

Status: Point in time view as at 20/07/2005.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 7. (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 extended (retrospective to 30.9.2002) by **Finance Act 2003 (c. 14), s. 177(4)(8)(11)**

PART 7 U.K.

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^{F1}....

[^{F2}(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) [^{F3}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

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- (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

- F1** 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\(6\)](#)
- F2** 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\(3\)](#)
- F3** 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\(4\)](#)

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^{F4}....
- [^{F5}(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) [^{F6}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.

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- (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^{F7}..., as from time to time modified, amended or revised.

Textual Amendments

- F4** 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\(6\)](#)
- F5** 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\(3\)](#)
- F6** 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\(4\)](#)
- F7** 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\(5\)](#)

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 [^{F8}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

- F8** 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

^{F9}35

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Textual Amendments

- F9** 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)

- C1** Sch. 26 para. 35 saved by The Offshore Funds Regulations 2004 (S.I. 2004/2572), regs. 1(1)(2), **7(3)(b)**
C2 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.
- [^{F10}(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,
 - (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

- F10** 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.

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- (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: capital profits, gains or losses

- [^{F11}38] (1) Capital profits, gains or losses arising to an investment trust from a [^{F12}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 [^{F13}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.

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- (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

- F11** 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](#)
- F12** Words in Sch. 26 para. 38(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 36](#)
- F13** 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 [^{F14}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.
- (3) In the cases mentioned in sub-paragraph (2)(a) capital profits, gains or losses arising from a [^{F15}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

- F11** 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](#)
- F14** Words in Sch. 26 para. 38A(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 36](#)
- F15** Words in Sch. 26 para. 38A(3) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 36](#)

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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.

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