

Status: Point in time view as at 30/12/2006.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

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 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 9

MISCELLANEOUS

Contracts which become derivative contracts

[^{F1}43A(1) This paragraph applies if—

- (a) a company is a party to a relevant contract which (having not been a derivative contract) becomes a derivative contract, and
 - (b) immediately before the time at which the relevant contract becomes a derivative contract, the relevant contract is a chargeable asset.
- (2) The company shall, when it ceases to be a party to the relevant contract, bring into account (for the accounting period in which it ceases to be party to the relevant contract) the amount of any chargeable gain or allowable loss treated as accruing to the company on the assumption—
- (a) that it had made a disposal of the relevant contract immediately before the relevant time, and
 - (b) that the disposal had been for a consideration equal to the notional carrying value of the relevant contract at that time.

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- (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 TCGA 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) For the purposes of this paragraph “the relevant time” means the time, on or after 30th December 2006, at which the relevant contract becomes a derivative contract.
- (5) For the purposes of this paragraph the “notional carrying value” of a contract at any time is the amount which would have been the carrying value of the contract in the accounts of the company if an accounting period had ended immediately before that time.

Textual Amendments

- F1** Sch. 26 paras. 43A, 43B substituted for Sch. 26 paras. 44, 45 (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 2006 \(S.I. 2006/3269\)](#), arts. 1, **10**

Contracts which cease to be derivative contracts

- 43B (1) This paragraph applies if a company is party to a relevant contract which (having been a derivative contract) ceases to be a derivative contract.
- (2) The company is to be treated—
- for the purposes of this Schedule, as if at the relevant time it had disposed of the contract in a related transaction for a consideration of an amount equal to the notional carrying value of the contract at that time, and
 - for the purposes of TCGA 1992, as if immediately after that time it had reacquired the contract for the same consideration.
- (3) In this paragraph “the relevant time” means the time at which the contract ceases to be a derivative contract.
- (4) Paragraph 43A(5) (meaning of “notional carrying value”) applies for the purposes of this paragraph.]

Textual Amendments

- F1** Sch. 26 paras. 43A, 43B substituted for Sch. 26 paras. 44, 45 (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 2006 \(S.I. 2006/3269\)](#), arts. 1, **10**

^{F2}44

Textual Amendments

- F2** Sch. 26 para. 44 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **11**

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F³45

Textual Amendments

F3 Sch. 26 para. 45 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **11**

Derivative contracts which are to be taxed on a chargeable gains basis

[F⁴45A(1) 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.

(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—

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- (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 [^{F5}TCGA 1992] (substantial shareholding exemptions: disposal of asset related to shares) would apply to that gain.

Textual Amendments

- F4** 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**
- F5** Words in Sch. 26 para. 45A(6) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **30**

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—

AB

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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 [^{F6}TCGA 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

F4 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**

F6 Words in Sch. 26 para. 45B(8) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, \(Parts 2 and 9\) \(Amendment\) Order 2006 \(S.I. 2006/3269\)](#), arts. 1, **30**

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—

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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 (2)),
- (b) the company is not a body falling within sub-paragraph (3);
- (c) the underlying subject matter of the derivative contract falls within sub-paragraph (4);
- ^{F7}(d)

^{F8}(1A)

- (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

- F4** 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

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- F7** Sch. 26 para. 45C(1)(d) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, 12
- F8** Sch. 26 para. 45C(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 2006 \(S.I. 2006/3269\)](#), arts. 1, 12

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—

- [^{F9}(a) the derivative contract is a loan-contract embedded derivative to which the company is treated as party by virtue of a creditor relationship of the company (“the original relationship”),
- (b) the derivative contract is treated as an option by virtue of section 94A(3) of the Finance Act 1996,]
- (d) the additional conditions in sub-paragraph (2) are satisfied.

(2) The additional conditions are—

- (a) the company is not party to the [^{F10}original relationship] at any time in the accounting period for the purposes of a trade carried on by it (but see sub-paragraph (3)),
- ^{F11}(b)
- (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.
- [^{F12}(f) the original asset is not an existing asset.]

(3) The condition in sub-paragraph (2)(a) does not apply if the company—

- (a) is party to the [^{F13}original relationship] for the purposes of life assurance business, or
- (b) is a mutual trading company.

[Where in any accounting period—

- ^{F14}(3A) (a) a company is party to a creditor relationship for the purposes of its life assurance business, and
- (b) that creditor relationship is one in relation to which section 94A of the Finance Act 1996 would have effect but for the fact that the company accounts for the creditor relationship at fair value through profit and loss,

this [^{F15}Schedule and Chapter 2 of Part 4 of the Finance Act 1996] shall have effect for that accounting period as it would if the creditor relationship were one in relation to which that section has effect.]

(4) In this paragraph—

[^{F16}“existing asset” means an asset in relation to which paragraph 9(2) of Schedule 10 to the Finance Act 2004 has effect;]

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“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.

- (7) In sub-paragraph (6)—

“holding company” has the meaning given in paragraph 22(1) of Schedule A1 to ^{F17}TCGA 1992];

“trading company” has the meaning given by paragraph 22A of that Schedule.

^{F18}(8) The ^{F19}[original relationship] shall not be treated as a qualifying corporate bond by virtue of section 117(A1) of ^{F20}TCGA 1992].]

[See also paragraph 45H (treatment of gains and losses on terminal exercise of ^{F21}(9) option).]

Textual Amendments

- F4** 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**
- F9** Sch. 26 para. 45D(1)(a)(b) substituted for Sch. 26 para. 45D(1)(a)-(c) (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 2006 \(S.I. 2006/3269\)](#), arts. 1, **13(2)**
- F10** Words in Sch. 26 para. 45D(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **13(3)**
- F11** Sch. 26 para. 45D(2)(b) omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **13(2)(a)**
- F12** Sch. 26 para. 45D(2)(f) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **13(4)**

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- F13** Words in Sch. 26 para. 45D(3)(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **13(5)**
- F14** Sch. 26 para. 45D(3A) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **13(3)**
- F15** Words in Sch. 26 para. 45D(3A) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **13(6)**
- F16** Words in Sch. 26 para. 45D(4) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **13(4)**
- F17** Words in Sch. 26 para. 45D(7) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **30**
- F18** Sch. 26 para. 45D(8) substituted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **13(5)**
- F19** Words in 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, \(Parts 2 and 9\) \(Amendment\) Order 2006 \(S.I. 2006/3269\)](#), arts. 1, **13(7)**
- F20** Words in 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, \(Parts 2 and 9\) \(Amendment\) Order 2006 \(S.I. 2006/3269\)](#), arts. 1, **30**
- F21** Sch. 26 para. 45D(9) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **13(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.

^{F22}(2)

(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.

^{F23}(5)

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Textual Amendments

- F4** 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**
- F22** Sch. 26 para. 45E(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **14**
- F23** Sch. 26 para. 45E(5) omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **14**

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—
- ^{F24}(a) the derivative contract is a loan-contract embedded derivative to which the company is treated as party by virtue of a creditor relationship of the company (“the original relationship”),
 - (c) the derivative contract is treated as a contract for differences by virtue of section 94A(3) of the Finance Act 1996,]
 - (d) the additional conditions in sub-paragraph (2) are satisfied.
- (2) The additional conditions are—
- (a) the [^{F25}original 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)),
 - ^{F26}(b)
 - (c) the underlying subject matter of the derivative contract—
 - ^{F27}(i)
 - (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)).
 - ^{F28}(f) the original asset is not an existing asset.]
- (3) The condition in sub-paragraph (2)(a) does not apply if the company—
- (a) is party to the [^{F29}original 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));

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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 [^{F30}the original asset].

- (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 [^{F31}the original asset] came into existence, and
 - (ii) the date when the [^{F32}debtor relationship corresponding to the creditor relationship mentioned in sub-paragraph (1)] 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 [^{F33}the original asset].
- (7) In this paragraph [^{F34}—
- “existing asset” means an asset in relation to which paragraph 11(2) of Schedule 10 to the Finance Act 2004 has effect;]
- “qualifying ordinary shares” means shares which satisfy Condition 1 in paragraph 45D(5).

[^{F35}(8) The [^{F36}original relationship] shall not be treated as a qualifying corporate bond by virtue of section 117(A1) of [^{F37}TCGA 1992].]

Textual Amendments

- F4** 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**
- F24** Sch. 26 para. 45F(1)(a)(c) substituted for Sch. 26 para. 45F(1)(a)-(c) (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 2006 \(S.I. 2006/3269\)](#), arts. 1, **15(2)**
- F25** Words in Sch. 26 para. 45F(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **15(3)**
- F26** 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**
- F27** Sch. 26 para. 45F(2)(c)(i) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **15(4)**
- F28** Sch. 26 para. 45F(2)(f) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **15(5)**

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Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

- F29** Words in Sch. 26 para. 45F(3)(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 2006 \(S.I. 2006/3269\)](#), arts. 1, [15\(6\)](#)
- F30** Words in Sch. 26 para. 45F(4) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, [15\(7\)](#)
- F31** Words in Sch. 26 para. 45F(6)(a)(i) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, [15\(8\)\(a\)](#)
- F32** Words in Sch. 26 para. 45F(6)(a)(ii) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, [15\(8\)\(b\)](#)
- F33** Words in Sch. 26 para. 45F(6)(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 2006 \(S.I. 2006/3269\)](#), arts. 1, [15\(8\)\(c\)](#)
- F34** Words in Sch. 26 para. 45F(7) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), [15\(3\)](#)
- F35** Sch. 26 para. 45F(8) substituted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), [15\(4\)](#)
- F36** Words in Sch. 26 para. 45F(8) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, \(Parts 2 and 9\) \(Amendment\) Order 2006 \(S.I. 2006/3269\)](#), arts. 1, [15\(9\)](#)
- F37** Words in Sch. 26 para. 45F(8) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, \(Parts 2 and 9\) \(Amendment\) Order 2006 \(S.I. 2006/3269\)](#), arts. 1, [30](#)

Creditor relationships: existing assets

- ^{F38}**45F(A)** This paragraph applies if paragraph 45D or 45F would apply to a derivative contract for an accounting period but for sub-paragraph (2)(f) of that paragraph.
- (2) Paragraph 14(3) (non-trading debits and credits) shall not apply to the credits and debits given in relation to the contract for the accounting period by paragraph 15.
 - (3) The original creditor relationship by virtue of which paragraph 45D or 45F would apply to the derivative contract shall not be treated as a qualifying corporate bond by virtue of section 117(A1) of TCGA 1992.
 - (4) For the purposes of TCGA 1992 the amount or value of the consideration for any disposal of the original asset shall be treated as adjusted so as to exclude so much of it as, on a just and reasonable apportionment, relates to any interest which—
 - (a) falls to be brought into account under Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) as accruing to any company at any time; and
 - (b) in consequence of, or of the terms of, the disposal, is not paid or payable to the company to which it is treated for the purposes of that Chapter as accruing.
 - (5) Where—
 - (a) there has been a reorganisation for the purposes of sections 126 to 132 of TCGA 1992, and

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- (b) for the purposes of those sections, the original asset mentioned in sub-paragraph (4) is treated as the original shares,
the reference in sub-paragraph (4) to the disposal of the original asset includes a reference to the disposal of the asset which, as a result of the reorganisation, has become the new holding for the purposes of those sections.
- (6) For the purposes of TCGA 1992 the amount or value of the consideration for any disposal by a company of the original asset—
- (a) shall be increased by the addition of any relevant exchange losses, and
 - (b) shall (after giving effect to any such increase) be reduced (but not below nil) by the deduction of any relevant exchange gains,
- but this sub-paragraph does not apply in a case where paragraph 45F would apply but for sub-paragraph (2)(f) of that paragraph.
- (7) For the purposes of sub-paragraph (6), “relevant exchange gains” and “relevant exchange losses” are—
- (a) the amount of any exchange gains or losses in respect of the original asset that are brought into account under Chapter 2 of Part 4 of the Finance Act 1996 by the company for an accounting period throughout which the company holds the original asset; and
 - (b) for any accounting period not falling within paragraph (a) in which the company holds the original asset, an amount which, on a just and reasonable apportionment, represents so much of the amount of any exchange gains or losses brought into account under that Chapter in respect of the original asset, by the company making the disposal, for that period as is referable to the part of the period for which the company holds the asset.
- (8) Where the amount of the relevant exchange gains falling to be deducted under sub-paragraph (6)(b) exceeds the amount required to reduce the amount or value of the consideration to nil, the excess shall be treated for the purposes of section 38(1)(c) of TCGA 1992 as incidental costs of making the disposal of the original asset.]

Textual Amendments

- F4** 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**
- F38** Sch. 26 para. 45FA 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **16**

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.

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^{F39}(e)

- (1A) The additional conditions are—
- (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

- F4** 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**
- F39** 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**

Treatment of net gains and losses on terminal exercise of option

- [^{F40}45H. (1) This paragraph applies where—
- (a) a derivative contract is one to which paragraph 45D applies for an accounting period,
 - (b) rights that fall to be treated as comprised in the derivative contract are [^{F41}to any extent exercised or otherwise disposed of] in the accounting period, and
 - (c) those rights are rights to acquire shares.
- (2) In any such case—

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- [^{F42}(a) sub-paragraph (3) has effect in relation to a disposal of the asset representing the original creditor relationship mentioned in paragraph 45D(1)(a) (“the original relationship”), and]
- (b) sub-paragraph (4) has effect in relation to a disposal of all or any of the shares (“the relevant shares”) acquired—
- [^{F43}(i) as a result of the exercise of rights mentioned in sub-paragraph (1) (b); and
- (ii) in circumstances where a disposal is deemed not to occur by virtue of section 127 of [^{F44}TCGA 1992].]
- (3) For the purpose of computing any chargeable gain accruing to the company on a disposal of the [^{F45}original asset], the sums allowable as a deduction under section 38(1)(a) of [^{F46}TCGA 1992] (acquisition costs) shall—
- (a) if G exceeds L, be increased by the amount of that excess,
- (b) if L exceeds G, be reduced by the amount of that excess.
- (4) For the purpose of computing any chargeable gain accruing to the company on a disposal of all the relevant shares, the sums allowable as a deduction under section 38(1)(a) of [^{F46}TCGA 1992] (acquisition costs) shall—
- (a) if G exceeds L, be increased by the amount of that excess,
- (b) if L exceeds G, be reduced by the amount of that excess,
- and, in the case of a part disposal of those shares, section 42(2) of that Act shall have effect accordingly.
- (5) If the amount of the excess in sub-paragraph (3)(b) or (4)(b) is greater than the amount of expenditure allowable under section 38(1)(a) of [^{F46}TCGA 1992], the amount of the excess that cannot be deducted from the expenditure so allowable shall, for the purpose mentioned in sub-paragraph (3) or (4) (as the case may be), be added to the amount of the consideration for the disposal of the shares.
- [Sections 37 and 39 of TCGA 1992 do not apply in relation to a disposal mentioned ^{F47}(5A) in sub-paragraph (1)(b), (2)(a) or (b) above.]
- (6) In this paragraph—
- G is the sum of—
- (a) [^{F48}the relevant Chapter 2 amount, and]
- (b) the amounts of any chargeable gains treated as accruing to the company under paragraph 45A(4)(a) in respect of the derivative contract in each relevant accounting period, so far as referable, on a just and reasonable apportionment, to the shares acquired as a result of the exercise of rights mentioned in sub-paragraph (1)(b);
- L is the sum of the amounts of any allowable losses treated as accruing to the company under paragraph 45A(4)(b) in respect of the derivative contract in each relevant accounting period, so far as so referable.
- (7) For the purposes of sub-paragraph (6)—
- [^{F49}(a) the “relevant Chapter 2 amount” means the amount by which the carrying value of the loan-contract host contract at the date on which the option is exercised exceeds the carrying value of that contract at—
- (i) the date on which the company became party to the original relationship, or

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- (ii) (if later) the date on which the derivative contract became one to which paragraph 45D applies;]
- (b) a “relevant accounting period” is—
- (i) the accounting period in which the disposal in question is made, or
- (ii) any previous accounting period.]

Textual Amendments

- F4** 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**
- F40** Sch. 26 paras. 45H, 45HA inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **17**
- F41** Words in Sch. 26 para. 45H(1)(b) substituted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **9(2)**
- F42** Sch. 26 para. 45H(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **17(2)**
- F43** Sch. 26 para. 45H(2)(b)(i)(ii) substituted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **9(3)**
- F44** Words in Sch. 26 para. 45H(2)(b)(ii) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **30**
- F45** Words in Sch. 26 para. 45H(3) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **17(3)**
- F46** Words in Sch. 26 paras. 45H(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **30**
- F47** Sch. 26 para. 45H(5A) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **17(4)**
- F48** Words in Sch. 26 para. 45H(6) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **17(5)**
- F49** Sch. 26 para. 45H(7)(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **17(6)**

Treatment of net gains and losses on disposal of certain embedded derivatives

[(1) This paragraph applies where—

- ^{F50}45HZA. (a) a derivative contract is one to which paragraph 45F (creditor relationships: embedded derivatives which are exactly tracking contracts for differences) applies for an accounting period, and
- (b) the asset representing the original relationship mentioned in paragraph 45F(1)(a) is disposed of in the accounting period.

(2) For the purpose of computing any chargeable gain accruing to the company on the disposal, the sums allowable as a deduction under section 38(1)(a) of TCGA 1992 (acquisition costs) shall—

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- (a) if G exceeds L, be increased by the amount of that excess,
 - (b) if L exceeds G, be reduced by the amount of that excess.
- (3) If the amount of the excess in sub-paragraph (2)(b) is greater than the amount of expenditure allowable under section 38(1)(a) of TCGA 1992, the amount of the excess that cannot be deducted from the expenditure so allowable shall, for the purpose mentioned in sub-paragraph (2), be added to the amount of the consideration for the disposal.
- (4) Sections 37 and 39 of TCGA 1992 do not apply in relation to the disposal.
- (5) In this paragraph—
G is the sum of—
 - (a) the relevant Chapter 2 amount, and
 - (b) the amount of any chargeable gains treated as accruing to the company under paragraph 45A(4)(a) in respect of the derivative contract in each relevant accounting period, andL is the sum of the amounts of any allowable losses treated as accruing to the company under paragraph 45A(4)(b) in respect of the derivative contract in each relevant accounting period.
- (6) For the purposes of paragraph (5)—
 - (a) the relevant Chapter 2 amount means the amount by which the carrying value of the loan-contract host contract at the date of the disposal exceeds the carrying value of that contract at the date on which the company became party to the original relationship;
 - (b) a relevant accounting period is—
 - (i) the accounting period in which the disposal is made, or
 - (ii) any previous accounting period.]

Textual Amendments

- F4** 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**
- F50** Sch. 26 para. 45HA 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **18**

[^{F51}Treatment of credits and debits on terminal exercise of non-embedded option or running to delivery of future]

- [(1) This paragraph applies where—
^{F40}[^{F51}45HA. (a) a company is party to a derivative contract in an accounting period,
(b) the derivative contract is a plain vanilla contract which is an option,
(c) rights comprised in the plain vanilla contract are exercised to any extent in that accounting period, and
(d) those rights are rights to acquire shares.
- (1A) This paragraph also applies where—
 - (a) a company is party to a derivative contract in an accounting period,
 - (b) the derivative contract is a plain vanilla contract which is a future,

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- (c) delivery is taken of an asset in accordance with the terms of the future, and
(d) that asset is shares.]
- (2) [^{F52}Where this paragraph applies], for the purpose of computing any chargeable gain accruing to the company on a disposal by it of all the shares [^{F53}acquired or delivered], the sums allowable as a deduction under section 38(1)(a) of [^{F54}TCGA 1992] (acquisition costs) shall—
- (a) if G exceeds L, be increased by the amount of that excess,
(b) if L exceeds G, be reduced by the amount of that excess,
- and, in the case of a part disposal of those shares, section 42(2) of that Act shall have effect accordingly.
- (3) If the amount of the excess in sub-paragraph (2)(b) is greater than the amount of expenditure allowable under section 38(1)(a) of [^{F55}TCGA 1992], the amount of the excess that cannot be deducted from the expenditure so allowable shall, for the purpose mentioned in sub-paragraph (2), be added to the amount of the consideration for the disposal of the shares.
- (4) In this paragraph—
- G is the sum of the credits brought into account under [^{F56}paragraph 14(3)] in respect of the derivative contract in each relevant accounting period so far as referable, on a just and reasonable apportionment, to the shares acquired as a result of the exercise of the rights mentioned in [^{F57}sub-paragraph (1)(c) or the delivery mentioned in sub-paragraph (1A)(c)];
- L is the sum of the debits brought into account under [^{F56}paragraph 14(3)] in respect of the derivative contract in each relevant accounting period, so far as so referable.
- (5) For the purposes of sub-paragraph (4), a “relevant accounting period” is—
- (a) the accounting period in which the disposal in question is made, or
(b) any previous accounting period.]

Textual Amendments

- F4** 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**
- F40** Sch. 26 paras. 45H, 45HA inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **17**
- F51** Words in Sch. 26 para. 45HA 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **19(2)**
- F52** Words in Sch. 26 para. 45HA(2) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **19(3)(a)**
- F53** Words in Sch. 26 para. 45HA(2) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **19(3)(b)**

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Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

- F54** Words in Sch. 26 para. 45HA(2) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **30**
- F55** Words in Sch. 26 para. 45HA(3) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **30**
- F56** Words in Sch. 26 para. 45HA(4) substituted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **10**
- F57** Words in Sch. 26 para. 45HA(4) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **19(4)**

^{F58}45H.

Textual Amendments

- F4** 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**
- F58** 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**

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—
- ^{F59}(a) the derivative contract is a loan-contract embedded derivative to which the company is treated as party by virtue of 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 [^{F60}loan-contract host contract] are non-trading credits and non-trading debits,
 - ^{F61}(d)
 - (e) [^{F62}the derivative contract is treated by virtue of section 94A(3) of the Finance Act 1996] 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—
- ^{F63} ...
- “gilt-edged security” has the meaning given by section 103(1) of the Finance Act 1996;

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Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

“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

- F4** 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**
- F59** Sch. 26 para. 45I(1)(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **20(2)**
- F60** Words in Sch. 26 para. 45I(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **20(3)**
- F61** Sch. 26 para. 45I(1)(d) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **20(4)**
- F62** Words in Sch. 26 para. 45I(1)(e) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **20(5)**
- F63** Words in Sch. 26 para. 45I(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **20(6)**

Issuers of securities with embedded derivatives: deemed options

[^{F64}45J(1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—

- [^{F65}(a) the derivative contract is a loan-contract embedded derivative to which the company is treated as party by virtue of a debtor relationship of the company (“the original relationship”),]
- (c) [^{F66}the derivative contract is treated by virtue of section 94A(3) of the Finance Act 1996] as an option,
- (d) 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 [^{F67}original] 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 [^{F67}original] relationship in the ordinary course of that business,

[^{F68}(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—

Status: Point in time view as at 30/12/2006.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

- (a) paragraph [F⁶⁹14(2) and (3) (trading and 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 [F⁷⁰(9A)] (as the case may be) of this paragraph shall, subject to sub-paragraph (4), apply instead.

[F⁷¹(4) If the company was a party to the [F⁷²original] relationship immediately before its first accounting period to begin on or after 1st January 2005—

- (a) sub-paragraphs (5) and (9) do not apply, but
- (b) where sub-paragraph (7) applies, E shall be taken to be nil and an allowable loss of an amount equal to F shall accordingly be treated as accruing to the company in the accounting period there mentioned.]

[F⁷³(4A) Sub-paragraph (5) 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”).

(5) Where this sub-paragraph applies—

- (a) section 144(2) of [F⁷⁴TCGA 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 value of the option at the time the company became party to the loan relationship (the “initial carrying value”) was the consideration for the grant of the option;
- (b) to the extent that it would otherwise apply, section 17(1) of the Taxation of Chargeable Gains Act 1992 (deemed market value consideration) does not apply to the relevant disposal.]

(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,

[F⁷⁵(8) In sub-paragraph (7)—

E is—

- (a) in a case where the company was a party to the original relationship at the time it was created, the initial carrying value of the option, and
- (b) in a case where the company became a party to the original relationship at a later time, the carrying value of the option at that time;

F is the amount paid by the debtor in fulfilment of the obligations under the original relationship reduced (but not below nil) by the fair value of the loan-contract host contract at the date on which the option is exercised.

Status: Point in time view as at 30/12/2006.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

- (9) Sub-paragraph (9A) applies if the company ceases to be a party to the original relationship at a time when the option mentioned in sub-paragraph (1)(c) has not been exercised.
- (9A) The company is treated for the purposes of corporation tax on chargeable gains—
- (a) as having disposed of an asset for a consideration equal to G, and
 - (b) as having acquired that asset for a consideration equal to H.
- (9B) In sub-paragraph (9A)—
- G is—
- (a) in a case where the company was a party to the original relationship at the time it was created, the initial carrying value of the option, and
 - (b) in a case where the company became a party to the original relationship at a later time, the carrying value of the option at that time;
- H is—
- (a) in a case where the company ceases to be a party to the original relationship as a result of the redemption or repayment of the liability representing the original relationship, the amount paid by the company, and
 - (b) in any other case, the consideration given by the company on its ceasing to be party to the original relationship,
- in either case reduced (but not below nil) by the fair value of the loan-contract host contract at the date on which it so ceases.]
- (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

- F64** 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**
- F65** Sch. 26 para. 45J(1)(a) substituted for Sch. 26 para. 45J(1)(a)(b) (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 2006 \(S.I. 2006/3269\)](#), arts. 1, **21(2)**
- F66** Words in Sch. 26 para. 45J(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **21(3)**
- F67** Word in Sch. 26 para. 45J(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **21(4)**
- F68** 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**

Status: Point in time view as at 30/12/2006.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

- F69** Words in Sch. 26 para. 45J(3)(a) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **18(2)**
- F70** Word in Sch. 26 para. 45J(3)(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **21(5)**
- F71** Sch. 26 para. 45J(4) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **18(3)**
- F72** Word in Sch. 26 para. 45J(4) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **21(4)**
- F73** Sch. 26 para. 45J(4A)(5) substituted for Sch. 26 para. 45J(5) (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **18(4)**
- F74** Words in Sch. 26 para. 45J(5)(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **30**
- F75** Sch. 26 paras. 45J(8)-(9B) substituted for Sch. 26 para. 45J(8)(9) (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 2006 \(S.I. 2006/3269\)](#), arts. 1, **21(6)**

Issuers of securities with embedded derivatives: equity instruments

[(1) This paragraph applies to a company for an accounting period if the following
^{F76}45JA conditions are satisfied—

- ^{F77}(a) the company is party to a loan-contract embedded derivative by virtue of a debtor relationship of the company (“the original relationship”)]
- (b) the division mentioned in [^{F78}section 94A(1) of the Finance Act 1996 in the case of the original relationship] is between—
 - (i) rights and liabilities under a loan relationship, and
 - (ii) rights and liabilities under an equity instrument [^{F79}of the company],
- (c) in the case of that debtor relationship, the company is treated under subsection (2)(b)(i) of that section as party to a relevant contract,
- (d) the relevant contract is treated by virtue of subsection (3) of that section as an option,
- ^{F80}(e)
- (f) the company pays an amount in the accounting period to the person who is party to the [^{F81}original] relationship as creditor in discharge of any obligations under that relationship,
- (g) 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 [^{F82}original] 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 [^{F82}original] relationship in the ordinary course of that business;

Status: Point in time view as at 30/12/2006.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

- (b) the liability representing the [^{F83}original] relationship was not owed by the company immediately before its first accounting period to begin on or after 1st January 2005; and
- (c) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc.).
- (3) If RA exceeds E, an allowable loss equal to the amount of the excess shall be treated as accruing to the company for the purposes of corporation tax on chargeable gains in the accounting period.
- (4) In sub-paragraph (3)—
- [^{F84}RA is the amount paid as mentioned in sub-paragraph (1)(f) reduced (but not below nil) by an amount equal to the fair value of the loan-contract host contract at the time that amount is paid;]
- E is the amount treated in accordance with section 94A(2) of the Finance Act 1996 as the carrying value of the relevant contract at the time the company became party to the [^{F85}original] relationship.
- (5) In this paragraph “option” and “securities house” have the same meaning as in paragraph 45J(10).]

Textual Amendments

- F64** 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**
- F76** Sch. 26 para. 45JA inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **19**
- F77** Sch. 26 para. 45JA(1)(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **22(2)(a)**
- F78** Words in Sch. 26 para. 45JA(1)(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **22(2)(b)**
- F79** Words in Sch. 26 para. 45JA(1)(b)(ii) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **22(2)(c)**
- F80** Sch. 26 para. 45JA(1)(e) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **22(3)**
- F81** Word in Sch. 26 para. 45JA(1)(f) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **22(4)**
- F82** Word in Sch. 26 para. 45JA(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **22(5)**
- F83** Word in Sch. 26 para. 45JA(2)(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **22(5)**
- F84** Words in Sch. 26 para. 45JA(4) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **22(6)**

Status: Point in time view as at 30/12/2006.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

F85 Word in Sch. 26 para. 45JA(4) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, 22(7)

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—

- ^{F86}(a) the derivative contract is a loan-contract embedded derivative to which the company is treated as party by virtue of a debtor relationship of the company (“the original 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
- ^{F87}(d) the derivative contract is an exactly tracking contract within the meaning of sub-paragraph (2A), 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 ^{F88}original 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 ^{F88}original relationship in the ordinary course of that business,
- ^{F89}(b)
- (c) the underlying subject matter of the derivative contract is ^{F90}... shares,
- (d) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc).
- [^{F92}the liability representing the original relationship was not owed by the
- ^{F91}(e) company immediately before its first accounting period to begin on or after 1st January 2005.]

[For the purposes of this paragraph “an exactly tracking contract” is a contract for ^{F93}(2A) 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 (2B));

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 proceeds of issue of the liability which represents the original relationship.

(2B) In sub-paragraph (2A), 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, or
- (b) any index of the value of those assets.

Status: Point in time view as at 30/12/2006.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

- (2C) In sub-paragraph (2B) “the relevant period” means—
- (a) the period between—
 - (i) the date when the liability representing the original relationship came into existence, and
 - (ii) the date when the corresponding creditor 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 liability representing the original relationship.]
- (3) Where this paragraph applies to a derivative contract for an accounting [^{F94}period—
- (a) paragraph 14(2) and (3) (trading and 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^{F95}, but
 - (b) sub-paragraph (3A) shall have effect.]
- [Where—
- ^{F96}(3A) (a) the [^{F97}original] relationship comes to an end, and
- (b) an amount (“the discharge amount”) is paid to discharge all the company’s obligations under that relationship,
- then, for the purposes of corporation tax on chargeable gains, there shall be treated as accruing to the company a chargeable gain or allowable loss of an amount determined in accordance with sub-paragraph (3B).
- (3B) That amount is the amount of the gain or loss (as the case may be) that would accrue on the assumption that—
- (a) the derivative contract is an asset of the company,
 - (b) there is a disposal of that asset at the time when the [^{F98}original] relationship comes to an end,
 - ^{F99}(c) the consideration for the disposal of that asset—
 - (i) in a case where the company was party to the original relationship at the time it was created, is equal to the amount of the proceeds of issue of the security representing that relationship, and
 - (ii) in a case where the company became party to the original relationship after that time, is equal to the amount of the carrying value of the loan-contract host contract at that time, and]
 - (d) the cost of the asset is equal to the discharge amount.]
- (4) In this paragraph “securities house” has the same meaning as in paragraph 45J (see sub-paragraph (10) of that paragraph).

Textual Amendments

- F64** 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**
- F86** Sch. 26 para. 45K(1)(a) substituted for Sch. 26 para. 45K(1)(a)(b) (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 2006 \(S.I. 2006/3269\)](#), arts. 1, **23(2)(a)**

Status: Point in time view as at 30/12/2006.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

- F87** Sch. 26 para. 45K(1)(d) 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 2006 (S.I. 2006/3269), arts. 1, **23(3)**
- F88** Word in Sch. 26 para. 45K(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 2006 (S.I. 2006/3269), arts. 1, **23(4)**
- F89** 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**
- F90** Words in Sch. 26 para. 45K(2)(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 2006 (S.I. 2006/3269), arts. 1, **23(5)**
- F91** Sch. 26 para. 45K(2)(e) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2005 (S.I. 2005/2082), arts. 1(2), **20(3)**
- F92** Word in Sch. 26 para. 45K(2)(e) 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 2006 (S.I. 2006/3269), arts. 1, **23(4)**
- F93** Sch. 26 paras. 45K(2A)-(2C) 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 2006 (S.I. 2006/3269), arts. 1, **23(6)**
- F94** Sch. 26 para. 45K(3)(a) substituted for words (with effect in accordance with art. 1(3) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2005 (S.I. 2005/2082), arts. 1(2), **20(4)(a)**
- F95** Sch. 26 para. 45K(3)(b) and word inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2005 (S.I. 2005/2082), arts. 1(2), **20(4)(b)**
- F96** Sch. 26 para. 45K(3A)(3B) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2005 (S.I. 2005/2082), arts. 1(2), **20(5)**
- F97** Word in Sch. 26 para. 45K(3A)(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 2006 (S.I. 2006/3269), arts. 1, **23(7)**
- F98** Word in Sch. 26 para. 45K(3B)(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 2006 (S.I. 2006/3269), arts. 1, **23(7)**
- F99** Sch. 26 para. 45K(3B)(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 2006 (S.I. 2006/3269), arts. 1, **23(8)**

Securities with embedded options: existing liabilities

[(1) Where in any accounting period paragraph 45K would apply to a derivative contract ^{F100}45KA. but for sub-paragraph (2)(e) of that paragraph, paragraph 14(3) (non-trading credits and debits) shall not apply to the relevant credits and debits.

(2) For the purposes of this paragraph the relevant credits and debits are the credits and debits given in relation to the contract for the accounting period by paragraph 15.]

Textual Amendments

- F64** 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**

Status: Point in time view as at 30/12/2006.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 9. (See end of Document for details)

F100 Sch. 26 para. 45KA 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 2006 \(S.I. 2006/3269\)](#), arts. 1, 24

Derivatives not embedded in a loan relationship

45^{F101}(1) This paragraph applies where—

(a) a company is party to a non-financial embedded derivative or a nested derivative (“the contract”),]

[the contract is a derivative contract falling within paragraph 3(1)(a),
^{F102}(aa)

(ab) paragraph 45M does not apply in relation to the contract,]

(b) regulation 9 of the Disregard Regulations (interest rate contracts) does not apply to the contract^{F103}, and

(c) no election having effect in relation to the derivative contract is or has been made under sub-paragraph (2A),]

^{F104} ...

^{F105}^{F106}(1A) In this paragraph “the original contract” means—

(a) the non-financial contract mentioned in paragraph 2A to which the company is party, and as a result of which the company falls to be treated under paragraph 2A(2) as party to the non-financial embedded derivative; or

(b) the hybrid derivative mentioned in paragraph 2B to which the company is party, and as a result of which the company falls to be treated under paragraph 2B(2) as party to the nested derivative.]

(1B) Where this paragraph applies—

(a) paragraph 14(2) and (3) (trading and non-trading credits and debits) do not apply in relation to the derivative contract, but

(b) sub-paragraph (1C) or (2) applies in relation to the original contract, according to ^{F107}whether that contract is a hybrid derivative or a non-financial contract].

(1C) If the original contract is ^{F108}a hybrid derivative], profits and losses are to be computed for the purposes of this Schedule as if that contract—

^{F109}(a) were not one where the rights and liabilities are treated for accounting purposes as divided as mentioned in sub-paragraph (2) of paragraph 2B, and]

(b) were not one in relation to which a fair value basis of accounting is used.

(2) ^{F110}If the contract is a non-financial contract], profits and losses are to be brought into account for the purposes of the Corporation Tax Acts in relation to that contract as if that contract—

^{F111}(a) were not one where the rights and liabilities are treated for accounting purposes as divided as mentioned in sub-paragraph (2) of paragraph 2A, and]

(b) were not one in relation to which a fair value basis of accounting is used.

^{F112}and, accordingly, this Schedule shall not apply to the contract, but section 42 of the Finance Act 1998 shall apply to the contract as if fair value accounting were not generally accepted accounting practice in relation to the company.]

This sub-paragraph has effect notwithstanding paragraph 1(2).]

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[A company may elect that this paragraph is not to apply to any of its contracts
F113(2A)]^{F114} unless—

- (a) the contract is a contract of long-term insurance, or
- (b) the underlying subject matter of the embedded derivative contract is, or includes, commodities.

Paragraph 45LA contains further provisions about elections under this sub-paragraph.]

(2B) Any such election—

- (a) must be made by giving notice in writing to Her Majesty’s Revenue and Customs,
- (b) must be made before the end of the first applicable accounting period of the company, and
- (c) is irrevocable.

(2C) For the purposes of sub-paragraph (2B), the “first applicable accounting period” is the first accounting period ending on or after 17th August 2005 in which the conditions in paragraphs (a) to (b) of sub-paragraph (1) are satisfied.

(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

- F64** 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**
- F101** Words in Sch. 26 para. 45L(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **25(2)**
- F102** Sch. 26 para. 45L(1)(aa)(ab) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **21(2)(c)**
- F103** Sch. 26 para. 45L(1)(c) and word inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **21(2)(d)**
- F104** Words in Sch. 26 para. 45L(1) omitted (with effect in accordance with art. 1 of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **12(2)(c)**
- F105** Sch. 26 paras. 45L(1A)-(1C)(2) substituted for Sch. 26 para. 45L(2) (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **12(3)**
- F106** Sch. 26 para. 45L(1A) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **25(3)**
- F107** Words in Sch. 26 para. 45L(1B)(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **25(4)**
- F108** Words in Sch. 26 para. 45L(1C) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **25(5)(a)**

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- F109** Sch. 26 para. 45L(1C)(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 2006 (S.I. 2006/3269), arts. 1, 25(5)(b)
- F110** Words in Sch. 26 para. 45L(2) 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 2006 (S.I. 2006/3269), arts. 1, 25(6)(a)
- F111** Sch. 26 para. 45L(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 2006 (S.I. 2006/3269), arts. 1, 25(6)(b)
- F112** Words in Sch. 26 para. 45L(2) 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 2006 (S.I. 2006/3269), arts. 1, 25(6)(c)
- F113** Sch. 26 para. 45L(2A)(2B)(2C) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2005 (S.I. 2005/2082), arts. 1(2), 21(4)
- F114** Words in Sch. 26 para. 45L(2A) added (with effect in accordance with art. 1 of the amending S.I.) by The Finance Act 2002, Schedule 26 (Parts 2 and 9) (Amendment No. 3) Order 2005 (S.I. 2005/3440), arts. 1, 12(4)

Elections under paragraph 45L(2A): further provisions

[^{F115}45L(1A)] In this paragraph “a disapplication election” means an election under paragraph 45L(2A).

- (2) Where—
- (a) a company makes a disapplication election in relation to its contracts, and
 - (b) another company, which is a member of the same group as the company making the election, is a party to a contract to which the election applies,
- the other company shall be treated, in relation to that contract, as if it had also made a disapplication election.
- (3) Where—
- (a) a company (“the electing company”) makes a disapplication election in relation to its contracts,
 - (b) another company (“the transferee”) becomes party to a contract, to which paragraph 2(3) applies, in place of the electing company (whether before or after the disapplication election is made), and
 - (c) the transferee is a member of the same group of companies as the electing company at the time of the transfer,
- the transferee shall be treated, in relation to the contract referred to in paragraph (b), as if it had also made a disapplication election.
- (4) Where—
- (a) a company (“A”) is treated under [^{F116}paragraph 2A or 2B] as party to a relevant contract to which paragraph 45L(1) applies,
 - (b) another company (“B”), becomes a party to that contract in place of A,
 - (c) A and B are members of the same group of companies when B becomes a party to the contract, and
 - (d) paragraph 45L(1) does not apply to B’s other relevant contracts by reason of a disapplication election (whenever made),

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sub-paragraph (5) applies, unless A, subsequent to B's becoming party to the contract, makes a disapplication election.

- (5) Where this sub-paragraph applies B shall be treated, in relation to the contract referred to in sub-paragraph (4)(b), as if paragraph 45L(1) applied to it.
- (6) In this paragraph references to companies being members of the same group of companies shall be construed in accordance with section 170 of [F117TCGA 1992].]

Textual Amendments

- F115** Sch. 26 para. 45LA and cross-heading inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **13**
- F116** Words in Sch. 26 para. 45LA(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **26**
- F117** Words in Sch. 26 para. 45LA(6) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **30**

Treatment of host contract as a loan relationship

- [F118] **F119** (1) This paragraph applies where for an accounting period—
- (a) a company is party to a hybrid derivative contract falling within paragraph 3(1)(b),
 - (b) the nested derivative is a derivative contract falling within paragraph 3(1)(a),
 - (c) the underlying subject matter of the derivative 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, and
 - (d) the quasi-derivative host contract is treated for accounting purposes as, or as forming part of, a financial asset.
- (2) Where this paragraph applies—
- (a) the quasi-derivative host contract shall be treated for the purposes of the Corporation Tax Acts as if it were a creditor relationship of the company, and
 - (b) the nested derivative shall be treated—
 - (i) as satisfying the conditions in paragraph 4(2A), and
 - (ii) as a chargeable asset (within the meaning of paragraph 4A(4)).]
- F120** (3)
- (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).
- F121** (5)
- F122** (6)]

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Textual Amendments

- F118** 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**
- F119** Sch. 26 para. 45M(1)(2) 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 2006 \(S.I. 2006/3269\)](#), arts. 1, **27(2)**
- F120** Sch. 26 para. 45M(3) omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **22(4)**
- F121** Sch. 26 para. 45M(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **27(3)**
- F122** Sch. 26 para. 45M(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 2006 \(S.I. 2006/3269\)](#), arts. 1, **27(3)**

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 [F123(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).
- (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

- F123** 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**

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F124 47

Textual Amendments

F124 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**

F125 48

Textual Amendments

F125 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**

F126 48A.

Textual Amendments

F126 Sch. 26 para. 48A omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **23**

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—

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- (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
 - [^{F127}(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.

Textual Amendments

F127 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

- [^{F128}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

F128 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

- [^{F129}30(A) This paragraph applies where—

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- (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 [^{F131}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
- ^{F132}(3A) amounts recognised for accounting purposes in relation to the contract in respect of—
- (a) accrued amounts;
 - (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) [^{F133}paragraph 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,

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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.]

^{F134}(4)

[This paragraph does not apply if or to the extent that such a debit or credit as ^{F135}(5) is mentioned in sub-paragraph (2) falls to be brought into account apart from this paragraph]]

Textual Amendments

F129 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](#)

F130 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)

F131 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)

F132 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)

F133 Words in Sch. 26 para. 50A(3B)(b) substituted by The Finance Act 2002, Schedule 26, (Parts 2 and 9) (Amendment) Order 2006 ([S.I. 2006/3269](#)), art. 28

F134 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)

F135 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)

Modifications etc. (not altering text)

C1 Sch. 26 para. 50A applied by [2005 c. 22](#), Sch. 6, para. 7(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.

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Finance Act 2002, Part 9.