SCHEDULES

SCHEDULE 26

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 extended (retrospective to 30.9.2002) by Finance Act 2003 (c. 14), **s. 177(4)(8)(11)**

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, notwithstanding paragraph 15.

(2) For the purposes of this paragraph, 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.

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, notwithstanding paragraph 15.

(2) For the purposes of this paragraph, 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 issued by the Financial Services Authority, as from time to time modified, amended or revised.

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 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).

Distributing offshore funds

35 (1) For the purposes of paragraph 5(1) of Schedule 27 to the Taxes Act 1988 (computation of UK equivalent profit), the assumptions to be made in determining

what, for any period, would be the total profits of an offshore fund are to include the assumptions in sub-paragraphs (2) and (3).

(2) The first assumption is that this Schedule does not apply for the purposes of corporation tax in computing the profits or loss of an offshore fund.

(3) The second assumption is that for the purposes of corporation tax the profits and losses that are to be taken to arise from the derivative contracts of an offshore fund are to be computed—

(a) in accordance with the provisions applicable, in the case of unauthorised unit trusts, for the purposes of income tax; and

(b) as if the provisions so applicable had effect in relation to an accounting period of an offshore fund as they have effect, in the case of unauthorised unit trusts, in relation to a year of assessment.

(4) In this paragraph "unauthorised unit trust" means the trustees of any unit trust scheme which is not an authorised unit trust but is a unit trust scheme for the purposes of section 469 of the Taxes Act 1988.

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.

(2) Where this paragraph applies in relation to a relevant contract of a company in an accounting period—

(a) the Corporation Tax Acts shall have effect for that period (and any succeeding accounting period in which the relevant contract is a relevant contract of the company) as if the relevant contract were a derivative contract, and

(b) the accounting method to be used as regards the relevant contract for that period (and any such succeeding period) shall be an authorised mark to market basis of 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,

(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.

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 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 and venture capital trusts: capital reserves

38 (1) Where any profits or losses arising to an investment trust from a derivative contract for an accounting period are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice used for the accounting period, those profits and losses must not be brought into account as credits or debits for the purposes of this Schedule, notwithstanding paragraph 15.

(2) Where any profits or losses arising to a venture capital trust from a derivative contract for an accounting period—

(a) are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice used for the accounting period as if the venture capital trust were an investment trust, or

(b) would be carried to or sustained by a capital reserve if the venture capital trust were an investment trust and were using that Statement of Recommended Practice, those profits and losses must not be brought into account as credits or debits for the purposes of this Schedule, notwithstanding paragraph 15.

(3) For the purposes of this paragraph, the "Statement of Recommended Practice" used for an accounting period is—

(a) in relation to any accounting period for which it is permitted to be used, the Statement of Recommended Practice relating to Investment Trust Companies issued by the Association of Investment Trust Companies in December 1995, as from time to time modified, amended or revised, or

(b) in relation to any accounting period for which it is permitted to be used, any subsequent statement of recommended practice relating to investment trusts, as from time to time modified, amended or revised.

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 10/07/2003.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2002, Part 7.