
STATUTORY INSTRUMENTS

2005 No. 2082

The Finance Act 2002, Schedule 26, Parts
2 and 9 (Amendment No. 2) Order 2005

Amendment of Part 9 of Schedule 26 to the Finance Act 2002

19. After paragraph 45J insert—

“Issuers of securities with embedded derivatives: equity instruments

45JA.—(1) This paragraph applies to a company for an accounting period if the following conditions are satisfied—

- (a) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) has effect in relation to a debtor relationship of the company,
- (b) the division mentioned in subsection (1) of that section in the case of that debtor relationship is between—
 - (i) rights and liabilities under a loan relationship, and
 - (ii) rights and liabilities under an equity instrument,
- (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,
- (e) the relevant contract is not a derivative contract,
- (f) the company pays an amount in the accounting period to the person who is party to the loan 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 debtor 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 debtor relationship in the ordinary course of that business;
- (b) the liability representing the debtor 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)—

RA is—

- (a) the amount paid as mentioned in sub-paragraph (1)(f), less
- (b) so much of that amount as is treated for accounting purposes as paid in discharge of the liabilities mentioned in sub-paragraph (1)(b)(i);

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 debtor relationship.

(5) In this paragraph “option” and “securities house” have the same meaning as in paragraph 45J(10).”.