



Corporation Tax Act 2009

2009 CHAPTER 4

PART 7

DERIVATIVE CONTRACTS

CHAPTER 2

CONTRACTS TO WHICH THIS PART APPLIES

Exclusions from derivative contracts

589 Contracts excluded because of underlying subject matter: general

- (1) A relevant contract is not a derivative contract for the purposes of this Part if its underlying subject matter—
 - (a) consists wholly of excluded property (see subsections (2) to (5)), or
 - (b) is treated as consisting wholly of such property.
- (2) “Excluded property” means—
 - (a) intangible fixed assets,
 - (b) shares in a company other than shares within subsection (3), or
 - (c) rights of a unit holder under a unit trust scheme other than a scheme in relation to which section 490 (holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights) has effect.
- (3) The shares within this subsection are—
 - (a) shares to which section 524 or 526 (shares subject to outstanding third party obligations and shares which are non-qualifying shares) applies, and
 - (b) shares in an open-ended investment company in relation to which section 490 has effect.

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- (4) Subsection (2)(a) applies only in relation to a relevant contract which is an option or future.
- (5) Subsection (2)(b) and (c) apply only in relation to a relevant contract which—
 - (a) meets any of conditions A to E in section 591, and
 - (b) is not designed to produce a return which equates in substance to the return on an investment of money at a commercial rate of interest.
- (6) Section 590 applies for determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of excluded property.

590 Disregard of subordinate or small value underlying subject matter

- (1) This section applies in relation to a relevant contract if its underlying subject matter consists only of—
 - (a) excluded property, and
 - (b) other underlying subject matter which is—
 - (i) subordinate in relation to any of the excluded property, or
 - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (2) The underlying subject matter of the contract is treated for the purposes of this Part as if it consisted wholly of excluded property.
- (3) For the purposes of this section, whether part of the underlying subject matter of a relevant contract of a company is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the contract.
- (4) In this section “excluded property” has the same meaning as in section 589.

591 Conditions A to E mentioned in section 589(5)

- (1) The following are the conditions mentioned in section 589(5).
- (2) Condition A is that the relevant contract—
 - (a) is a plain vanilla contract entered into or acquired by a company carrying on [^{F1}long-term business],
 - (b) is an approved derivative for the purposes of Rule 3.2.5 of the Insurance Prudential Sourcebook [^{F2}(within the meaning given by section 139(4) of FA 2012)], and
 - (c) does not meet the condition in section 579(1)(b) (contract which is or forms part of a financial asset or liability for accounting purposes).
- (3) Condition B is that—
 - (a) the relevant contract is entered into or acquired by a company otherwise than for the purposes of a trade carried on by it,
 - (b) there is a hedging relationship between the contract and—
 - (i) an asset of the company which consists of shares or rights of a unit holder under a unit trust scheme, or
 - (ii) any share capital of the company or any liability related to share capital of the company, and

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- (c) the relevant contract is not one to which the company is treated as a party under section 585(2) (loan relationships with embedded derivatives).
- (4) Condition C is that—
 - (a) the relevant contract is entered into or acquired by a company otherwise than for the purposes of a trade carried on by it, and
 - (b) the relevant contract is an option which is listed on a recognised stock exchange to subscribe for shares in a company.
- (5) Condition D is that—
 - (a) the relevant contract is entered into or acquired by a company otherwise than in the course of activities forming an integral part of a trade carried on by it,
 - (b) the relevant contract is—
 - (i) an option to acquire shares in a company, or
 - (ii) a future requiring delivery of shares in a company,
 - (c) the relevant contract is not one to which the company is treated as a party under section 585(2), and
 - (d) the shares to be acquired or delivered—
 - (i) constitute a substantial shareholding within the meaning of paragraph 8 of Schedule 7AC to TCGA 1992 (meaning of “substantial shareholding”), or
 - (ii) would do so if acquired or delivered.
- (6) Condition E is that—
 - (a) the company which is a party to the relevant contract has a hedging relationship between—
 - (i) the relevant contract, and
 - (ii) an asset or liability representing a loan relationship which is treated as mentioned in section 585(1) (loan relationships with embedded derivatives), and
 - (b) each relevant contract to which the company is treated as a party under section 585(2) in the case of that loan relationship is a derivative contract to which any of the provisions in subsection (7) applies.
- (7) The provisions mentioned in subsection (6)(b) are—
 - (a) section 645 (creditor relationships: embedded derivatives which are options),
 - (b) section 648 (creditor relationships: embedded derivatives which are exactly tracking contracts for differences),
 - (c) sections 653 to 655 (issuers of securities with embedded derivatives: deemed options), and
 - (d) section 658 (issuers of securities with embedded derivatives: deemed contracts for differences).
- (8) For the cases in which sections 653 to 655 and section 658 apply, see sections 652 and 656 respectively.

Textual Amendments

- F1** Words in s. 591(2)(a) substituted (17.7.2012) by Finance Act 2012 (c. 14), Sch. 16 para. 167(2)
- F2** Words in s. 591(2)(b) inserted (17.7.2012) by Finance Act 2012 (c. 14), Sch. 16 para. 167(3)

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592 Embedded derivatives treated as meeting condition in section 591 etc

- (1) This section applies if for an accounting period—
 - (a) a company is a party to a hybrid derivative which meets the condition in section 579(1)(b) (contract which is or forms part of a financial asset or liability for accounting purposes),
 - (b) the embedded derivative is a relevant contract which meets the condition in section 579(1)(a) (contract treated for accounting purposes as derivative),
 - (c) the underlying subject matter of that contract consists, or is treated as consisting, wholly of—
 - (i) shares in a company, or
 - (ii) rights of a unit holder under a unit trust scheme, and
 - (d) the host contract is or forms part of a financial asset or liability for accounting purposes.
- (2) The embedded derivative is treated—
 - (a) for the purposes of section 589 (contracts excluded because of underlying subject matter: general) as meeting one of the conditions in section 591, and
 - (b) as a chargeable asset.
- (3) The host contract is treated for the purposes of the Corporation Tax Acts as if it were a creditor relationship of the company (see Part 5 (loan relationships)).
- (4) Section 590 (disregard of subordinate or small value underlying subject matter) applies for the purpose of determining whether the underlying subject matter is to be treated as consisting wholly of property mentioned in subsection (1)(c) as that section so applies in relation to excluded property.
- (5) In this section—

“the embedded derivative” means the relevant contract to which the company is treated as a party under section 584(2)(a) because of the hybrid derivative mentioned in subsection (1)(a), and

“the host contract” means the relevant contract to which the company is treated as a party under section 584(2)(b) because of that hybrid derivative.

593 Contracts where part of underlying subject matter is excluded property

- (1) This section applies to a relevant contract of a company—
 - (a) which is an option or future,
 - (b) which meets any of the accounting conditions in section 579(1), and
 - (c) whose underlying subject matter consists of—
 - (i) excluded property, and
 - (ii) other underlying subject matter.
- (2) A relevant contract to which this section applies is treated for the purposes of the Corporation Tax Acts as if it were the following two contracts—
 - (a) a relevant contract whose underlying subject matter consists of the excluded property, and
 - (b) a relevant contract whose underlying subject matter consists of the other underlying subject matter.

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- (3) For the purposes of giving effect to subsection (2), all such apportionments as are just and reasonable are to be made.
- (4) This section does not apply to a relevant contract if it is determined in accordance with section 590 (disregard of subordinate or small value underlying subject matter) that the underlying subject matter of the relevant contract is to be treated as consisting wholly of excluded property.
- (5) In this section “excluded property” has the same meaning as in section 589 (contracts excluded because of underlying subject matter: general).

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