amount,
- but only if Condition 1 or 2, as modified by sub-paragraph (7), is satisfied.
- (7) The modifications are that—
- (a) in Condition 1, the references to sub-paragraph (2), and paragraph (a) of that sub-paragraph, are to be taken respectively as references to sub-paragraph (6) and paragraphs (a) and (b) of that sub-paragraph, and
  - (b) in Condition 2, the reference to paragraph 12A(2)(a) of Schedule 9 to the Finance Act 1996 is to be taken as a reference to paragraph 12A(6)(a) and (b) of that Schedule.
- (8) In this paragraph—
- “assignment”, in relation to Scotland, means an assignation;
  - “chargeable payment” has the meaning given by section 214(2) of the Taxes Act 1988;
  - “exempt distribution” means a distribution which is exempt by virtue of section 213(2) of the Taxes Act 1988;
  - “creditor relationship” has the same meaning as in Chapter 2 of Part 4 of the Finance Act 1996 (see section 103(1) of that Act);
  - “the relevant 6 year period” means the period of 6 years following—
    - (a) in case A, the transaction mentioned in paragraph 28(2)(a), or
    - (b) in case B, the last of the series of transactions mentioned in paragraph 28(2)(b);
  - “the relevant derivative contract” means the derivative contract mentioned in paragraph 28(1);
  - “the relevant group” means—
    - (a) in case A, the group mentioned in paragraph 28(2)(a), or
    - (b) in case B, the group mentioned in paragraph 28(2)(b);
  - “the transferee company” means the company referred to as such in paragraph 28(1).]

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### Textual Amendments

**F30** Sch. 26 para. 30A and cross-heading inserted (with effect in accordance with Sch. 7 para. 24(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 7 para. 24\(1\)](#)

### Formation of SE by merger

<sup>F31</sup>~~30B~~(1) This paragraph applies where—

- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),
  - (b) each merging company is resident in a member State,
  - (c) the merging companies are not all resident in the same State, and
  - (d) either—
    - (i) immediately after formation the SE is resident in the United Kingdom and within the charge to corporation tax in accordance with section 6 of the Taxes Act 1988, or
    - (ii) immediately after formation the SE is not resident in the United Kingdom but is within the charge to corporation tax in accordance with section 11 of the Taxes Act 1988.
- (2) Where this paragraph applies, the transfer in the course of the merger of rights or liabilities under a derivative contract shall be disregarded except—
- (a) for the purpose of determining the debits or credits to be brought into account in respect of exchange gains or losses and identifying the company which is to bring them into account, and
  - (b) for the purpose of identifying the company in whose case a debit or credit which does not relate to the transfer is to be brought into account.
- (3) Where this paragraph applies, the transferor and the transferee companies of a right or liability under a derivative contract shall be deemed, except for the purposes specified in sub-paragraph (2)(a) and (b), to be the same company.
- (4) Paragraph 30 shall apply, with any necessary modifications, in relation to this paragraph as in relation to paragraph 28.
- (5) Sub-paragraphs (2) and (3) shall apply in relation to a merger only if—
- (a) it is effected for bona fide commercial reasons, and
  - (b) it does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (6) But sub-paragraph (5) shall not have the effect of preventing sub-paragraphs (2) and (3) from applying if before the merger Her Majesty's Revenue and Customs have on the application of the merging companies notified them that Her Majesty's Revenue and Customs are satisfied that sub-paragraph (5) will not have that effect.
- (7) For the purposes of this paragraph a company is resident in a member State if—
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and

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- (b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.]

#### Textual Amendments

**F31** Sch. 26 para. 30B and cross-heading inserted (with effect in accordance with s. 55(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. **55(1)**

#### *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

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- (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
  - (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)

- C4** 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>F32</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>F33</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

- F32** 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\(3\)](#)
- F33** 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\(6\)](#)

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**Changes to legislation:**

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