

**Bill 5: Derivative Contracts**

***Summary***

1. This paper presents draft clauses which bring into account for the purposes of corporation tax profits and losses arising to a company from its derivative contracts.
2. With the main exception of a couple of provisions in FA 1996, most of the derivative contracts provisions are found in Schedule 26 to FA 2002. The draft clauses rewrite the primary legislation on this subject.
3. The draft clauses appear in a single Part containing twelve Chapters.
4. The paper consists of:
  - draft clauses, all with origins; and
  - draft explanatory notes together with draft notes for Annex 1 to the Bill which outline proposed changes in the law.

***Questions for the committee***

5. To enable us to consider relevant issues before publication of the draft Bill, we would be grateful for your comments on these draft clauses.
6. In particular, we would welcome comments on proposals outlined in the draft Change Notes which are intended for inclusion in Annex 1 to the Bill.

***Closing date for comments***

7. We would welcome any comments by 19 October 2007. If possible, they should be sent by e-mail to:

[jackie.bartlett@hmrc.gsi.gov.uk](mailto:jackie.bartlett@hmrc.gsi.gov.uk)

Written comments should be sent to:

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8. The names of respondents may be published unless they ask for their comments to be treated in confidence.

# Bill 5

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## PART 8

### DERIVATIVE CONTRACTS

#### CHAPTER 1

##### INTRODUCTION

##### *Introduction* 5

#### 1 Overview of Part [J7derover]

- (1) This Part is about how profits and losses arising to a company from its derivative contracts are brought into account for corporation tax purposes.

Origin: FA 2002 Sch.26 paras.1(1), 15(1); drafting.

- (2) For the meaning of “derivative contract”, see section 10 and the remainder of Chapter 2. 10

Origin: Drafting.

#### 2 General rule that profits arising from derivative contracts are chargeable as income [j72601]

- (1) The general rule for corporation tax purposes is that all profits arising to a company from its derivative contracts are within the charge to corporation tax as income in accordance with this Part. 15

Origin: FA 2002 Sch.26 para.1(1).

- (2) For how such profits are calculated and brought into account, see – 20
- (a) section 3 (profits and losses from derivative contracts to be calculated using credits and debits given by this Part),
  - (b) section 4 (trading credits and debits brought into account under Part [3]), and
  - (c) section 5 (non-trading credits and debits brought into account under Part [6]). 25

Origin: Drafting.

- (3) But see section 6 (exception to the general rule: derivative contracts giving rise to chargeable gains).

Origin: Drafting.

**3 Profits and losses from derivative contracts to be calculated using credits and debits given by this Part [j72601b]**

Profits and losses arising to a company from its derivative contracts are to be calculated using credits and debits given by this Part.

Origin: FA 2002 Sch.26 para.14(1).

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**4 Trading credits and debits brought into account under Part [3] [j72614]**

- (1) This section applies so far as in an accounting period a company is party to a derivative contract for the purposes of a trade it carries on.

Origin: FA 2002 Sch.26 para.14(2).

- (2) The credits in respect of the contract for the period are treated as receipts of the trade which must be brought into account in calculating the profits of the trade for the period.

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Origin: FA 2002 Sch.26 para.14(2).

- (3) The debits in respect of the contract for the period are treated as expenses of the trade which are deductible in calculating those profits.

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Origin: FA 2002 Sch.26 para.14(2).

- (4) So far as subsection (3) provides for any amount to be deductible, it applies despite anything in section 74 of ICTA (allowable deductions).

Origin: FA 2002 Sch.26 para.14(4).

- (5) For cases in which this section does not apply, see –
- (a) section 29 (derivatives not embedded in a loan relationship), and
  - (b) section 64 (exclusion from this section of trading credits and debits under some contracts).

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Origin: Drafting.

**5 Non-trading credits and debits brought into account under Part [6] [j72614a]**

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- (1) This section applies if, for an accounting period, there are credits or debits in respect of the derivative contracts of a company which are not required to be brought into account in accordance with section 4.

Origin: FA 2002 Sch.26 para.14(3).

- (2) Those credits or debits –
- (a) are to be treated as non-trading credits or non-trading debits (within the meaning of Part [6] (loan relationships)) for the period, and
  - (b) are accordingly to be brought into account in calculating whether there are gains under [section {j061080}] or losses in respect of which claims may be made under Chapter [13] of that Part.

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Origin: FA 2002 Sch.26 para.14(3); drafting.

- (3) For cases in which this section does not apply, see –
- (a) section 29 (derivatives not embedded in a loan relationships), and
  - (b) section 65 (exclusion from this section of non-trading credits and debits under some contracts).

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[Origin: Drafting.](#)

**6 Exception to the general rule: derivative contracts giving rise to chargeable gains [j72601a]**

- (1) Chapter 6 makes provision –
- (a) for cases in which profits arising to a company from its derivative contracts are within the charge to corporation tax as chargeable gains, and 5
  - (b) for other cases in which provisions relating to corporation tax on chargeable gains apply in relation to derivative contracts.

[Origin: Drafting.](#) 10

- (2) See in particular –
- (a) section 66 (derivatives contracts to which section 68, 70, 73 or 75 applies to be taxed on a chargeable gains basis),
  - (b) section 76 (existing assets representing creditor relationships: options),
  - (c) section 78 (existing assets representing creditor relationships: contracts for differences), 15
  - (d) sections 81 to 83 (issuers of securities with embedded derivatives: deemed options), and
  - (e) section 87 (issuers of securities with embedded derivatives: deemed contracts for differences). 20

[Origin: Drafting.](#)

**7 Overview of remaining provisions of this Part [J7derover1]**

- (1) Most of the remaining provisions of this Part contain rules about the credits and debits to be brought into account in respect of derivative contracts.

[Origin: Drafting.](#) 25

- (2) In particular, see –
- (a) Chapter 3 (credits and debits to be brought into account: general),
  - (b) Chapter 4 (further provision about credits and debits to be brought into account etc),
  - (c) Chapter 5 (anti-avoidance), 30
  - (d) Chapter 9 (continuity of treatment: groups and SE mergers), and
  - (e) Chapter 10 (special kinds of company).

[Origin: Drafting.](#)

- (3) Chapter 7 makes further provision about corporation tax on chargeable gains.

[Origin: Drafting.](#) 35

- (4) Chapter 8 makes provision in relation to contracts which became derivative contracts at certain dates.

[Origin: Drafting.](#)

- (5) Chapter 11 makes special provision in relation to mutual trading companies and insurance companies. 40

[Origin: Drafting.](#)

- (6) Chapter 12 contains general and supplementary provision, including general definitions.

[Origin: Drafting.](#)

*Relationship of this Part to other provisions*

- 8 Priority of rules under this Part for corporation tax [j7derpriority1]** 5
- (1) The amounts that are brought into account in accordance with this Part in respect of any matter are the only amounts to be brought into account for corporation tax purposes in respect of it.  
[Origin: FA 2002 Sch.26 para.1\(2\).](#)
- (2) Subsection (1) is subject to any provision to the contrary. 10  
[Origin: FA 2002 Sch.26 para.1\(2\).](#)
- (3) For such provisions, see in particular –  
 (a) section 29 (derivatives not embedded in a loan relationship),  
 (b) section 106 (plain vanilla contracts which became derivative contracts before 30 December 2006), and 15  
 (c) paragraph 1(3) of Schedule 29 to FA 2002 (intangible fixed assets).  
[Origin: Drafting.](#)
- 9 Relationship of this Part to Part [6]: loan relationships [j7derpriority3]**
- (1) This section applies if –  
 (a) a company is party to a loan relationship because of a derivative contract, and 20  
 (b) in accordance with this Part, a profit or loss would accrue to the company for an accounting period on the contract (“the derivative profit or loss”).  
[Origin: FA 1996 s.101\(1\).](#) 25
- (2) The general rule is that this Part does not apply to the derivative profit or loss if –  
 (a) an amount representing the derivative profit or loss, or  
 (b) an amount representing the profit or loss accruing to that company on the contract, 30  
 is brought into account for that period for the purposes of Part [6] (loan relationships).  
[Origin: FA 1996 s.101\(1\).](#)
- (3) But in a case where section 21 (loan relationships with embedded derivatives) applies – 35  
 (a) the general rule does not apply so far as the derivative profit or loss would accrue from the rights and liabilities mentioned in section 21(1)(b), and  
 (b) that profit or loss would be dealt with in accordance with that section and this Part. 40

Origin: FA 1996 s.101(1A); drafting.

## CHAPTER 2

### CONTRACTS TO WHICH THIS PART APPLIES

#### *Meaning of "derivative contract" and other basic definitions*

- 10 Meaning of “derivative contract” [j72602JP]** 5
- (1) For the purposes of the Corporation Tax Acts, a company’s derivative contracts for an accounting period are those of its contracts which –
- (a) are relevant contracts (see sections 11 and 12),
  - (b) meet any of the accounting conditions for the accounting period (see section 14(1)), and 10
  - (c) are not prevented from being derivative contracts by section 24 or any other provision of the Corporation Tax Acts.
- Origin: FA 2002 Sch.26 para.2(1).
- (2) See also –
- (a) sections 22 and 23 (other contracts etc treated as derivative contracts), 15  
and
  - (b) section 125 (which includes power to amend the provisions relating to meaning of “derivative contract”).
- Origin: Drafting.
- 11 Meaning of “relevant contract” [j72602JPa]** 20
- (1) In this Part “relevant contract” means –
- (a) an option,
  - (b) a future, or
  - (c) a contract for differences.
- Origin: FA 2002 Sch.26 para.2(2). 25
- (2) For the meaning of “option”, “future” and “contract for differences”, see sections 15, 16 and 17 respectively.
- Origin: Drafting.
- 12 Derivative and relevant contracts of a person and being party to such contracts [j72653]** 30
- (1) For the purposes of this Part, references to a relevant contract of a person are references to a relevant contract entered into or acquired by a person (but see subsection (2)).
- Origin: FA 2002 Sch.26 para.53(1); drafting.
- (2) For particular cases where companies are treated as parties to relevant contracts, see – 35
- (a) section 19 (non-financial contracts with embedded derivatives),
  - (b) section 20 (hybrid derivatives), and

- (c) section 21 (loan relationships with embedded derivatives).  
Origin: FA 2002 Sch.26 para.2(2A).
- (3) References to a person being party to a relevant contract must be read in accordance with subsections (1) and (2).  
Origin: FA 2002 Sch.26 para.53(1); drafting. 5
- (4) For the purposes of this Part, a relevant contract is acquired by a person if that person becomes –  
(a) entitled to the rights under the relevant contract, and  
(b) subject to the liabilities under it.  
Origin: FA 2002 Sch.26 para.53(2). 10
- (5) For the purposes of the Corporation Tax Acts, references to a person’s derivative contracts and to a person being party to a derivative contract must be read in accordance with this section.  
Origin: FA 2002 Sch.26 para.53(6).
- 13 Meaning of “plain vanilla contract” [j72602JPb] 15**
- In this Part “plain vanilla contract” means a relevant contract other than one to which a company is treated as being party under a provision mentioned in section 12(2).  
Origin: FA 2002 Sch.26 para.2(2B).
- 14 The accounting conditions [j72603] 20**
- (1) The accounting conditions for any accounting period are that –  
(a) the relevant contract is treated for accounting purposes as a derivative,  
(b) the relevant contract –  
(i) is not so treated just because of not meeting the requirement in section 9(b) of Financial Reporting Standard 26 issued in December 2004 by the Accounting Standards Board, but 25  
(ii) is treated for accounting purposes as, or as forming part of, a financial asset or liability, or  
(c) the relevant contract is not within paragraph (a) or (b), but is within subsection (2). 30  
Origin: FA 2002 Sch.26 para.3(1).
- (2) A relevant contract is within this subsection if –  
(a) its underlying subject matter is commodities, or  
(b) it is a contract for differences whose underlying subject matter is – 35  
(i) land,  
(ii) tangible movable property, other than commodities which are tangible assets,  
(iii) intangible fixed assets,  
(iv) weather conditions, or  
(v) creditworthiness. 40  
Origin: FA 2002 Sch.26 para.3(2).

- (3) For the purposes of subsection (1)(a), a relevant contract of a company is treated for accounting purposes as a derivative for an accounting period if for that period –
- (a) it is so treated for the purposes of the relevant accounting standard used by the company for that period, or 5
  - (b) it would be so treated if the company used the relevant accounting standard in respect of the contract.

Origin: FA 2002 Sch.26 para.3(3).

- (4) For the purposes of subsection (1)(b), a relevant contract of a company is treated for accounting purposes as, or as forming part of, a financial asset or liability for an accounting period if for that period –
- (a) it is so treated for the purposes of the relevant accounting standard used by the company for that period, or 10
  - (b) it would be so treated if the company used the relevant accounting standard for that period in respect of the contract. 15

Origin: FA 2002 Sch.26 para.3(4).

- (5) In this section “relevant accounting standard” means –
- (a) in relation to any accounting period for which it is required or permitted to be used, Financial Reporting Standard 25 issued in December 2004 by the Accounting Standards Board, or 20
  - (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent accounting standard dealing with transactions which are derivatives under Financial Reporting Standard 25, as from time to time amended.

Origin: FA 2002 Sch.26 para.3(5). 25

- (6) For the meaning of “underlying subject matter”, see section 18.

Origin: Drafting.

## 15 Meaning of “option” [j7option]

- (1) In this Part “option” includes a warrant.
- Origin: FA 2002 Sch.26 para.12(1), (8). 30
- (2) But references in this Part to an option do not include references to a contract whose terms –
- (a) provide –
    - (i) that, after setting off their obligations to each other under the contract, a cash payment is to be made by one party to the other in respect of the excess, if any, or 35
    - (ii) that each party is liable to make to the other party a cash payment in respect of all that party’s obligations to the other under the contract, and
  - (b) do not provide for the delivery of any property. 40

Origin: FA 2002 Sch.26 para.12(10).

- (3) Subsection (2) does not prevent an option whose underlying subject matter is currency from being an option.

Origin: FA 2002 Sch.26 para.12(10).

- (4) For the meaning of “underlying subject matter”, see section 18.

Origin: Drafting.

- (5) See also sections 61(5), 80(7) and 95(10) (“option” to be construed as if subsections (2) and (3) were omitted). 5

Origin: Drafting.

## 16 Meaning of “future” [j7future]

- (1) In this Part a “future” means a contract for the sale of property under which delivery is to be made –

(a) at a future date agreed when the contract is made, and 10

(b) at a price so agreed,

but this is subject to subsection (4).

Origin: FA 2002 Sch.26 para.12(1), (6).

- (2) For the purposes of subsection (1)(b), a price is to be taken to be agreed when the contract is made. 15

Origin: FA 2002 Sch.26 para.12(7).

- (3) Subsection (2) applies even if –

(a) the price is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract, or 20

(b) in a case where the contract is expressed to be by reference to a standard lot and quality, provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

Origin: FA 2002 Sch.26 para.12(7).

- (4) References in this Part to a future do not include references to a contract whose terms – 25

(a) provide –

(i) that, after setting off their obligations to each other under the contract, a cash payment is to be made by one party to the other in respect of the excess, if any, or 30

(ii) that each party is liable to make to the other party a cash payment in respect of all that party’s obligations to the other under the contract, and

(b) do not provide for the delivery of any property.

Origin: FA 2002 Sch.26 para.12(10). 35

- (5) Subsection (4) does not prevent a future whose underlying subject matter is currency from being a future.

Origin: FA 2002 Sch.26 para.12(10).

- (6) For the meaning of “underlying subject matter”, see section 18.

Origin: Drafting. 40

## 17 Meaning of “contract for differences” [j7cod]

(1) In this Part “contract for differences” means a contract the purpose or pretended purpose of which is to make a profit or avoid a loss by reference to fluctuations in—

- (a) the value or price of property described in the contract, or 5
- (b) an index or other factor designated in the contract.

Origin: FA 2002 Sch.26 para.12(1), (3).

(2) But none of the following is a contract for differences—

- (a) a future, 10
- (b) an option,
- (c) a contract of insurance,
- (d) a capital redemption policy,
- (e) a contract of indemnity,
- (f) a guarantee,
- (g) a warranty, or 15
- (h) a loan relationship.

Origin: FA 2002 Sch.26 para.12(5).

(3) For the purposes of subsection (1)(b), an index or factor may be determined by reference to any matter.

Origin: FA 2002 Sch.26 para.12(4). 20

## 18 Meaning of “underlying subject matter” [j72611]

(1) In this Part references to the underlying subject matter of a relevant contract must be read as follows.

Origin: FA 2002 Sch.26 para.11(1).

(2) The underlying subject matter of an option is— 25

- (a) the property which would fall to be delivered if the option were exercised, or
- (b) if the property which would so fall is a derivative contract, the underlying subject matter of that contract.

Origin: FA 2002 Sch.26 para.11(2). 30

(3) The underlying subject matter of a future is—

- (a) the property which, if the future were to run to delivery, would fall to be delivered at the date and price agreed when the contract is made, or
- (b) if the property which would so fall is a derivative contract, the underlying subject matter of that contract. 35

Origin: FA 2002 Sch.26 para.11(3).

(4) The underlying subject matter of a contract for differences is—

- (a) if the contract for differences relates to fluctuations in the value or price of property described in the contract, the property so described, or
- (b) if an index or factor is designated in the contract for differences, the matter by reference to which the index or factor is determined. 40

Origin: FA 2002 Sch.26 para.11(4).

- (5) In the case of a contract for differences, its underlying subject matter may include—
- (a) interest rates,
  - (b) weather conditions, and
  - (c) creditworthiness. 5
- [Origin: FA 2002 Sch.26 para.11\(5\).](#)
- (6) Interest rates are not the underlying subject matter of a relevant contract if—
- (a) under the terms of that contract—
    - (i) the date on which a party to that contract becomes subject to a duty to make a payment is a variable date, and 10
    - (ii) the amount of that payment varies according to the date of payment, and
  - (b) those terms refer to an interest rate or rates only for the purpose of establishing that amount.
- [Origin: FA 2002 Sch.26 para.11\(6\).](#) 15
- (7) The underlying subject matter of a relevant contract is not treated as being—
- (a) land,
  - (b) shares in a company, or
  - (c) rights of a unit holder under a unit trust scheme,
- just because its underlying subject matter includes income from that kind of property. 20
- [Origin: FA 2002 Sch.26 para.11\(7\).](#)

*Cases where companies treated as parties to relevant contracts*

**19 Non-financial contracts with embedded derivatives [j72602A]**

- (1) This section applies if in accordance with generally accepted accounting practice a company treats rights and liabilities under a non-financial contract to which it is party as divided between—
- (a) rights and liabilities under one or more derivatives (“embedded derivatives”), and
  - (b) the remaining rights and liabilities. 30
- [Origin: FA 2002 Sch.26 para.2A\(1\); drafting.](#)
- (2) The company is treated for the purposes of this Part—
- (a) as party to a relevant contract whose rights and liabilities consist only of those of the embedded derivative, or
  - (b) if there is more than one embedded derivative, as party to relevant contracts each of whose rights and liabilities consist only of those of one of the embedded derivatives. 35
- [Origin: FA 2002 Sch.26 para.2A\(2\).](#)
- (3) Each relevant contract to which a company is treated as party under subsection (2) is treated as an option, a future or a contract for differences depending on what the character of a separate contract containing the rights and liabilities of the embedded derivative would be. 40

Origin: FA 2002 Sch.26 para.2A(3).

- (4) In this Chapter –  
“non-financial contract” means a contract which is neither a loan relationship nor a hybrid derivative,  
“non-financial embedded derivative” means a relevant contract to which a company is treated as party under subsection (2). 5

Origin: FA 2002 Sch.26 para.2A(1), (2).

- (5) For the meaning of “hybrid derivative”, see section 20(4).

Origin: FA 2002 Sch.26 para.2A(1); drafting.

- (6) See also section 29 (derivatives not embedded in a loan relationship). 10

Origin: Drafting.

## 20 Hybrid derivatives [j72602b]

- (1) This section applies if –  
(a) a company is party to a relevant contract which meets the condition in section 14(1)(b) or (c), 15  
(b) in accordance with generally accepted accounting practice, the company treats rights and liabilities under the contract as divided between –  
(i) rights and liabilities under one or more derivatives (“embedded derivatives”), and 20  
(ii) the remaining rights and liabilities (the “host contract”), and  
(c) a contract consisting of only those remaining rights and liabilities would be a relevant contract.

Origin: FA 2002 Sch.26 para.2B(1).

- (2) The company is treated for the purposes of this Part – 25  
(a) as party to a relevant contract whose rights and liabilities consist only of those of the embedded derivative, or (if there is more than one embedded derivative) party to relevant contracts each of whose rights and liabilities consist only of those of one of the embedded derivatives, and 30  
(b) as party to a relevant contract whose rights and liabilities are those of the host contract.

Origin: FA 2002 Sch.26 para.2B(2).

- (3) Each relevant contract to which a company is treated as party under subsection (2)(a) or (b) is treated as an option, a future or a contract for differences depending on what the character of a separate contract containing the rights and liabilities of the embedded derivative or host contract would be. 35

Origin: FA 2002 Sch.26 para.2B(3).

- (4) In this Chapter –  
“hybrid derivative” means a relevant contract within subsection (1), 40  
“nested derivative” means a relevant contract to which a company is treated as party under subsection (2)(a),

“quasi-derivative host contract” means a relevant contract to which a company is treated as party under subsection (2)(b).

Origin: FA 2002 Sch.26 para.2B(1), (3).

- (5) See also sections 27 (nested derivatives treated as meeting condition A in section 26 etc) and 29 (derivatives not embedded in a loan relationship). 5

Origin: Drafting.

## 21 Loan relationships with embedded derivatives [j726loanrels94a]

- (1) This section applies if in accordance with generally accepted accounting practice a company treats the rights and liabilities under a loan relationship to which it is party as divided between— 10
- (a) rights and liabilities under a loan relationship, and
  - (b) rights and liabilities under one or more derivative financial instruments or equity instruments (“embedded derivatives”).

Origin: FA 1996 s.94A(1).

- (2) The company is treated for the purposes of this Part— 15
- (a) as party to a relevant contract whose rights and liabilities consist only of those of the embedded derivative, or
  - (b) if there is more than one embedded derivative, as party to relevant contracts each of whose rights and liabilities consist only of those of one of the embedded derivatives. 20

Origin: FA 1996 s.94A(2).

- (3) Each relevant contract to which a company is treated as party under subsection (2) is treated for the purposes of this Part as an option, a future or a contract for differences depending on what the character of a separate contract containing the rights and liabilities of the embedded derivative would be. 25

Origin: FA 1996 s.94A(3).

- (4) For the treatment of the rights and liabilities within subsection (1)(a), see [section {j061094Aaa}].

Origin: Drafting.

*Other contracts etc treated as derivative contracts* 30

## 22 Contracts relating to holdings in unit trusts, OEICs or offshore funds [j72636]

- (1) This section applies in relation to a relevant contract to which a company is party in an accounting period if—
- (a) it is not a derivative contract for the purposes of this Part, and
  - (b) its underlying subject matter consists wholly or partly of a relevant holding in that period. 35

Origin: FA 2002 Sch.26 para.36(1).

- (2) The Corporation Tax Acts have effect—
- (a) for that accounting period, and

(b) for any succeeding accounting period in which the relevant contract is a relevant contract of the company,  
as if the relevant contract were a derivative contract.

Origin: FA 2002 Sch.26 para.36(2).

- (3) For the purposes of this section, the underlying subject matter of a contract consists wholly or partly of a relevant holding in an accounting period if – 5
- (a) at any time in that period it consists wholly or partly of –
- (i) any rights under a unit trust scheme,
  - (ii) any shares in an open-ended investment company, or
  - (iii) an interest in an offshore fund that is a material interest for the purposes of section 759 of ICTA, and 10
- (b) there is a time in the period when that scheme, company or fund fails to meet the qualifying investments test.

Origin: FA 2002 Sch.26 para.36(3), (4); Annex 1, Changes 1, 2.

- (4) In subsection (3) “meeting the qualifying investments test” has the same meaning as in [section {j0696108e}]. 15

Origin: FA 2002 Sch.26 para.36(4).

- (5) See section 18(2)(c)(ii) of F(No.2)A 2005 for the power to modify the meaning of “relevant holding” for the purposes of this section by regulations under section 17(3) of that Act. 20

Origin: Drafting.

- (6) For the way in which credits and debits must be brought into account where this section applies, see section 47.

Origin: Drafting.

- (7) See also – 25
- (a) section 48 (contract becoming contract to which this section applies), and
- (b) section 90 (company ceasing to be party to contract to which this section applies).

Origin: Drafting. 30

**23 Non-qualifying shares where the associated transactions condition is met [j726loanrels91B5]**

- (1) This section applies in a case within [section {j061091M}(1)(b)(ii)] (loan relationships: non-qualifying shares) if the associated transactions condition is met. 35

Origin: FA 1996 s.91B(5).

- (2) As respects the investing company, an associated transaction is treated as a derivative contract or a transaction in respect of a derivative contract if it is not in fact such a contract or transaction.

Origin: FA 1996 s.91B(5). 40

- (3) For the way in which credits and debits must be brought into account where this section applies, see section 49.

Origin: Drafting.

- (4) This section must be read as if it were in Chapter [6] (shares with guaranteed returns etc) of Part [7] (relationships treated as loan relationships etc).

Origin: Drafting.

- (5) See, in particular – 5  
     [section {jsharesover}] (meaning of “the investing company”), and  
     [section {j06191E}] (meaning of “associated transaction” and “the associated transactions condition”).

Origin: Drafting.

*Exclusions from derivative contracts* 10

**24 Contracts excluded because of underlying subject matter: general [j72604]**

- (1) A relevant contract is not a derivative contract for the purposes of this Part if its underlying subject matter – 15  
     (a) consists wholly of excluded property, or  
     (b) is treated as consisting wholly of such property.

Origin: FA 2002 Sch.26 para.4(1).

- (2) “Excluded property”, in relation to an option or future, means intangible fixed assets (but see also subsection (3)).

Origin: FA 2002 Sch.26 para.4(2).

- (3) “Excluded property”, in relation to a relevant contract which meets any of conditions A to E in section 26, means – 20  
     (a) shares in a company other than shares excluded by subsection (4), or  
     (b) rights of a unit holder under a unit trust scheme other than a scheme in relation to which [section {j0696104}] has effect.

Origin: FA 2002 Sch.26 para.4(2). 25

- (4) The shares excluded by this subsection are – 30  
     (a) shares in relation to which [section {j061091A}] or [{j061091B}] has effect, and  
     (b) shares in an open-ended investment company in relation to which [section {j0696104}] has effect.

Origin: FA 2002 Sch.26 para.4(2ZA).

- (5) Section 25 applies for determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of excluded property.

Origin: FA 2002 Sch.26 para.4(4).

**25 Disregard of subordinate or small value underlying subject matter [j72609]** 35

- (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.

Origin: FA 2002 Sch.26 para.9(1), (2).

- (2) The underlying subject matter of the contract is treated for the purposes of this Part as if it consisted wholly of excluded property. 5

Origin: FA 2002 Sch.26 para.9(5).

- (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 relevant contract. 10

Origin: FA 2002 Sch.26 para.9(6).

- (4) In this section “excluded property” has the same meaning as in section 24.

Origin: FA 2002 Sch.26 para.9(2), (5).

**26 Conditions A to E mentioned in section 24(3) [j72604m]** 15

- (1) The following are the conditions mentioned in section 24(3).

Origin: Drafting.

- (2) Condition A is that the relevant contract—
- (a) is a plain vanilla contract entered into or acquired by a company carrying on life assurance business, 20
  - (b) is an approved derivative for the purposes of Rule 3.2.5 of the Insurance Prudential Sourcebook, and
  - (c) does not meet the condition in section 14(1)(b).

Origin: FA 2002 Sch.26 para.4(2A); Annex 1, Change 3.

- (3) Condition B is that— 25
- (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— 30
    - (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
  - (c) the relevant contract is not a section 21 embedded derivative.

Origin: FA 2002 Sch.26 para.4(2B); drafting.

- (4) Condition C is that— 35
- (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 quoted on a recognised stock exchange to subscribe for shares in a company.

Origin: FA 2002 Sch.26 para.4(2C). 40

- (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 5
  - (ii) a future requiring delivery of shares in a company,
- (c) the relevant contract is not a section 21 embedded derivative, 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, or 10
  - (ii) would do so if acquired or delivered.

Origin: FA 2002 Sch.26 para.4(2CA).

- (6) Condition E is that –
  - (a) the company that is party to the relevant contract has a hedging relationship between –
    - (i) the relevant contract, and 15
    - (ii) an asset or liability representing a loan relationship which is treated as mentioned in section 21(1), and
  - (b) each section 21 embedded derivative to which the company is treated as party in the case of that loan relationship is a derivative contract to which section 70, 73, 76, 78, 81, 82, 83 or 87 applies. 20

Origin: FA 2002 Sch.26 para.4(2D); drafting.

- (7) For the cases in which sections 81 to 83 and section 87 apply, see sections 80 and 85 respectively.
 

Origin: Drafting. 25
- (8) For the meaning of –
  - (a) “hedging relationship”, see section 130,
  - (b) “section 21 embedded derivative”, see section 133(1).

Origin: Drafting.

- (9) See also sections 119 and 121 (which modify this section for mutual trading companies and insurance companies). 30

Origin: Drafting.

## 27 Nested derivatives treated as meeting condition A in section 26 etc [j72645Mx]

- (1) This section applies if for an accounting period –
  - (a) a company is party to a hybrid derivative which meets the condition in section 14(1)(b), 35
  - (b) the nested derivative is a derivative contract which meets the condition in section 14(1)(a),
  - (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 40
  - (d) the quasi-derivative host contract is treated for accounting purposes as a financial asset or as forming part of such an asset.

Origin: FA 2002 Sch.26 para.45M(1).

- (2) The nested derivative is treated –
  - (a) for the purposes of section 24 as meeting condition A in section 26, and
  - (b) as a chargeable asset.

Origin: FA 2002 Sch.26 para.45M(2).

5

- (3) The quasi-derivative host contract is treated for the purposes of the Corporation Tax Acts as if it were a creditor relationship of the company (see Part [6] (loan relationships)).

Origin: FA 2002 Sch.26 para.45M(2).

- (4) Section 25 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 it so applies in relation to excluded property.

10

Origin: FA 2002 Sch.26 para.45M(4).

- (5) For the meaning of “hybrid derivative”, “nested derivative” and “quasi-derivative host contract”, see section 20.

15

Origin: Drafting.

## 28 Contracts where part of underlying subject matter is excluded property [j72646]

- (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 14(1), and
  - (c) whose underlying subject matter is within subsection (2).

20

Origin: FA 2002 Sch.26 para.46(1).

- (2) The underlying subject matter of a relevant contract is within this subsection if it consists of –
  - (a) excluded property, and
  - (b) underlying subject matter other than excluded property.

25

Origin: FA 2002 Sch.26 para.46(2).

- (3) 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 separate contracts –
  - (a) a relevant contract whose underlying subject matter consists of excluded property, and
  - (b) a relevant contract whose underlying subject matter consists of the underlying subject matter mentioned in subsection (2)(b).

30

Origin: FA 2002 Sch.26 para.46(3).

35

- (4) For the purposes of giving effect to subsection (3) all such apportionments as are just and reasonable must be made.

Origin: FA 2002 Sch.26 para.46(4).

- (5) This section does not apply to a relevant contract if it is determined in accordance with section 25 that the underlying subject matter of the relevant contract is to be treated as consisting wholly of excluded property.

40

Origin: FA 2002 Sch.26 para.46(5).

- (6) In this section “excluded property” has the same meaning as in section 24.

Origin: FA 2002 Sch.26 para.46(2), (3), (5).

*Derivatives not embedded in a loan relationship*

**29 Derivatives not embedded in a loan relationship [j72645L] 5**

- (1) This section applies if –
- (a) a company is party to a non-financial embedded derivative or a nested derivative (“the contract”),
  - (b) the contract is a derivative contract which meets the condition in section 14(1)(a), 10
  - (c) section 27 does not apply in relation to the contract,
  - (d) regulation 9 of the Disregard Regulations (interest rate contracts) does not apply to the contract, and
  - (e) no election having effect in relation to the contract is or has been made under section 30. 15

Origin: FA 2002 Sch.26 para.45L(1).

- (2) If this section applies –
- (a) sections 4 and 5 do not apply in relation to the contract, and
  - (b) subsections (3) and (4) or subsection (5) apply in relation to the original contract, depending on whether that contract is a non-financial contract or a hybrid derivative. 20

Origin: FA 2002 Sch.26 para.45L(1B).

- (3) If the original 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 – 25
- (a) were not one where the rights and liabilities are treated for accounting purposes as divided as mentioned in section 19(1), and
  - (b) were not one in relation to which a fair value basis of accounting is used.

Origin: FA 2002 Sch.26 para.45L(2). 30

- (4) Accordingly, this Part does not apply to the original contract, but section 42 of the Finance Act 1998 applies to that contract (despite section 8(1)) as if fair value accounting were not generally accepted accounting practice in relation to the company.

Origin: FA 2002 Sch.26 para.45L(2). 35

- (5) If the original contract is a hybrid derivative, profits and losses are to be calculated for the purposes of this Part as if that contract –
- (a) were not one where the rights and liabilities are treated for accounting purposes as divided as mentioned in section 20(1), and
  - (b) were not one in relation to which a fair value basis of accounting is used. 40

Origin: FA 2002 Sch.26 para.45L(1C).

- (6) In this section –
- ““the Disregard Regulations” means the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004,
  - “the original contract” means – 5
    - (a) the non-financial contract as a result of which the company falls to be treated under section 19(2) as party to the non-financial embedded derivative, or
    - (b) the hybrid derivative as a result of which the company falls to be treated under section 20(2) as party to the nested derivative. 10

[Origin: FA 2002 Sch.26 para.45L\(1A\), \(3\).](#)

- (7) For the meaning of –
- (a) “non-financial contract” and “non-financial embedded derivative”, see section 19,
  - (b) “hybrid derivative” and “nested derivative”, see section 20. 15

[Origin: Drafting.](#)

### **30 Election for section 29 not to apply [\[j72645Laa\]](#)**

- (1) A company may elect that section 29 is not to apply in relation to any of its contracts unless –
- (a) the contract is a contract of long-term insurance, or 20
  - (b) the underlying subject matter of the embedded derivative is, or includes, commodities.

[Origin: FA 2002 Sch.26 para.45L\(2A\).](#)

- (2) An election under this section –
- (a) must be made before the end of the first applicable accounting period of the company, and 25
  - (b) is irrevocable.

[Origin: FA 2002 Sch.26 para.45L\(2B\); Annex 1, Change 4.](#)

- (3) In subsection (2) “the first applicable accounting period” means the first accounting period in which the conditions in paragraphs (a) to (d) of section 29(1) are met. 30

[Origin: FA 2002 Sch.26 para.45L\(2C\).](#)

- (4) Section 31 makes further provision about elections under this section.

[Origin: FA 2002 Sch.26 para.45L\(2A\).](#)

### **31 Elections under section 30: groups of companies [\[j72645LA\]](#)** 35

- (1) If –
- (a) a company makes an election under section 30 in relation to its contracts, and
  - (b) another company, which is a member of the same group as the company making the election, is party to a contract to which the election applies, 40

the other company is treated, in relation to that contract, as if it had also made such an election.

[Origin: FA 2002 Sch.26 para.45LA\(1\), \(2\).](#)

- (2) If—
- (a) a company (“the electing company”) makes an election under section 30 in relation to its contracts, 5
  - (b) another company (“the transferee”) becomes party to a contract to which section 19 applies, in place of the electing company (whether before or after the 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, 10
- the transferee is treated, in relation to the contract mentioned in paragraph (b), as if it had also made such an election.

[Origin: FA 2002 Sch.26 para.45LA\(1\), \(3\).](#)

- (3) If— 15
- (a) a company (“A”) is treated under section 19 or 20 as party to a relevant contract in relation to which section 29(1) applies,
  - (b) another company (“B”) becomes party to that contract in place of A,
  - (c) A and B are members of the same group of companies when B becomes party to the contract, and 20
  - (d) section 29(1) does not apply in relation to B’s other relevant contracts by reason of an election under section 30 (whenever made),
- subsection (4) applies, unless A, subsequent to B’s becoming party to the contract, makes such an election.

[Origin: FA 2002 Sch.26 para.45LA\(4\).](#) 25

- (4) B is treated, in relation to the contract mentioned in subsection (3)(b), as if section 29(1) applied in relation to it.

[Origin: FA 2002 Sch.26 para.45LA\(5\).](#)

- (5) In this section references to companies being members of the same group of companies are construed in accordance with section 170 of TCGA 1992. 30

[Origin: FA 2002 Sch.26 para.45LA\(6\).](#)

### CHAPTER 3

#### CREDITS AND DEBITS TO BE BROUGHT INTO ACCOUNT: GENERAL

##### *Credits and debits to be brought into account: general rules*

### 32 Credits and debits to be brought into account [\[j72615\]](#) 35

- (1) The credits to be brought into account in respect of a company’s derivative contracts are the amounts which, when taken together, fairly represent for the accounting period in question all profits of the company arising to it from its derivative contracts and related transactions.

[Origin: FA 2002 Sch.26 para.15\(1\).](#) 40

- (2) The debits to be brought into account in respect of a company’s derivative contracts are the amounts which, when taken together, fairly represent for the accounting period in question –
- (a) all losses arising to the company from its derivative contracts and related transactions, and 5
  - (b) expenses that –
    - (i) are incurred by the company under or for the purposes of those contracts and transactions, and
    - (ii) are incurred directly in one of the ways specified in subsection (3). 10

Origin: FA 2002 Sch.26 para.15(1), (4).

- (3) The ways are –
- (a) in bringing any of the derivative contracts into existence,
  - (b) in entering into or giving effect to any of the related transactions,
  - (c) in making payments under any of those contracts or as a result of any of those transactions, or 15
  - (d) in taking steps to ensure the receipt of payments under any of those contracts or in accordance with any of those transactions.

Origin: FA 2002 Sch.26 para.15(4).

- (4) For the purposes of subsections (1) and (2)(a), any expenses are ignored. 20

Origin: FA 2002 Sch.26 para.15(1).

- (5) For the treatment of expenses incurred before entering into a derivative contract, where the contract is not entered into, see section 34.

Origin: Drafting.

- (6) This section and sections 33 and 34 are subject to the following provisions of this Part. 25

Origin: FA 2002 Sch.26 para.15(9).

- (7) For the meaning of “related transaction” see section 33.

Origin: Drafting.

**33 Meaning of “related transaction” [j72615a] 30**

- (1) In this Part “related transaction”, in relation to a derivative contract, means any disposal or acquisition (in whole or in part) of rights or liabilities under the contract.

Origin: FA 2002 Sch.26 para.15(7).

- (2) For this purpose the cases where there is taken to be such a disposal or acquisition include – 35

- (a) those where rights or liabilities under the derivative contract are transferred or extinguished by any sale, gift, surrender or release, and
- (b) those where the contract is discharged by performance in accordance with its terms. 40

Origin: FA 2002 Sch.26 para.15(8).

**34 Pre-contract expenses where contract not entered into [j72615aa]**

- (1) This section applies if—
- (a) a company may enter into a derivative contract or related transaction but has not yet done so,
  - (b) it incurs any expenses for purposes connected— 5
    - (i) with entering into it, or
    - (ii) with giving effect to any obligation that might arise under it, and
  - (c) had the company entered into the contract or transaction, the expenses would be expenses within section 32(2)(b). 10

[Origin: FA 2002 Sch.26 para.15\(5\).](#)

- (2) The expenses are treated as expenses in relation to which debits may be brought into account in accordance with section 32(2) to the same extent as if the company had entered into the contract or transaction.

[Origin: FA 2002 Sch.26 para.15\(5\).](#) 15

**35 Exchange gains and losses from derivative contracts [j72616]**

- (1) The reference in section 32(1) to the profits arising to a company from its derivative contracts includes a reference to exchange gains so arising, and the reference in section 32(2) to the losses arising to a company from its derivative contracts includes a reference to exchange losses so arising. 20

[Origin: FA 2002 Sch.26 para.16\(1\); drafting.](#)

- (2) Subsection (1) is subject to subsections (3) and (4).

[Origin: FA 2002 Sch.26 para.16\(2\).](#)

- (3) Subsection (1) does not apply to an exchange gain or loss of a company so far as— 25

- (a) it arises—
  - (i) in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency, or
  - (ii) as a result of the translation from one currency to another of the profit or loss of part of the company's business, and 30
- (b) it is recognised in—
  - (i) the company's statement of total recognised gains and losses, or
  - (ii) the company's statement of changes in equity.

[Origin: FA 2002 Sch.26 para.16\(3\).](#)

- (4) Subsection (1) does not apply to so much of an exchange gain or loss arising to a company in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency as is within a description specified for the purpose in regulations made by the Treasury. 35

[Origin: FA 2002 Sch.26 para.16\(3A\).](#)

- (5) The Treasury may by regulations make provision for or in connection with bringing into account in specified circumstances amounts in relation to which subsection (1) does not apply because of subsection (3) or (4). 40

Origin: FA 2002 Sch.26 para.16(8).

- (6) The reference in subsection (5) to bringing amounts into account is a reference to bringing amounts into account –
- (a) for the purposes of this Part as credits or debits arising to a company from its derivative contracts, or
  - (b) for the purposes of corporation tax on chargeable gains.

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Origin: FA 2002 Sch.26 para.16(9).

- (7) The regulations may –
- (a) make different provision for different cases, and
  - (b) make provision subject to an election or to other specified conditions.

10

Origin: FA 2002 Sch.26 para.16(10).

- (8) For the meaning of references to exchange gains or losses from derivative contracts, see section 129.

Origin: Drafting.

*Application of generally accepted accounting practice*

15

### 36 Generally accepted accounting practice and recognised amounts [j72617A]

- (1) This Part operates by reference to the accounts of companies and amounts recognised for accounting purposes in those accounts.

Origin: Drafting.

- (2) The general rule is that the amounts to be brought into account by a company as credits or debits for any period for the purposes of this Part are those that are recognised in determining the company's profit or loss for the period in accordance with generally accepted accounting practice.

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Origin: FA 2002 Sch.26 para.17A(1).

- (3) But subsection (2) is subject to the provisions of this Part and, in particular, section 32(1) to (4).

25

Origin: FA 2002 Sch.26 para.17A(1).

- (4) References in this Part to an amount recognised in determining a company's profit or loss for a period are to an amount recognised in –

- (a) the company's profit and loss account or income statement for that period,
- (b) a statement of total recognised gains and losses or statement of changes in equity for that period, or
- (c) any other statement of items brought into account in calculating the company's profits and losses for that period.

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Origin: FA 2002 Sch.26 para.17B(1).

- (5) If, in accordance with generally accepted accounting practice, an amount is shown as a prior period adjustment in any statement within subsection (4), it must be brought into account for the purposes of this Part in calculating the company's profits and losses for the period to which the statement relates.

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- [Origin: FA 2002 Sch.26 para.17B\(2\).](#)
- (6) Subsection (5) does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.
- [Origin: FA 2002 Sch.26 para.17B\(2\).](#)
- 37 Companies without GAAP-compliant accounts: meaning of “amounts recognised for accounting purposes” [j72617B]** 5
- (1) If a company –
- (a) does not draw up accounts in compliance with generally accepted accounting practice, or
- (b) does not draw up accounts at all, 10
- this Part applies as if GAAP-compliant accounts had been drawn up.
- [Origin: FA 2002 Sch.26 para.17A\(2\), \(4\).](#)
- (2) In this section “GAAP-compliant accounts” means accounts drawn up in compliance with generally accepted accounting practice. 15
- [Origin: FA 2002 Sch.26 para.17A\(2\); drafting.](#)
- (3) References in this Part to amounts recognised for accounting purposes are references to the amounts that would have been recognised if GAAP-compliant accounts had been drawn up for the period of account in question and any relevant earlier period. 20
- [Origin: FA 2002 Sch.26 para.17A\(2\), \(3\).](#)
- (4) For this purpose a period of account is relevant to a later period if the accounts for the later period rely to any extent on amounts derived from the earlier period.
- [Origin: FA 2002 Sch.26 para.17A\(3\).](#)
- 38 Power to make regulations about accounts [j72617C]** 25
- (1) The Treasury may by regulations make provision –
- (a) excluding amounts of a specified description from section 36(4),
- (b) requiring amounts of a specified description that are not within section 36(4) to be brought into account in determining a company’s profit or loss for a period in specified circumstances, and 30
- (c) as to the way in which any such amounts are to be brought into account.
- [Origin: FA 2002 Sch.26 para.17C\(1\).](#)
- (2) For the purposes of subsection (1)(b), it does not matter whether the amounts are not within 36(4) because of regulations under subsection (1)(a) or otherwise. 35
- [Origin: FA 2002 Sch.26 para.17C\(1\).](#)
- (3) The regulations may (in particular) make provision by reference to the fact that amounts derive from or otherwise relate to amounts brought into account in a specified way in a previous period of account. 40

Origin: FA 2002 Sch.26 para.17C(2).

- (4) The regulations may make—
- (a) different provision for different cases, and
  - (b) provision subject to an election or to other specified conditions.

Origin: FA 2002 Sch.26 para.17C(3).

5

- (5) The regulations may apply, exclude or modify any of the provisions of this Part in relation to cases for which provision is made by the regulations.

Origin: FA 2002 Sch.26 para.17C(4).

- (6) The regulations may apply to periods of account beginning before they are made, but not earlier than the calendar year in which they are made.

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Origin: FA 2005 Sch.4 para.52(1), (2).

*Rules differing from generally accepted accounting practice*

**39 Credits and debits treated as relating to capital expenditure [j72625]**

- (1) This section applies if generally accepted accounting practice allows a credit or debit for an accounting period in respect of a company's derivative contract to be treated in the company's accounts as an amount brought into account in determining the value of a fixed capital asset or project.

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Origin: FA 2002 Sch.26 para.25(1).

- (2) Despite that treatment, the credit or debit must be brought into account in accordance with this Part, for the accounting period for which it is given, in the same way as a credit or debit that is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice.

20

Origin: FA 2002 Sch.26 para.25(2).

- (3) But subsection (2) does not apply to a debit which is taken into account in arriving at the amount of expenditure in relation to which a debit may be given by Part [9] (intangible fixed assets).

25

Origin: FA 2002 Sch.26 para.25(3).

- (4) Subsections (5) and (6) apply if a debit is brought into account as mentioned in subsection (2).

30

Origin: FA 2002 Sch.26 para.25(4).

- (5) No debit may be brought into account in respect of the writing down of so much of the value of the asset or project as is attributable to that debit.

Origin: FA 2002 Sch.26 para.25(4).

- (6) No debit may be brought into account in respect of so much of any amortisation or depreciation as represents a writing off of the interest component of the asset.

35

Origin: FA 2002 Sch.26 para.25(4).

**40 Credits and debits recognised in equity or shareholders' funds [j72625A]**

- (1) This section applies if in accordance with generally accepted accounting practice a credit or debit for a period in respect of a company's derivative contract –
- (a) is recognised in equity or shareholders' funds, and 5
  - (b) is not recognised in any of the statements mentioned in section 36(4).

Origin: FA 2002 Sch.26 para.25A.

- (2) The credit or debit must be brought into account for the period in accordance with this Part in the same way as a credit or debit that is brought into account in determining the company's profits or loss for the period in accordance with generally accepted accounting practice. 10

Origin: FA 2002 Sch.26 para.25A.

**41 Release of liability under derivative contract under statutory insolvency arrangement [j72622]**

No credit is required to be brought into account by a company in respect of the release of the company's liability to pay an amount under a derivative contract of the company if the release is part of a statutory insolvency arrangement. 15

Origin: FA 2002 Sch.26 para.22(5).

**CHAPTER 4**

FURTHER PROVISION ABOUT CREDITS AND DEBITS TO BE BROUGHT INTO ACCOUNT ETC 20

*Contracts ceasing to be derivative contracts***42 Contracts ceasing to be derivative contracts [j72643B]**

- (1) This section applies if a company is party to a contract which ceases to be a derivative contract.

Origin: FA 2002 Sch.26 para.43B(1). 25

- (2) The company is treated for the purposes of this Part 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.

Origin: FA 2002 Sch.26 para.43B(2).

- (3) In this section "the relevant time" means the time when the contract ceases to be a derivative contract. 30

Origin: FA 2002 Sch.26 para.43B(3).

- (4) For the purposes of this section, the "notional carrying value" of the contract at the relevant time is the amount which would have been the carrying value of the contract in the accounts of the company if a period of account had ended immediately before that time. 35

Origin: FA 2002 Sch.26 paras.43A(5), 43B(4); drafting.

- (5) See also section 92 (chargeable gains provision for contracts ceasing to be derivative contracts).

Origin: Drafting

*Index-linked gilt-edged securities with embedded contracts for differences*

- 43 Index-linked gilt-edged securities with embedded contracts for differences** 5  
[\[j72645i\]](#)
- (1) This section applies to a derivative contract of a company for an accounting period if conditions A to D are met.  
 Origin: FA 2002 Sch.26 para.45I(1).
- (2) Condition A is that the derivative contract is a section 21 embedded derivative to which the company is treated as party because of a creditor relationship of the company. 10  
 Origin: FA 2002 Sch.26 para.45I(1).
- (3) Condition B is that the derivative contract is treated as a contract for differences because of section 21(3). 15  
 Origin: FA 2002 Sch.26 para.45I(1).
- (4) Condition C is that the creditor relationship is an index-linked gilt-edged security.  
 Origin: FA 2002 Sch.26 para.45I(1).
- (5) Condition D is that the credits and debits which fall to be brought into account for the accounting period for the purposes of Part [6] (loan relationships) in respect of the [section [{j061094Aaa}](#)] host contract are non-trading credits and non-trading debits. 20  
 Origin: FA 2002 Sch.26 para.45I(1).
- (6) The credits and debits which would fall to be brought into account in accordance with this Part in respect of the derivative contract for the accounting period apart from this section may not be so brought into account. 25  
 Origin: FA 2002 Sch.26 para.45I(2).
- (7) In this section –  
     “gilt-edged security” has the same meaning as in Part [6] (loan relationships) (see [section [{j0610103}](#)](1)),  
     “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 989 of ITA 2007). 35  
 Origin: FA 2002 Sch.26 para.45I(3).
- (8) For the meaning of –  
     (a) “creditor relationship”, see section 128(1),  
     (b) “section 21 embedded derivative” and “[section [{j061094Aaa}](#)] host contract”, see section 133. 40

Origin: Drafting.

*Company ceasing to be party to derivative contract*

**44 Company ceasing to be party to derivative contract [j72653a]**

- (1) This section applies if –
- (a) a company ceases to be party to a derivative contract in an accounting period (the “cessation period”), 5
  - (b) profits or losses arise to the company from the derivative contract or a related transaction in that period, and
  - (c) the credits or debits brought into account in accordance with this Part for that period do not include credits or debits representing the whole of those profits or losses. 10

Origin: FA 2002 Sch.26 para.53(3).

- (2) Credits or debits in respect of so much of those profits or losses as are not represented by credits or debits brought into account for the cessation period must continue to be brought into account in accordance with this Part over one or more subsequent accounting periods (“post-cessation periods”) as in the case of a derivative contract to which the company is party in those periods. 15

Origin: FA 2002 Sch.26 para.53(3).

- (3) The questions specified in subsection (4) must be determined by reference to the circumstances immediately before the company ceased to be party to the derivative contract, instead of the circumstances in the post-cessation period in question. 20

Origin: FA 2002 Sch.26 para.53(4).

- (4) The questions are any question –
- (a) how far in a post-cessation period the company is party to the derivative contract for the purposes of a trade it carries on, or 25
  - (b) how far in a post-cessation period the derivative contract is referable to a particular business the company carries on or a particular description of such business.

Origin: FA 2002 Sch.26 para.53(4). 30

- (5) The questions specified in subsection (6) must be determined by reference to the circumstances in the cessation period, instead of the circumstances in the post-cessation period in question.

Origin: FA 2002 Sch.26 para.53(5).

- (6) The questions are any question – 35
- (a) how far the derivative contract has a particular purpose in a post-cessation period, or
  - (b) whether there is a connection between the company and any other person for a post-cessation period for the purposes of this Part.

Origin: FA 2002 Sch.26 para.53(5). 40

- (7) For the purposes of the Corporation Tax Acts, references to a person's derivative contracts and to a person being party to a derivative contract must be read in accordance with this section.

Origin: FA 2002 Sch.26 para.53(6).

*Deemed assignments where company's residence or operations move abroad* 5

**45 Company ceasing to be UK resident treated as assigning derivative contracts [j72622A]**

- (1) If a company ceases to be UK resident, this Part applies as if –
- (a) immediately before so ceasing the company had assigned its rights and liabilities under its derivative contracts for a consideration of an amount equal to their fair value at that time, and 10
  - (b) it had immediately reacquired them for a consideration of the same amount.

Origin: FA 2002 Sch.26 para.22A(1), (2).

- (2) Subsection (1) does not apply in relation to a derivative contract so far as immediately after the company ceases to be UK resident its rights and liabilities under the contract are held or owed for the purposes of a permanent establishment of the company in the United Kingdom. 15

Origin: FA 2002 Sch.26 para.22A(3).

**46 Non-UK resident companies treated as assigning derivative contracts no longer held for permanent establishment in UK [j72622Aa]** 20

- (1) This section applies if rights and liabilities under a derivative contract of a company that is not UK resident cease to any extent to be held or owed for the purposes of a permanent establishment of the company in the United Kingdom in any circumstances not involving a related transaction. 25

Origin: FA 2002 Sch.26 para.22A(1).

- (2) This Part applies as if –
- (a) immediately before the rights and liabilities so cease the company had assigned them, so far as so ceasing, for a consideration of an amount equal to their fair value at that time, and 30
  - (b) the company had immediately reacquired them for a consideration of the same amount.

Origin: FA 2002 Sch.26 para.22A(4).

*Contracts relating to holdings in unit trusts, OEICs or offshore funds*

**47 Contracts within section 22 [j72636a]** 35

- (1) This section applies if a company is party in an accounting period to a relevant contract which is treated as a derivative contract under section 22 (contracts relating to holdings in unit trusts, open-ended investment companies or offshore funds).

Origin: FA 2002 Sch.26 para.36(1). 40

- (2) The credits and debits that are to be brought into account in accordance with this Part in relation to the relevant holding mentioned in section 22(1) must be determined on the basis of fair value accounting.

Origin: FA 2002 Sch.26 para.36(2A); Annex 1, Change 1.

**48 Contract becoming contract to which section 22 applies [j72637] 5**

- (1) This section applies if –
- (a) a company is party to a relevant contract in two successive accounting periods,
  - (b) section 22 applies in relation to the relevant contract for the second accounting period but not the first accounting period, 10
  - (c) immediately before the beginning of the second accounting period the relevant contract was a chargeable asset, and
  - (d) an opening valuation of the contract falls to be made as at the beginning of the second accounting period for the purpose of bringing an amount into account on the fair value accounting basis used for that period under section 47(2). 15

Origin: FA 2002 Sch.26 para.37(1), (2), (3), (4).

- (2) For the purposes of that opening valuation, the value of the contract as at that time is taken to be equal to the market value of the contract.

Origin: FA 2002 Sch.26 para.37(4). 20

- (3) In subsection (2) “the market value of the contract” means the market value of the contract for the purposes of corporation tax on chargeable gains if it had been disposed of immediately before the end of the first accounting period.

Origin: FA 2002 Sch.26 para.37(4).

- (4) For the rules which apply where a company ceases to be party to a contract to which section 22 applies, see section 90. 25

Origin: Drafting.

*Transactions associated with non-qualifying shares*

**49 Non-qualifying shares where the associated transactions condition is met [j7nqscal] 30**

- (1) This section applies if credits and debits are required to be brought into account in accordance with this Part by the investing company in respect of any associated transaction within [section {j06191E}] because of section 23 (which treats such a transaction that is not a derivative contract as if it were).

Origin: FA 1996 s.91B(5). 35

- (2) Those credits and debits must be determined on the basis of fair value accounting.

Origin: FA 1996 s.91B(5).

- (3) This section must be read as if it were in Chapter [6] (shares with guaranteed returns etc) of Part [7] (relationships treated as loan relationships etc). 40

Origin: Drafting.

- (4) See, in particular, [section [jsharesover](#)] (meaning of “the investing company”).

Origin: Drafting.

### *Partnerships involving companies*

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## **50 Partnerships involving companies [\[j72649\]](#)**

- (1) This section applies if—
- (a) a trade or business is carried on by a partnership (“the firm”),
  - (b) any of the partners 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.

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Origin: FA 2002 Sch.26 para.49(1).

- (2) No credits or debits are to be brought into account in accordance with this Part in respect of the contract in calculating the profits and losses of the trade or business for corporation tax purposes in accordance with the firm’s profit-sharing arrangements.

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Origin: FA 2002 Sch.26 para.49(2).

- (3) Instead, each company partner must bring into account in accordance with this Part credits and debits in respect of the contract for each of its accounting periods in which the conditions in subsection (1) are met.

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Origin: FA 2002 Sch.26 para.49(2).

- (4) Section 51 (determination of credits and debits by company partners) contains rules for the credits and debits to be brought into account under subsection (3).

Origin: FA 2002 Sch.26 para.49(2).

- (5) In sections 51 and 52 “company partner” and “the firm” have the same meaning as in this section.

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Origin: Drafting.

## **51 Determination of credits and debits by company partners [\[j72649a\]](#)**

- (1) The credits and debits to be brought into account under section 50(3) must be determined separately for each company partner as follows.

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Origin: FA 2002 Sch.26 para.49(3).

- (2) The contract entered into or acquired by the firm is treated as if it were instead entered into or acquired by the company partner for the purposes of the trade or business which the company partner carries on.

Origin: FA 2002 Sch.26 para.49(4).

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- (3) Anything done by or in relation to the firm in connection with the contract is treated as done by or in relation to the company partner.

Origin: FA 2002 Sch.26 para.49(4).

- (4) So far as exchange gains or losses arising from the contract are recognised in—  
 (a) the firm’s statement of total recognised gains and losses, or  
 (b) the firm’s statement of changes in equity,  
 they are treated as if they had been recognised in the corresponding statement of the company partner. 5  
*Origin: FA 2002 Sch.26 para.49(4).*
- (5) The credits and debits in the case of each company partner are the partner’s appropriate share of the total credits and debits determined in accordance with subsections (2) to (4). 10  
*Origin: FA 2002 Sch.26 para.49(5).*
- (6) A company partner’s “appropriate share” is the share that would be apportioned to it on the assumption specified in subsection (7).  
*Origin: FA 2002 Sch.26 para.49(6).*
- (7) That assumption is that the total credits and debits determined in accordance with subsections (2) to (4) are apportioned between the partners in the shares in which any profit or loss would be apportioned between them in accordance with the firm’s profit-sharing arrangements. 15  
*Origin: FA 2002 Sch.26 para.49(6).*
- (8) This section is subject to section 52 (company partners using fair value accounting). 20  
*Origin: Drafting.*
- 52 Company partners using fair value accounting [j72649b]**
- (1) This section applies if a company partner uses fair value accounting in relation to its interest in the firm. 25  
*Origin: FA 2002 Sch.26 para.50(1),(2).*
- (2) Credits and debits to be brought into account by the company partner under section 51 must be determined on the basis of fair value accounting.  
*Origin: FA 2002 Sch.26 para.50(1),(2).*
- Adjustments on change of accounting policy*
- 53 Introduction to sections 54 and 55 [j72650A]** 30
- (1) Sections 54 and 55 apply if—  
 (a) there is a change of accounting policy in drawing up a company’s accounts from one period of account to the next, and  
 (b) the accounting policy in each of those periods accords with the law and practice applicable in relation to that period. 35  
*Origin: FA 2002 Sch.26 para.50A(1).*
- (2) In this section and those sections—  
 (a) the first of those periods of account is referred to as “the earlier period”, and

(b) the next is referred to as “the later period”.

Origin: FA 2002 Sch.26 para.50A(1).

- (3) Sections 54 and 55 apply, in particular, if—
- (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 5
  - (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.

Origin: FA 2002 Sch.26 para.50A(1A). 10

- (4) If an election is made under [section {j0610567}], sections 54 and 55 apply as if there were a change of accounting policy consisting of the company treating the assets referred to in [section {j0610567}(1)(b)] as mentioned in [section {j061094Aaa}(1)] as from the date the election has effect.

Origin: F(No.2)A 2005 Sch.6 para.7(6). 15

#### 54 Adjustments on change of accounting policy involving change of value [j72650Aa]

- (1) If there is an increase in the carrying value of a derivative contract of a company between—
- (a) the end of the earlier period, and 20
  - (b) the beginning of the later period,
- a corresponding credit must be brought into account in accordance with this Part for the later period.

Origin: FA 2002 Sch.26 para.50A(2), (3); drafting.

- (2) If there is a decrease in the carrying value of a derivative contract between— 25
- (a) the end of the earlier period, and
  - (b) the beginning of the later period,
- a corresponding debit must be brought into account in accordance with this Part for the later period.

Origin: FA 2002 Sch.26 para.50A(2), (3); drafting. 30

- (3) This section does not apply so far as such a credit or debit as is mentioned in this section falls to be brought into account apart from this section.

Origin: FA 2002 Sch.26 para.50A(5).

#### 55 Change of accounting policy: company ceasing to be party to derivative contract [j72650Ab] 35

- (1) This section applies if—
- (a) a company has ceased to be party to a derivative contract in an accounting period (“the cessation period”),
  - (b) section 44(2) (credits and debits to be brought into account in respect of profits and losses arising in the cessation period) applied to the cessation, and 40

- (c) there is a difference between the amount outstanding in respect of the derivative contract (see subsection (4)) –
- (i) at the end of the earlier period, and
  - (ii) at the beginning of the later period.

Origin: FA 2002 Sch.26 para.50A(3C). 5

- (2) If that amount has increased, a credit equal to the increase must be brought into account in accordance with this Part for the later period.

Origin: FA 2002 Sch.26 para.50A(3C).

- (3) If that amount has decreased, a debit equal to the decrease must be brought into account in accordance with this Part for the later period. 10

Origin: FA 2002 Sch.26 para.50A(3C).

- (4) Subsections (2) and (3) do not apply so far as the credit or debit falls to be brought into account apart from this section.

Origin: FA 2002 Sch.26 para.50A(5).

- (5) In subsection (1) “the amount outstanding in respect of the derivative contract” means so much of the recognised deferred income or recognised deferred loss from the derivative contract as has not been represented by credits or debits brought into account in accordance with this Part in respect of the contract. 15

Origin: FA 2002 Sch.26 para.50A(3D).

- (6) In subsection (5) – 20

“recognised deferred income”, in relation to a derivative contract, means the amount recognised in the company’s balance sheet in accordance with generally accepted accounting practice as deferred income in respect of the profits that arose from the contract or a related transaction in the cessation period, 25

“recognised deferred loss”, in relation to a derivative contract, means the amount so recognised as deferred loss in respect of the losses that so arose.

Origin: FA 2002 Sch.26 para.50A(3D).

## CHAPTER 5 30

### ANTI-AVOIDANCE

#### *Unallowable purposes*

#### 56 Derivative contracts for unallowable purposes [j72623]

- (1) This section applies if in any accounting period a derivative contract of the company has an unallowable purpose. 35

Origin: FA 2002 Sch.26 para.23(1).

- (2) The company may not bring into account for that period for the purpose of this Part so much of any exchange credits for that period in respect of that contract as on a just and reasonable apportionment are referable to the unallowable purpose. 40

Origin: FA 2002 Sch.26 para.23(2).

- (3) The company may not bring into account for that period for the purpose of this Part so much of any debits for that period in respect of that contract as on a just and reasonable apportionment are referable to the unallowable purpose.

Origin: FA 2002 Sch.26 para.23(3).

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- (4) Subsections (2) and (3) are subject to section 58.

Origin: FA 2002 Sch.26 para.23(2).

- (5) An amount that would be brought into account in accordance with this Part as respects any matter apart from this section and section 58 –

- (a) is treated for the purposes of section 8(1) (priority of rules under this Part for corporation tax) as if it were so brought into account, and  
(b) must not be brought into account for corporation tax purposes as respects that matter either in accordance with this Part or otherwise.

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Origin: FA 2002 Sch.26 para.23(8).

- (6) For the purposes of this section and section 58, in the case of any company a credit is an exchange credit so far as it is attributable to any exchange gains included in the reference in section 32(1) to profits of the company (see section 35).

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Origin: FA 2002 Sch.26 para.23(9).

- (7) For the meaning of “unallowable purpose” in this section and section 58, see section 57.

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Origin: FA 2002 Sch.26 para.23(10), drafting.

## 57 Meaning of “unallowable purpose” [j72624]

- (1) For the purposes of sections 56 and 58, a derivative contract to which a company is party has an unallowable purpose in an accounting period if the purposes for which, at any time during that period, the company –

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- (a) is party to the contract, or  
(b) enters into transactions which are related transactions by reference to it, include a purpose which is not amongst the business or other commercial purposes of the company.

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Origin: FA 2002 Sch.26 para.24(1).

- (2) Accordingly, in sections 56 and 58 “unallowable purpose” means that purpose.

Origin: FA 2002 Sch.26 para.24(1).

- (3) If a company is not within the charge to corporation tax in respect of some of its activities, for the purposes of this section the business and other commercial purposes of the company do not include the purposes of those activities.

35

Origin: FA 2002 Sch.26 para.24(2).

- (4) Subsection (5) applies if a tax avoidance purpose is one of the purposes for which a company –

- (a) is party to a derivative contract at any time, or

40

- (b) enters into a transaction which is a related transaction by reference to a derivative contract of the company.

Origin: FA 2002 Sch.26 para.24(3).

- (5) For the purpose of subsection (1), the tax avoidance purpose is only regarded as a business or other commercial purpose of the company if it is not – 5
- (a) the main purpose for which the company is party to the derivative contract or, as the case may be, enters into the related transaction, or
- (b) one of the main purposes for which it is or does so.

Origin: FA 2002 Sch.26 para.24(3).

- (6) The references in subsections (4) and (5) to a tax avoidance purpose are references to any purpose that consists of securing a tax advantage for the company or any other person. 10

Origin: FA 2002 Sch.26 para.24(4).

- (7) In this section “tax advantage” has the meaning given by section 840ZA of ICTA. 15

Origin: FA 2002 Sch.26 para.24(5).

## 58 Allowance of accumulated net losses [j72623a]

- (1) This section applies if –
- (a) in any accounting period a derivative contract of a company has an unallowable purpose, and 20
- (b) there is a net loss in respect of that contract for that period.

Origin: FA 2002 Sch.26 para.23(1), (4).

- (2) For the purposes of this section, there is such a net loss if –
- (a) the sum of the debits in respect of that contract which are excluded from being brought into account for that period by section 56(3), exceeds 25
- (b) the sum of the exchange credits in respect of that contract which are so excluded by section 56(2).

Origin: FA 2002 Sch.26 para.23(4).

- (3) The amount of that excess is the amount of the net loss in respect of the contract for the period. 30

Origin: FA 2002 Sch.26 para.23(4).

- (4) The amount of the excess accumulated net losses in respect of the contract for an accounting period may be brought into account as a debit for that period.

Origin: FA 2002 Sch.26 para.23(4), (5). 35

- (5) The amount of the excess accumulated net losses in respect of a contract for an accounting period is found as follows.

### Step 1

Add together the amount of any net loss arising in respect of the contract for that accounting period and earlier accounting periods. 40

- Step 2  
Deduct from the result of Step 1 any amount which was brought into account in accordance with this section in any earlier accounting period.
- Step 3  
Add together the amount of any credits (other than exchange credits) arising in respect of the contract for that accounting period or any earlier accounting period. 5
- Step 4  
Deduct from the result of Step 3 – 10
- (a) so much of any debits arising in respect of the contract for that accounting period or any earlier accounting period as is not excluded from being brought into account by section 56(3), and
  - (b) any amount which was brought into account in accordance with this section in any earlier accounting period.
- Step 5 15  
Compare the result of Step 2 and Step 4.  
The amount of the excess accumulated net losses for the period is the lower of those results.
- Origin: FA 2002 Sch.26 para.23(5), (6), (7).

*Transactions not at arm's length* 20

**59 Bringing into account adjustments under Schedule 28AA to ICTA [j72631A]**

- (1) This section deals with the credits and debits that must be brought into account in accordance with this Part as a result of Schedule 28AA to ICTA (provision not at arm's length) applying in relation to a company's derivative contracts or related transactions. 25  
Origin: Drafting.
- (2) Subsection (3) applies if under Schedule 28AA to ICTA an amount ("the imputed amount") is treated as an amount of profits or losses (disregarding any expenses) arising to a company from any of its derivative contracts or related transactions. 30  
Origin: FA 2002 Sch.26 para.31A(1).
- (3) Credits or debits relating to the imputed amount must be brought into account in accordance with this Part to the same extent as they would be in the case of an actual amount of such profits or losses. 35  
Origin: FA 2002 Sch.26 para.31A(2).
- (4) Subsection (5) applies if under Schedule 28AA to ICTA an amount is treated as expenses incurred by a company under or for the purposes of any of its derivative contracts or related transactions.  
Origin: FA 2002 Sch.26 para.31A(1).

- (5) Debits relating to the amount must be brought into account in accordance with this Part to the same extent as they would be in the case of an actual amount of such expenses.

Origin: FA 2002 Sch.26 para.31A(2).

**60 Exchange gains and losses where derivative contracts not on arm's length terms [j72627]** 5

- (1) This section applies if –
- (a) a company is party to a derivative contract in an accounting period, and
  - (b) an exchange gain or exchange loss arises to the company for the accounting period from the contract. 10

Origin: FA 2002 Sch.26 para.27(1), (3).

- (2) Subsection (3) applies if as a result of Schedule 28AA to ICTA (provision not at arm's length) the company's profits and losses are calculated for tax purposes as if it were not party to the contract.

Origin: FA 2002 Sch.26 para.27(1). 15

- (3) Any exchange gains or losses which arise to the company from the contract for the accounting period must be left out of account in determining the credits and debits to be brought into account in accordance with this Part in the case of the company.

Origin: FA 2002 Sch.26 para.27(2). 20

- (4) Subsection (5) applies if as a result of Schedule 28AA to ICTA the company's profits and losses are calculated for tax purposes as if the terms of the contract were those that would have been agreed by the company and the other party to the contract had they been dealing at arm's length ("the arm's length terms"). 25

Origin: FA 2002 Sch.26 para.27(3).

- (5) The credits and debits which are to be brought into account in accordance with this Part in the case of the company must be determined on the assumption that the amount of any exchange gain or loss arising to the company from the contract in the accounting period is the adjusted amount. 30

Origin: FA 2002 Sch.26 para.27(4).

- (6) In subsection (5), the "adjusted amount" means the amount of an exchange gain or loss which would have arisen from the contract if its terms were the arm's length terms.

Origin: FA 2002 Sch.26 para.27(5). 35

- (7) That amount may be nil.

Origin: FA 2002 Sch.26 para.27(5).

**61 Transfers of value to connected companies [j72626]**

- (1) This section applies if –
- (a) an option of a company ("A") expires, 40
  - (b) until its expiry the option was a derivative contract of A,

- (c) as a result of its expiry there is a transfer of value by A to a company (“B”) which is a connected company in relation to A, and
- (d) B is not within the charge to corporation tax in respect of the derivative contract under or because of this Part.
- Origin: FA 2002 Sch.26 para.26(1). 5
- (2) If A paid any amount to B for the grant of the option, A must bring into account a credit of that amount in respect of the derivative contract for the accounting period in which the option expires.
- Origin: FA 2002 Sch.26 para.26(3), (4).
- (3) In determining for the purposes of subsection (1)(c) whether there is a transfer of value, the assumption specified in subsection (4) must be made. 10
- Origin: FA 2002 Sch.26 para.26(2).
- (4) That assumption is that if there had not been a connection between the transferor and the transferee the option would have been exercised on the date on which it expired. 15
- Origin: FA 2002 Sch.26 para.26(2); drafting.
- (5) In this section “option” is to be construed as if section 15(2) and (3) were omitted.
- Origin: FA 2002 Sch.26 para.26(5).
- (6) For the purposes of this section, B is a connected company in relation to A in an accounting period if in that period there is a connection between B and A. 20
- Origin: FA 2002 Sch.26 para.26(6).
- (7) [Section {j061087d}] applies for the purpose of determining whether there is such a connection (but [sections {j061087c}] to [{j061088b}] must be ignored). 25
- Origin: FA 2002 Sch.26 para.26(6).

*Transactions with non-UK residents*

**62 Derivative contracts with non-UK residents [j72631]**

- (1) This section applies in relation to a company (“A”) if, as a result of any transaction—
- (a) A and a non-UK resident (“NR”) both become party to a derivative contract, 30
- (b) A becomes party to a derivative contract to which NR is party, or
- (c) NR becomes party to a derivative contract to which A is party.
- Origin: FA 2002 Sch.26 para.31(1), (9).
- (2) For each accounting period for any part of which A and NR are both party to a derivative contract which makes provision for notional interest payments, the credits and debits which fall to be brought into account in accordance with this Part in respect of the contract in the case of A do not include the amount of any relevant debit in relation to that contract. 35
- Origin: FA 2002 Sch.26 para.31(2). 40

- (3) The amount of a relevant debit is calculated by determining for the accounting period the amount (if any) by which –
- (a) the aggregate of any notional interest payments made by A to NR while A and NR are both party to the contract, exceeds
  - (b) the aggregate of any notional interest payments made by NR to A during that time. 5

Origin: FA 2002 Sch.26 para.31(3).

- (4) For the purposes of this section, a payment is a notional interest payment if –
- (a) a derivative contract specifies –
    - (i) a notional principal amount, 10
    - (ii) a period, and
    - (iii) a rate of interest,
  - (b) the amount of the payment is determined (wholly or mainly) by applying a rate to the specified notional principal amount for the specified period, and 15
  - (c) the value of the rate is the same at all times as that of the specified rate of interest.

Origin: FA 2002 Sch.26 para.31(4).

- (5) This section is subject to section 63.

Origin: Drafting. 20

### 63 Exceptions to section 62 [j72631x]

- (1) Section 62 does not apply if A –
- (a) is a bank, building society, financial trader or recognised clearing house,
  - (b) is party to the derivative contract solely for the purposes of a trade or part of a trade it carries on in the United Kingdom, and 25
  - (c) is party to it otherwise than as agent or nominee of another person.

Origin: FA 2002 Sch.26 para.31(5).

- (2) Section 62 does not apply if NR –
- (a) is party to the derivative contract solely for the purposes of a trade or part of a trade that NR carries on in the United Kingdom through a relevant entity, and 30
  - (b) is party to it otherwise than as agent or nominee of another person.

Origin: FA 2002 Sch.26 para.31(6); FA 2003 s.153(2).

- (3) Section 62 does not apply if arrangements made in relation to the territory in which NR is resident – 35
- (a) have effect because of section 788 of ICTA (double taxation relief), and
  - (b) make provision in relation to interest (as defined in the arrangements).

Origin: FA 2002 Sch.26 para.31(7).

- (4) It does not matter whether the provision mentioned in subsection (3)(b) is for relief or otherwise. 40

Origin: FA 2002 Sch.26 para.31(7).

- (5) If NR is party to the contract as agent or nominee of another person, subsection (3) applies as if the reference to the territory in which NR is resident were a reference to the territory in which that other person is resident.

Origin: FA 2002 Sch.26 para.31(8).

- (6) In this section – 5  
“recognised clearing house” has the meaning given by section 285 of FISMA 2000,  
“relevant entity” means –  
(a) if NR is a company, a permanent establishment, and  
(b) if that is not the case, a branch or agency. 10

Origin: FA 2002 Sch.26 para.31(9); FA 2003 s.153(2).

## CHAPTER 6

### CHARGEABLE GAINS ARISING IN RELATION TO DERIVATIVE CONTRACTS

#### *Exclusion from section 4 or 5 of credits and debits under some derivative contracts*

**64 Exclusion from section 4 of trading credits and debits under some contracts 15**  
**[j72645Ab]**

- (1) If the provisions specified in subsection (2)(a) or (b) apply to a derivative contract for an accounting period, section 4 (trading credits and debits brought into account under Part [3]) does not apply to the relevant credits and debits.

Origin: FA 2002 Sch.26 paras.45J(3), 45K(3). 20

- (2) The provisions mentioned in subsection (1) are –  
(a) section 81 to 83 (issuers of securities with embedded derivatives: deemed options), and  
(b) section 87 (issuers of securities with embedded derivatives: deemed contracts for differences). 25

Origin: FA 2002 Sch.26 paras.45J(3), 45K(3).

- (3) For the cases in which sections 81 to 83 and section 87 apply, see sections 80 and 85 respectively.

Origin: Drafting.

- (4) For the meaning of “relevant credits” and “relevant debits”, see section 132. 30

Origin: Drafting.

**65 Exclusion from section 5 of non-trading credits and debits under some contracts 35**  
**[j72645Aa]**

- (1) If any of the provisions specified in subsection (2) applies to a derivative contract for an accounting period, section 5 (non-trading credits and debits brought into account under Part [6]) does not apply to the relevant credits and debits.

Origin: FA 2002 Sch.26 para.45A(2).

- (2) The provisions mentioned in subsection (1) are –
- (a) section 68 (derivative contracts relating to land or certain tangible movable property),
  - (b) section 70 (creditor relationships: embedded derivatives which are options), 5
  - (c) section 73 (creditor relationships: embedded derivatives which are exactly tracking contracts for differences),
  - (d) section 75 (property based total return swaps),
  - (e) section 76 (existing assets representing creditor relationships: options),
  - (f) section 78 (existing assets representing creditor relationships: contracts for differences), 10
  - (g) section 81 to 83 (issuers of securities with embedded derivatives: deemed options), and
  - (h) section 87 (issuers of securities with embedded derivatives: deemed contracts for differences). 15

*Origin:* FA 2002 Sch.26 paras.45A(1), 45FA(1), 45J(3), 45K(3).

- (3) For the cases in which sections 81 to 83 and section 87 apply, see sections 80 and 85 respectively.

*Origin:* Drafting.

- (4) If section 87 would apply to a derivative contract for an accounting period but for the fact that condition G in section 85 is not met, section 5 (non-trading credits and debits brought into account under Part [6]) does not apply to the relevant credits and debits. 20

*Origin:* FA 2002 Sch.26 para.45KA.

- (5) For the meaning of “relevant credits” and “relevant debits”, see section 132. 25

*Origin:* Drafting.

- (6) For the treatment of the relevant credits and debits in the case of a derivative contract to which section 68, 70, 73 or 75 applies, see section 66 (derivative contracts to be taxed on a chargeable gains basis).

*Origin:* Drafting. 30

- (7) For the provision which applies where section 76, 78, 81, 82, 83 or 87 applies, see that section.

*Origin:* Drafting.

*Derivative contracts to which section 68, 70, 73 or 75 applies to be taxed on a chargeable gains basis* 35

**66 Derivative contracts to which section 68, 70, 73 or 75 applies to be taxed on a chargeable gains basis [j72645A]**

- (1) This section applies to a derivative contract of a company for an accounting period if any of the provisions specified in subsection (2) applies to the derivative contract for the period. 40

*Origin:* FA 2002 Sch.26 para.45A(1).

- (2) The provisions are –
- (a) section 68 (derivative contracts relating to land or certain tangible movable property),
  - (b) section 70 (creditor relationships: embedded derivatives which are options), 5
  - (c) section 73 (creditor relationship: embedded derivatives which are exactly tracking contracts for differences), and
  - (d) section 75 (property based total return swaps).

Origin: FA 2002 Sch.26 para.45A(1).

- (3) For the purposes of corporation tax on chargeable gains – 10
- (a) if C exceeds D, a chargeable gain equal to the amount of the excess is treated as accruing to the company in the accounting period,
  - (b) if D exceeds C, an allowable loss equal to the amount of the excess is treated as accruing to the company in the accounting period.

Origin: FA 2002 Sch.26 para.45A(4). 15

- (4) “C” means the sum of the relevant credits for the accounting period in respect of the derivative contract.

Origin: FA 2002 Sch.26 para.45A(5).

- (5) “D” means the sum of the relevant debits for the accounting period in respect of the derivative contract. 20

Origin: FA 2002 Sch.26 para.45A(5).

- (6) For the meaning of “relevant credits” and “relevant debits”, see section 132.

Origin: Drafting.

- (7) For a case in which this section does not apply, see section 67.

Origin: Drafting. 25

## 67 Exception from section 66 [j72645Ac]

- (1) Section 66 does not apply to a derivative contract to which section 70 applies if, on the assumptions specified in subsection (2), paragraph 2 of Schedule 7AC to TCGA 1992 (substantial shareholding exemptions: disposal of asset related to shares) would apply to the gain mentioned in subsection (2)(d). 30

Origin: FA 2002 Sch.26 para.45A(4), (6).

- (2) Those assumptions are that –
- (a) the rights and liabilities which fall to be treated as comprised in the derivative contract were contained in a separate contract,
  - (b) that separate contract was an actual option, 35
  - (c) that option was disposed of at the end of the accounting period, and
  - (d) a gain accrued to the company on the disposal.

Origin: FA 2002 Sch.26 para.45A(6).

*Derivative contracts to which section 68 applies*

- 68 Derivative contracts relating to land or certain tangible movable property [j72645C]**
- (1) This section applies to a derivative contract of a company for an accounting period if conditions A to C are met. 5  
*Origin: FA 2002 Sch.26 para.45C(1).*
- (2) Condition A is that the company is not party to the derivative contract at any time in the accounting period for the purposes of a trade carried on by it.  
*Origin: FA 2002 Sch.26 para.45C(1),(2).*
- (3) Condition B is that the company is not an excluded body. 10  
*Origin: FA 2002 Sch.26 para.45C(1).*
- (4) Condition C is that the underlying subject matter of the derivative contract consists of either or both of the following –  
(a) land,  
(b) tangible movable property, other than commodities which are tangible assets. 15  
*Origin: FA 2002 Sch.26 para.45C(1), (4).*
- (5) For the position where the underlying subject matter of a derivative contract also includes income from property within subsection (4)(a) or (b), see section 69. 20  
*Origin: Drafting.*
- (6) For the meaning of “excluded body”, see section 88.  
*Origin: Drafting.*
- (7) See also sections 119 and 122 (which modify subsection (2) for mutual trading companies and insurance companies). 25  
*Origin: Drafting.*
- 69 Subordinate income to be left out of account in determining whether section 68 applies [j72645Ca]**
- (1) This section applies if the underlying subject matter of a derivative contract includes income from property within section 68(4)(a) or (b). 30  
*Origin: FA 2002 Sch.26 para.45C(5).*
- (2) If that income is subordinate income, it must be left out of account in determining for the purposes of section 68 whether condition C is satisfied.  
*Origin: FA 2002 Sch.26 para.45C(5).*
- (3) Income is “subordinate income” if it is – 35  
(a) subordinate in relation to so much of the underlying subject matter of the derivative contract as consists of property within section 68(4)(a) or (b), or

- (b) of small value in comparison with the value of the underlying subject matter as a whole.

Origin: FA 2002 Sch.26 para.45C(5).

- (4) For the purposes of this section, 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. 5

Origin: FA 2002 Sch.26 para.45C(6).

*Derivative contracts to which section 70 applies*

**70 Creditor relationships: embedded derivatives which are options [j72645D] 10**

- (1) This section applies to a derivative contract of a company for an accounting period if conditions A to G are met.

Origin: FA 2002 Sch.26 para.45D(1).

- (2) Condition A is that the derivative contract is a section 21 embedded derivative to which the company is treated as party because of a creditor relationship of the company. 15

Origin: FA 2002 Sch.26 para.45D(1); drafting.

- (3) Condition B is that the derivative contract is treated as an option because of section 21(3).

Origin: FA 2002 Sch.26 para.45D(1). 20

- (4) Condition C is that the company is not party to the creditor relationship at any time in the accounting period for the purposes of a trade carried on by it.

Origin: FA 2002 Sch.26 para.45D(2), (3).

- (5) Condition D is that the company is not an excluded body.

Origin: FA 2002 Sch.26 para.45D(2). 25

- (6) Condition E is that the underlying subject matter of the derivative contract –  
 (a) is qualifying ordinary shares, or  
 (b) is mandatorily convertible preference shares.

Origin: FA 2002 Sch.26 para.45D(2).

- (7) Condition F is that the asset representing the creditor relationship is not an asset in relation to which paragraph 9(2) of Schedule 10 to FA 2004 has effect. 30

Origin: FA 2002 Sch.26 para.45D(2), (4).

- (8) Condition G is that this section is not disapplied by section 71.

Origin: FA 2002 Sch.26 para.45D(2).

- (9) See also – 35  
 (a) section 100 (treatment of net gains and losses on terminal exercise of option), and

- (b) sections 119 and 122 (which modify subsection (4) for mutual trading companies and insurance companies).

Origin: FA 2002 Sch.26 para.45D(9); drafting.

- (10) Where this section applies to a derivative contract, the creditor relationship is not treated as a qualifying corporate bond under section 117(A1) of TCGA 1992. 5

Origin: FA 2002 Sch.26 para.45D(8).

- (11) Where in any accounting period –
- (a) a company is party to a creditor relationship for the purposes of its life assurance business, and 10
- (b) that creditor relationship is one in relation to which sections 21 and [j061094Aaa] would have effect but for the fact that the company accounts for the creditor relationship at fair value through profit and loss,
- this Part and Part [6] (loan relationships) have effect for that accounting period as they would if the creditor relationship were one in relation to which those sections have effect. 15

Origin: FA 2002 Sch.26 para.45D(3A).

## 71 Exclusions from section 70 [j72645E]

- (1) Section 70 does not apply to a derivative contract of a company for an accounting period if condition A or B is met in the period. 20

Origin: FA 2002 Sch.26 para.45E(1).

- (2) Condition A 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 – 25
- (a) which is specified in the contract for the asset representing the creditor relationship mentioned in section 70(2), or
- (b) which is or will be ascertainable by reference to that contract.

Origin: FA 2002 Sch.26 para.45E(3).

- (3) Condition B is that the rights and liabilities that fall to be treated as comprised in the derivative contract are such that – 30
- (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. 35

Origin: FA 2002 Sch.26 para.45E(4).

## 72 Meaning of certain expressions in section 70 [j72645Da] 40

- (1) This section applies for the purposes of section 70.

Origin: Drafting.

- (2) For the meaning of—
- (a) “excluded body”, see section 88,
  - (b) “creditor relationship”, see section 128(1),
  - (c) “section 21 embedded derivative”, see section 133(1).
- Origin: Drafting.** 5
- (3) “Mandatorily convertible preference shares” means shares which—
- (a) represent the creditor relationship mentioned in section 70(2),
  - (b) are not qualifying ordinary shares, and
  - (c) are issued upon terms that stipulate that they must be converted into, or exchanged for, qualifying ordinary shares by a relevant time. 10
- Origin: FA 2002 Sch.26 para.45D(4).**
- (4) In subsection (3) “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.
- Origin: FA 2002 Sch.26 para.45D(4).** 15
- (5) “Qualifying ordinary shares” means shares in a company which satisfy conditions A and B.
- Origin: FA 2002 Sch.26 para.45D(4).**
- (6) Condition A is that the shares are all or part of the issued share capital (however described) of the 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 the 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 the company. 20
- Origin: FA 2002 Sch.26 para.45D(5).** 25
- (7) Condition B is that the shares—
- (a) are listed on a recognised stock exchange, or
  - (b) are shares in a holding company or a trading company.
- Origin: FA 2002 Sch.26 para.45D(5).**
- (8) In subsection (7)—
- “holding company” has the meaning given by paragraph 22(1) of Schedule A1 to TCGA 1992,
  - “trading company” has the meaning given by paragraph 22A of that Schedule. 30
- Origin: FA 2002 Sch.26 para.45D(7).** 35

*Derivative contracts to which section 73 applies*

**73 Creditor relationships: embedded derivatives which are exactly tracking contracts for differences [j72645F]**

- (1) This section applies to a derivative contract of a company for an accounting period if conditions A to G are met. 40

- [Origin: FA 2002 Sch.26 para.45F\(1\).](#)
- (2) Condition A is that the derivative contract is a section 21 embedded derivative to which the company is treated as party because of a creditor relationship of the company.
- [Origin: FA 2002 Sch.26 para.45F\(1\).](#) 5
- (3) Condition B is that the derivative contract is treated as a contract for differences because of section 21(3).
- [Origin: FA 2002 Sch.26 para.45F\(1\).](#)
- (4) Condition C is that the derivative contract is an exactly tracking contract.
- [Origin: FA 2002 Sch.26 para.45F\(2\).](#) 10
- (5) Condition D is that the underlying subject matter of the derivative contract is qualifying ordinary shares listed on a recognised stock exchange.
- [Origin: FA 2002 Sch.26 para.45F\(2\).](#)
- (6) Condition E is that the company is not party to the creditor relationship at any time in the accounting period for the purposes of a trade carried on by it. 15
- [Origin: FA 2002 Sch.26 para.45F\(2\).](#)
- (7) Condition F is that the company is not an excluded body.
- [Origin: FA 2002 Sch.26 para.45F\(2\).](#)
- (8) Condition G is that the asset representing the creditor relationship is not an asset in relation to which paragraph 11(2) of Schedule 10 to FA 2004 has effect. 20
- [Origin: FA 2002 Sch.26 para.45F\(2\), \(7\).](#)
- (9) See also—
- (a) section 102 (treatment of net gains and losses on disposal of certain embedded derivatives), and
- (b) sections 119 and 122 (which modify subsection (6) for mutual trading companies and insurance companies). 25
- [Origin: Drafting.](#)
- (10) Where this section applies to a derivative contract, the creditor relationship is not treated as a qualifying corporate bond under section 117(A1) of TCGA 1992. 30
- [Origin: FA 2002 Sch.26 para.45F\(8\).](#)
- 74 Meaning of certain expressions in section 73 [j72645Fa]**
- (1) This section applies for the purposes of section 73.
- [Origin: Drafting.](#)
- (2) For the meaning of— 35
- (a) “excluded body”, see section 88,
- (b) “creditor relationship”, see section 128(1),
- (c) “section 21 embedded derivative”, see section 133(1).

**Origin: Drafting.**

- (3) “Qualifying ordinary shares” means shares in a company that are all or part of the issued share capital (however described) of the 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 the company, or 5
  - (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 the company.

**Origin: FA 2002 Sch.26 para.45F(7).**

- (4) “Exactly tracking contract” means a contract where D is equal to the amount determined by applying R% to C. 10

**Origin: FA 2002 Sch.26 para.45F(4).**

- (5) In subsection (4) —
- 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 the percentage change (if any) over the relevant period in — 15
    - (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,
  - C is the amount falling to be regarded in accordance with generally accepted accounting practice as the cost of the asset representing the creditor relationship mentioned in section 73(2) on the date when that asset came into existence. 20

**Origin: FA 2002 Sch.26 para.45F(4), (5).**

- (6) In subsection (5) “the relevant period” means —
- (a) the period between — 25
    - (i) the date when the asset representing that creditor relationship came into existence, and
    - (ii) the date when the debtor relationship corresponding to that creditor relationship comes to an end, or
  - (b) any other period in which almost all of that period falls, and which differs from that period only for purposes connected with giving effect to a valuation in relation to rights or liabilities under that asset. 30

**Origin: FA 2002 Sch.26 para.45F(6).**

- (7) For the meaning of “debtor relationship”, see section 128(2).

**Origin: Drafting.** 35*Derivative contracts to which section 75 applies***75 Property based total return swaps [j72645G]**

- (1) This section applies to a derivative contract of a company for an accounting period if conditions A to F are met.

**Origin: FA 2002 Sch.26 para.45G(1).** 40

- (2) Condition A is that the derivative contract is a contract for differences.

Origin: FA 2002 Sch.26 para.45G(1).

- (3) Condition B is that one or more indices are specified in the contract.

Origin: FA 2002 Sch.26 para.45G(1).

- (4) Condition C is that at least one index so specified (“the capital value index”) is an index of changes in the value of land. 5

Origin: FA 2002 Sch.26 para.45G(1).

- (5) Condition D is that the underlying subject matter of the derivative contract also includes interest rates.

Origin: FA 2002 Sch.26 para.45G(1).

- (6) Condition E is that the company is not party to the derivative contract at any time in the accounting period for the purposes of a trade carried on by it. 10

Origin: FA 2002 Sch.26 para.45G(1A), (1B).

- (7) Condition F is that the body is not an excluded body.

Origin: FA 2002 Sch.26 para.45G(1A).

- (8) For the meaning of “excluded body”, see section 88. 15

Origin: Drafting.

- (9) See also sections 119 and 122 (which modify subsection (6) for mutual trading companies and insurance companies).

Origin: Drafting.

*Creditor relationships with existing assets* 20

## 76 Existing assets representing creditor relationships: options [\[j72645FAa\]](#)

- (1) This section applies if section 70 would apply to a derivative contract of a company for an accounting period but for the fact that condition F in that section is not met.

Origin: FA 2002 Sch.26 para.45FA(1). 25

- (2) The original creditor relationship as a result of which section 70 would apply to the derivative contract is not treated as a qualifying corporate bond under section 117(A1) of TCGA 1992.

Origin: FA 2002 Sch.26 para.45FA(3).

- (3) For the purposes of corporation tax on chargeable gains, the amount or value of the consideration for any disposal by the company of the asset representing the original creditor relationship is reduced by so much of that amount or value as, on a just and reasonable apportionment, relates to interest within subsection (4). 30

Origin: FA 2002 Sch.26 para.45FA(4). 35

- (4) Interest is within this subsection if –  
 (a) it falls to be brought into account under Part [6] (loan relationships) as accruing to any company at any time, and

- (b) in consequence of, or of the terms of, the disposal, it is not paid or payable to the company to which it is treated for the purposes of that Part as accruing.

Origin: FA 2002 Sch.26 para.45FA(4).

- (5) For the purposes of corporation tax on chargeable gains, the amount or value of the consideration for any disposal by the company of the asset mentioned in subsection (3) – 5
- (a) is increased by the addition of any relevant exchange losses, and
- (b) is (after giving effect to any such increase) reduced (but not below nil) by the deduction of any relevant exchange gains. 10

Origin: FA 2002 Sch.26 para.45FA(6).

- (6) If the amount of the relevant exchange gains falling to be deducted under subsection (5)(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 asset mentioned in subsection (3). 15

Origin: FA 2002 Sch.26 para.45FA(8).

- (7) For the meaning of –
- (a) “relevant exchange gains” and “relevant exchange losses”, see section 77, 20
- (b) “original creditor relationship”, see section 131.

Origin: Drafting.

- (8) See also section 79 (existing assets representing creditor relationships: reorganisations).

Origin: Drafting. 25

## 77 Meaning of “relevant exchange gains” and “relevant exchange losses” in section 76 [j72645FAac]

- (1) This section applies for the purposes of section 76.
- Origin: Drafting.
- (2) “Relevant exchange gains” means an amount within subsection (4) or (5). 30

Origin: FA 2002 Sch.26 para.45FA(7).

- (3) “Relevant exchange losses” means an amount which would be within subsection (4) or (5) if references in those subsections to exchange gains were read as references to exchange losses.
- Origin: FA 2002 Sch.26 para.45FA(7). 35

- (4) An amount is within this subsection if it is the amount of any exchange gains in respect of the asset mentioned in section 76(3) that are brought into account under Part [6] (loan relationships) by the company for an accounting period throughout which the company holds that asset.

Origin: FA 2002 Sch.26 para.45FA(7). 40

- (5) For any accounting period not within subsection (4) in which the company holds that asset, an amount is within this subsection if it is an amount which, on a just and reasonable apportionment, represents so much of the amount of any exchange gains brought into account under that Part in respect of that asset, by the company making the disposal, for that period as is referable to the part of the period for which the company holds that asset. 5
- [Origin: FA 2002 Sch.26 para.45FA\(7\).](#)
- 78 Existing assets representing creditor relationships: contracts for differences [j72645FAad]**
- (1) This section applies if section 73 would apply to a derivative contract for an accounting period of a company but for the fact that condition G in that section is not met. 10
- [Origin: FA 2002 Sch.26 para.45FA\(1\).](#)
- (2) The original creditor relationship as a result of which section 73 would apply to the derivative contract is not treated as a qualifying corporate bond under section 117(A1) of TCGA 1992. 15
- [Origin: FA 2002 Sch.26 para.45FA\(3\).](#)
- (3) For the purposes of corporation tax on chargeable gains, the amount or value of the consideration for any disposal by the company of the asset representing the original creditor relationship is reduced by so much of that amount or value as, on a just and reasonable apportionment, relates to interest within subsection (4). 20
- [Origin: FA 2002 Sch.26 para.45FA\(4\).](#)
- (4) Interest is within this subsection if – 25
- (a) it falls to be brought into account under Part [6] (loan relationships) as accruing to any company at any time, and
- (b) in consequence of, or of the terms of, the disposal, it is not paid or payable to the company to which it is treated for the purposes of that Part as accruing.
- [Origin: FA 2002 Sch.26 para.45FA\(4\).](#) 30
- (5) See also section 79 (existing assets representing creditor relationships: reorganisations).
- [Origin: Drafting.](#)
- (6) For the meaning of “original creditor relationship”, see section 131. 35
- [Origin: Drafting.](#)
- 79 Existing assets representing creditor relationships: reorganisations [j72645FAab]**
- (1) This section applies if – 40
- (a) there has been a reorganisation for the purposes of sections 126 to 132 of TCGA 1992, and
- (b) for the purposes of those sections, the asset mentioned in section 76(3) or 78(3) is treated as the original shares.

Origin: FA 2002 Sch.26 para.45FA(5).

- (2) The reference in section 76(3) or 78(3) to the disposal of that 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.

Origin: FA 2002 Sch.26 para.45FA(5).

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*Issuers of securities with embedded derivatives: deemed options*

**80 Introduction to sections 81 to 83 [j72645Jb]**

- (1) Sections 81 to 83 apply to a derivative contract of a company for an accounting period if conditions A to E are met.

Origin: FA Sch.26 para.45J(1), (2).

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- (2) Condition A is that the derivative contract is a section 21 embedded derivative to which the company is treated as party because of a debtor relationship of the company.

Origin: FA 2002 Sch.26 para.45J(1); drafting.

- (3) Condition B is that the derivative contract is treated as an option because of section 21(3).

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Origin: FA 2002 Sch.26 para.45J(1).

- (4) Condition C is that the underlying subject matter of the derivative contract is shares.

Origin: FA 2002 Sch.26 para.45J(2).

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- (5) Condition D is that at the time when the company became party to the debtor relationship—

- (a) it was not carrying on a banking business or a business as a securities house, or  
(b) if it was carrying on such a business, it did not become party to the debtor relationship in the ordinary course of that business.

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Origin: FA 2002 Sch.26 para.45J(2).

- (6) Condition E is that the company is not an excluded body.

Origin: FA 2002 Sch.26 para.45J(2).

- (7) In this section “option” is to be construed as if section 15(2) and (3) were omitted.

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Origin: FA 2002 Sch.26 para.45J(10).

- (8) For the meaning of—

- (a) “debtor relationship”, see section 128(2),  
(b) “excluded body” and “securities house”, see sections 88 and 89 respectively,  
(c) “section 21 embedded derivative”, see section 133(1).

35

Origin: Drafting.

**81 Shares issued or transferred as a result of exercise of deemed option [j72645J]**

- (1) Subsections (2) and (3) apply if—
- (a) the option mentioned in section 80(3) is exercised at any time in the accounting period, and
  - (b) shares are issued or transferred in fulfilment of the obligations under the option (the “relevant disposal”).

Origin: FA 2002 Sch.26 para.45J(4A).

- (2) Section 144(2) of TCGA 1992 (exercise of options) applies to the relevant disposal as if the carrying value of the option at the time the company became party to the debtor relationship mentioned in section 80(2) (“the initial carrying value”) was the consideration for the grant of the option.

Origin: FA 2002 Sch.26 para.45J(5).

- (3) So far as it would otherwise apply, section 17(1) of TCGA 1992 (deemed market value consideration) does not apply to the relevant disposal.

Origin: FA 2002 Sch.26 para.45J(5).

**82 Payment instead of disposal on exercise of deemed option [j72645Je]**

- (1) Subsection (2) applies if—
- (a) the option mentioned in section 80(3) is exercised at any time in the accounting period,
  - (b) there is no relevant disposal, and
  - (c) an amount is paid in fulfilment of the obligations under the option.

Origin: FA 2002 Sch.26 para.45J(6).

- (2) If —
- (a) CV exceeds X, a chargeable gain equal to the amount of the excess is treated as accruing to the company in the accounting period,
  - (b) X exceeds CV, an allowable loss equal to the amount of the excess is treated as accruing to the company in the accounting period.

Origin: FA 2002 Sch.26 para.45J(7).

- (3) For the meaning of—
- (a) “relevant disposal”, see section 81,
  - (b) “CV” and “X”, see section 84.

Origin: Drafting.

**83 Person ceasing to be party to debtor relationship when deemed option not exercised [j72645Jf]**

- (1) Subsection (2) applies if the company ceases to be party to the debtor relationship mentioned in section 80(2) at a time when the option mentioned in section 80(3) has not been exercised.

Origin: FA 2002 Sch.26 para.45J(9).

- (2) The company is treated for the purposes of corporation tax on chargeable gains—

- (a) as having acquired an asset for a consideration of an amount equal to Y, and
- (b) as having disposed of that asset for a consideration of an amount equal to CV.

Origin: FA 2002 Sch.26 para.45J(9A).

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- (3) For the meaning of “Y” and “CV”, see section 84.

Origin: Drafting.

#### 84 Interpretation of sections 82 and 83 [j72645Jc]

- (1) This section applies for the purposes of sections 82 and 83.

Origin: Drafting.

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- (2) “CV” means –

- (a) if the company was party to the debtor relationship mentioned in section 80(2) at the time it was created, the initial carrying value of the option, or
- (b) if the company became party to that relationship at a later time, the carrying value of the option at that time.

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Origin: FA 2002 Sch.26 para.45J(8), (9B), drafting.

- (3) “X” means the amount paid by the debtor in fulfilment of the obligations under the debtor relationship reduced (but not below nil) by the fair value of the [section {j061094Aaa}] host contract at the date on which the option is exercised.

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Origin: FA 2002 Sch.26 para.45J(8); drafting.

- (4) “Y” means –

- (a) if the company ceases to be party to the debtor relationship as a result of the redemption or repayment of the liability representing that relationship, the amount paid by the company, or
- (b) otherwise, the consideration given by the company on its ceasing to be party to that relationship,

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in either case reduced (but not below nil) by the fair value of the [section {j061094Aaa}] host contract at the date on which it so ceases.

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Origin: FA 2002 Sch.26 para.45J(9B); drafting.

- (5) For the meaning of –

- (a) “the initial carrying value”, see section 81(2),
- (b) “[section {j061094Aaa}] host contract”, see section 133(2).

Origin: Drafting.

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*Issuers of securities with embedded derivatives: deemed contracts for differences*

#### 85 Introduction to section 87 [j72645Kb]

- (1) Section 87 applies to a derivative contract of a company for an accounting period if conditions A to G are met.

Origin: FA 2002 Sch.26 para.45K(1), (2).

- (2) Condition A is that the derivative contract is a section 21 embedded derivative to which the company is treated as party because of a debtor relationship of the company.

Origin: FA 2002 Sch.26 para.45K(1); drafting.

5

- (3) Condition B is that the derivative contract –
- (a) is treated as a contract for differences because of section 21(3), and
  - (b) is not within section 80.

Origin: FA 2002 Sch.26 para.45K(1).

- (4) Condition C is that the derivative contract is an exactly tracking contract. 10

Origin: FA 2002 Sch.26 para.45K(1).

- (5) Condition D is that the underlying subject matter of the derivative contract is shares.

Origin: FA 2002 Sch.26 para.45K(2).

- (6) Condition E is that at the time when the company became party to the debtor relationship – 15

- (a) it was not carrying on a banking business or a business as a securities house, or
- (b) if it was carrying on such a business, it did not become party to the debtor relationship in the ordinary course of that business. 20

Origin: FA 2002 Sch.26 para.45K(2).

- (7) Condition F is that the company is not an excluded body.

Origin: FA 2002 Sch.26 para.45K(2).

- (8) Condition G is that 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. 25

Origin: FA 2002 Sch.26 para.45K(2).

- (9) For the meaning of “exactly tracking contract”, see section 86.

Origin: Drafting

- (10) For the meaning of – 30

- (a) “debtor relationship”, see section 128(2),
- (b) “excluded body” and “securities house”, see sections 88 and 89 respectively,
- (c) “section 21 embedded derivative”, see section 133(1).

Origin: Drafting.

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## 86 Meaning of “exactly tracking contract” in section 85 [j72645Kc]

- (1) This section applies for the purposes of section 85.

Origin: Drafting.

- (2) “Exactly tracking contract” means a contract where D is equal to the amount determined by applying R% to C.

Origin: FA 2002 Sch.26 para.45K(2A).

- (3) In subsection (2) –
- D is the amount that must be paid to discharge the rights and liabilities that fall to be treated as comprised in the contract, 5
  - R% is 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, 10
  - C is the amount falling to be regarded in accordance with generally accepted accounting practice as the proceeds of issue of the liability which represents the debtor relationship mentioned in section 85(2).

Origin: FA 2002 Sch.26 para.45K(2A), (2B).

- (4) In subsection (3) “the relevant period” means – 15
- (a) the period between –
    - (i) the date when the liability representing that debtor relationship came into existence, and
    - (ii) the date when the creditor relationship corresponding to that debtor relationship comes to an end, or 20
  - (b) any other period in which almost all of that period falls, and which differs from that period only for purposes connected with giving effect to a valuation in relation to rights or liabilities under the liability representing that debtor relationship.

Origin: FA 2002 Sch.26 para.45K(2C). 25

## 87 Issuers of securities with embedded derivatives: deemed contracts for differences [j72645K]

- (1) Subsection (2) applies if –
- (a) the debtor relationship mentioned in section 85(2) comes to an end, and
  - (b) an amount (“the discharge amount”) is paid to discharge all the company’s obligations under that relationship. 30

Origin: FA 2002 Sch.26 para.45K(3), (3A).

- (2) For the purposes of corporation tax on chargeable gains, a chargeable gain or allowable loss equal to the amount mentioned in subsection (3) is treated as accruing to the company. 35

Origin: FA 2002 Sch.26 para.45K(3A).

- (3) That amount is the amount of the gain or loss (as the case may be) that would accrue on the assumptions specified in subsection (4).

Origin: FA 2002 Sch.26 para.45K(3B).

- (4) Those assumptions are that – 40
- (a) the derivative contract is an asset of the company,
  - (b) there is a disposal of that asset at the time when the debtor relationship comes to an end,

- (c) the consideration for the disposal of that asset is equal to the relevant amount, and
- (d) the cost of the asset is equal to the discharge amount.

Origin: FA 2002 Sch.26 para.45K(3B).

- (5) In subsection (4) “the relevant amount” means – 5
- (a) if the company was party to the debtor relationship at the time it was created, the amount of the proceeds of issue of the security representing that relationship, or
  - (b) if the company became party to the debtor relationship after that time, the amount of the carrying value of the [section {j061094Aaa}] host contract at that time. 10

Origin: FA 2002 Sch.26 para.45K(3B); drafting.

### *Interpretation*

#### 88 **Meaning of “excluded body” [j72645Cb]**

In this Chapter “excluded body” means – 15

- an authorised unit trust,
- an investment trust,
- an open-ended investment company, or
- a venture capital trust.

Origin: FA 2002 Sch.26 paras.45C(3), 45D(2), 45G(1A), 45J(2), 45K(2). 20

#### 89 **Meaning of “securities house” [j72645Jd]**

In this Chapter “securities house” means a person –

- (a) who is authorised for the purposes of FISMA 2000, and
- (b) whose business consists wholly or mainly of dealing as a principal in financial instruments within the meaning of section 984 of ITA 2007. 25

Origin: FA 2002 Sch.26 paras.45J(10), 45K(4).

## CHAPTER 7

### FURTHER PROVISION ABOUT CORPORATION TAX ON CHARGEABLE GAINS

#### *Company ceasing to be party to contract to which section 22 applies*

- 90 **Company ceasing to be party to contract to which section 22 applies [j72637a]** 30
- (1) This section applies if –
- (a) a company is party to a relevant contract in two successive accounting periods,
  - (b) section 22 applies in relation to the relevant contract for the second accounting period but not the first accounting period, and 35
  - (c) immediately before the beginning of the second accounting period the relevant contract was a chargeable asset.

Origin: FA 2002 Sch.26 para.37(1), (2), (3), (5).

- (2) The company must bring into account for the accounting period in which it ceases to be party to the contract the amount of any chargeable gain or allowable loss which would have been treated as accruing to it on the assumptions specified in subsection (3). 5

Origin: FA 2002 Sch.26 para.37(5).

- (3) Those assumptions are that –
- (a) the company disposed of the relevant contract immediately before the beginning of the second accounting period mentioned in subsection (1), and 10
  - (b) the disposal was for a consideration of an amount equal to the value (if any) given to the relevant contract in the accounts of the company at the end of the first accounting period mentioned in subsection (1).

Origin: FA 2002 Sch.26 para.37(5).

*Company ceasing to be party to contract which became derivative contract* 15

## 91 **Company ceasing to be party to contract which became derivative contract** **[j72643A]**

- (1) This section applies if –
- (a) a company is party to a relevant contract which (having not been a derivative contract) becomes a derivative contract, and 20
  - (b) immediately before the relevant contract becomes a derivative contract it is a chargeable asset.

Origin: FA 2002 Sch.26 para.43A(1).

- (2) The company must 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 it on the assumptions specified in subsection (3). 25

Origin: FA 2002 Sch.26 para.43A(2).

- (3) Those assumptions are that –
- (a) the company disposed of the relevant contract immediately before the relevant time, and 30
  - (b) the disposal was for a consideration of an amount equal to the notional carrying value of the relevant contract at that time.

Origin: FA 2002 Sch.26 para.43A(2).

- (4) In this section “the relevant time” means the time when the relevant contract becomes a derivative contract. 35

Origin: FA 2002 Sch.26 para.43A(4).

- (5) Section 42(4) (meaning of “notional carrying value”) applies for the purposes of this section.

Origin: FA 2002 Sch.26 para.43A(5); drafting. 40

- (6) This section only applies if the relevant time is on or after 30th December 2006.

Origin: FA 2002 Sch.26 para.43A(4).

*Contracts ceasing to be derivative contracts*

**92 Contracts ceasing to be derivative contracts [j72643Ba]**

- (1) This section applies if a company is party to a contract which ceases to be a derivative contract. 5

Origin: FA 2002 Sch.26 para.43B(1).

- (2) The company is treated for the purposes of corporation tax on chargeable gains as if immediately after the relevant time it had acquired the contract for a consideration of an amount equal to the notional carrying value of the contract at the relevant time. 10

Origin: FA 2002 Sch.26 para.43B(2).

- (3) In this section “the relevant time” means the time when the contract ceases to be a derivative contract.

Origin: FA 2002 Sch.26 para.43B(3).

- (4) Section 42(4) (meaning of “notional carrying value”) applies for the purposes of this section. 15

Origin: FA 2002 Sch.26 para.43B(4).

*Carry back of net losses on derivative contracts to which section 66 applies*

**93 Carry back of net losses on derivative contracts to which section 66 applies [j72645B]** 20

- (1) This section applies in the case of a company if—
- (a) there are net section 66 losses for an accounting period (“the loss period”),
  - (b) there are net section 66 gains for a previous accounting period (“the gains period”), 25
  - (c) the gains period falls wholly or partly within the period of 24 months immediately preceding the start of the loss period, and
  - (d) within two 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 section 66 losses for the loss period. 30

Origin: FA 2002 Sch.26 para.45B(1).

- (2) The net section 66 gains for the gains period must be reduced (but not below nil) by the amount in respect of which the claim is made.

Origin: FA 2002 Sch.26 para.45B(2).

- (3) And the net section 66 losses for the loss period must be reduced (but not below nil) by the amount in respect of which the claim is made. 35

Origin: FA 2002 Sch.26 para.45B(2).

- (4) For the purposes of this section—

- (a) the net section 66 gains for a later period must be reduced so far as possible before the net section 66 gains for an earlier period, and
- (b) where a gains period falls partly before the start of the 24 month period mentioned in subsection (1), only the appropriate fraction of the net section 66 gains for that period may be reduced.

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Origin: FA 2002 Sch.26 para.45B(3).

- (5) For the meaning of “net section 66 gains”, “net section 66 losses” and “the appropriate fraction”, see section 94.

Origin: Drafting.

**94 Meaning of certain expressions in section 93 [j72645Ba]**

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- (1) This section applies for the purposes of section 93.

Origin: Drafting.

- (2) If for an accounting period L exceeds G, there are net section 66 losses for the period of an amount equal to the excess.

Origin: FA 2002 Sch.26 para.45B(5).

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- (3) If for an accounting period G exceeds the sum of L and N, there are net section 66 gains for the period of an amount equal to the excess.

Origin: FA 2002 Sch.26 para.45B(5).

- (4) In the application of subsections (2) and (3) in relation to an accounting period of a company –

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G is the sum of the amounts of any chargeable gains treated as accruing to the company in the period under section 66(3)(a) in respect of derivative contracts of the company (“section 66 gains”),

L is the sum of the amounts of any allowable losses treated as accruing to the company in the period under section 66(3)(b) in respect of derivative contracts of the company,

25

N is the sum of the amounts of any non-section 66 losses that would fall to be deducted in the period from section 66 gains, on the assumption specified in subsection (5).

Origin: FA 2002 Sch.26 para.45B(6).

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- (5) That assumption is that, as respects the accounting period, non-section 66 losses are treated as being deducted from non-section 66 gains, so far as possible, before any remainder is deducted from section 66 gains.

Origin: FA 2002 Sch.26 para.45B(7).

- (6) The “appropriate fraction” is –

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$$\frac{A}{B}$$

where –

A is the number of days in the gains period that fall within the 24 month period mentioned in section 93(1)(c), and

B is the number of days in the gains period.

Origin: FA 2002 Sch.26 para.45B(4).

- (7) In this section— 5
- “deducted” means deducted in accordance with section 8(1) of TCGA 1992,
- “the gains period” has the same meaning as in section 93,
- “non-section 66 gains” means any chargeable gains accruing to the company in the accounting period, other than section 66 gains, 10
- “non-section 66 losses” means any allowable losses of the company that may be deducted in the accounting period, other than losses accruing in the period under section 66(3)(b).

Origin: FA 2002 Sch.26 para.45B(7); drafting.

*Issuers of securities with embedded derivatives: equity instruments* 15

## 95 Introduction to section 96 [j72645JAa]

- (1) Section 96 applies to a company for an accounting period if conditions A to H are met.
- Origin: FA 2002 Sch.26 para.45JA(1), (2).
- (2) Condition A is that the company is party to a section 21 embedded derivative because of a debtor relationship of the company. 20
- Origin: FA 2002 Sch.26 para.45JA(1).
- (3) Condition B is that the division mentioned in section 21(1) in the case of the debtor relationship is between— 25
- (a) rights and liabilities under a loan relationship, and
- (b) rights and liabilities under an equity instrument of the company.
- Origin: FA 2002 Sch.26 para.45JA(1).
- (4) Condition C is that, in the case of the debtor relationship, the company is treated under section 21(2) as party to a relevant contract. 30
- Origin: FA 2002 Sch.26 para.45JA(1).
- (5) Condition D is that the relevant contract is treated as an option because of section 21(3).
- Origin: FA 2002 Sch.26 para.45JA(1).
- (6) Condition E is that company pays an amount in the accounting period to the person who is party to the debtor relationship as creditor in discharge of any obligations under that relationship. 35
- Origin: FA 2002 Sch.26 para.45JA(1).
- (7) Condition F is that at the time when the company became party to the debtor relationship—

- (a) it was not carrying on a banking business or a business as a securities house, or
- (b) if it was carrying on such a business, it did not become party to that relationship in the ordinary course of that business.
- Origin: FA 2002 Sch.26 para.45JA(1), (2). 5
- (8) Condition G is that the company is not an excluded body.
- Origin: FA 2002 Sch.26 para.45JA(1), (2).
- (9) Condition H is that the liability representing the debtor relationship was not owed by the company immediately before its first accounting period to begin on or after 1 January 2005. 10
- Origin: FA 2002 Sch.26 para.45JA(1), (2).
- (10) In this section –
- (a) “option” is to be construed as if section 15(2) and (3) were omitted,
- (b) “excluded body” and “securities house” have the same meaning as in Chapter 6. 15
- Origin: FA 2002 Sch.26 para.45JA(5); drafting.
- (11) For the meaning of –
- (a) “debtor relationship”, see section 128(2),
- (b) “section 21 embedded derivative”, see section 133(1). 20
- Origin: Drafting.
- 96 Issuers of securities with embedded derivatives: equity instruments [j72645JA]**
- (1) If RA exceeds E, an allowable loss equal to the amount of the excess is treated as accruing to the company for the purposes of corporation tax on chargeable gains in the accounting period. 25
- Origin: FA 2002 Sch.26 para.45JA(3).
- (2) In this section –
- RA is the amount paid as mentioned in section 95(6) reduced (but not below nil) by an amount equal to the fair value of the [section {j061094Aaa}] host contract at the time that amount is paid, 30
- E is the amount treated as the carrying value of the relevant contract mentioned in section 95(4) at the time the company became party to the debtor relationship mentioned in section 95(2).
- Origin: FA 2002 Sch.26 para.45JA(4).
- (3) For the meaning of “[section {j061094Aaa}] host contract”, see section 133(2). 35
- Origin: Drafting.

*Treatment of shares acquired on terminal exercise of non-embedded option or running of future to delivery*

**97 Treatment of shares acquired on terminal exercise of non-embedded option [j72645HA]**

- (1) This section applies if— 5
- (a) a company is party to a derivative contract in an accounting period,
  - (b) the derivative contract is a plain vanilla contract,
  - (c) the contract is an option,
  - (d) rights to acquire shares are comprised in the contract, and
  - (e) shares are acquired as a result of the exercise of any of those rights in the accounting period. 10

[Origin: FA 2002 Sch.26 para.45HA\(1\).](#)

- (2) For the purpose of calculating any chargeable gain accruing to the company on a disposal by it of all the shares so acquired, the sums allowable as a deduction under section 38(1)(a) of TCGA 1992 (acquisition costs) must— 15
- (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 has effect accordingly.

[Origin: FA 2002 Sch.26 para.45HA\(2\).](#) 20

- (3) If the amount of the excess in subsection (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 must, for the purpose mentioned in subsection (2), be added to the amount of the consideration for the disposal of the shares. 25

[Origin: FA 2002 Sch.26 para.45HA\(3\).](#)

- (4) For the meaning of “G” and “L”, see section 99.

[Origin: Drafting.](#)

**98 Treatment of shares acquired on running of future to delivery [j72645HAa]**

- (1) This section applies if— 30
- (a) a company is party to a derivative contract in an accounting period,
  - (b) the derivative contract is a plain vanilla contract,
  - (c) the contract is a future, and
  - (d) delivery is taken of shares in accordance with the terms of the future.

[Origin: FA 2002 Sch.26 para.45HA\(1A\).](#) 35

- (2) For the purpose of calculating any chargeable gain accruing to the company on a disposal by it of all the shares so delivered, the sums allowable as a deduction under section 38(1)(a) of TCGA 1992 (acquisition costs) must— 40
- (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 has effect accordingly.

Origin: FA 2002 Sch.26 para.45HA(2).

- (3) If the amount of the excess in subsection (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 must, for the purpose mentioned in subsection (2), be added to the amount of the consideration for the disposal of the shares. 5

Origin: FA 2002 Sch.26 para.45HA(3).

- (4) For the meaning of “G” and “L”, see section 99.

Origin: Drafting.

**99 Meaning of G and L in sections 97 and 98 [j72645HAb] 10**

- (1) This section applies for the purposes of sections 97 and 98.

Origin: Drafting.

- (2) G is the sum of the credits brought into account under section 5 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 any of the rights mentioned in section 97(1)(d) or the delivery mentioned in section 98(1)(d). 15

Origin: FA 2002 Sch.26 para.45HA(4).

- (3) L is the sum of the debits brought into account under section 5 in respect of the derivative contract in each relevant accounting period, so far as so referable. 20

Origin: FA 2002 Sch.26 para.45HA(4).

- (4) In this section “relevant accounting period” means –  
(a) the accounting period in which the disposal in question is made, or  
(b) any previous accounting period.

Origin: FA 2002 Sch.26 para.45HA(5). 25

*Treatment of net gains and losses on terminal exercise of option*

**100 Treatment of net gains and losses on terminal exercise of option [j72645H] 10**

- (1) This section applies if –  
(a) a derivative contract is one to which section 70 (creditor relationships: embedded derivatives which are options) applies for an accounting period, 30  
(b) rights to acquire shares fall to be treated as comprised in the derivative contract, and  
(c) those rights are to any extent exercised or otherwise disposed of in the accounting period. 35

Origin: FA 2002 Sch.26 para.45H(1).

- (2) Subsection (3) applies if there is a disposal of the asset representing the creditor relationship mentioned in section 70(2).

Origin: FA 2002 Sch.26 para.45H(2).

- (3) For the purpose of calculating 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) must –
- (a) if the sum of G and CV exceeds L, be increased by the amount of that excess, 5
  - (b) if L exceeds the sum of G and CV, be reduced by the amount of that excess.

Origin: FA 2002 Sch.26 para.45H(3), (6); drafting.

- (4) Subsection (5) applies if there is a disposal of all or any of the shares (“the relevant shares”) acquired – 10
- (a) as a result of the exercise of rights mentioned in subsection (1)(b), and
  - (b) in circumstances where a disposal is deemed not to occur because of section 127 of TCGA 1992.

Origin: FA 2002 Sch.26 para.45H(2).

- (5) For the purpose of calculating 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 TCGA 1992 (acquisition costs) must – 15
- (a) if the sum of G and CV exceeds L, be increased by the amount of that excess,
  - (b) if L exceeds the sum of G and CV, be reduced by the amount of that excess, 20

and, in the case of a part disposal of those shares, section 42(2) of that Act has effect accordingly.

Origin: FA 2002 Sch.26 para.45H(4), (6); drafting.

- (6) If the amount of the excess in subsection (3)(b) or (5)(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 must, for the purpose mentioned in subsection (3) or (5) (as the case may be), be added to the amount of the consideration for the disposal of the shares. 30

Origin: FA 2002 Sch.26 para.45H(5).

- (7) Sections 37 and 39 of TCGA 1992 do not apply in relation to a disposal mentioned in subsection (1)(c), (2) or (4) above.

Origin: FA 2002 Sch.26 para.45H(5A).

- (8) For the meaning of “G”, “L” and “CV”, see section 101. 35

Origin: Drafting.

## 101 Meaning of G, L and CV in section 100 [j72645Hb]

- (1) This section applies for the purposes of section 100.

Origin: Drafting.

- (2) G is the sum of the amounts of any chargeable gains treated as accruing to the company under section 66(3)(a) in respect of the derivative contract in each relevant accounting period, so far as referable, on a just and reasonable 40

apportionment, to the shares acquired as a result of the exercise of rights mentioned in section 100(1)(b).

Origin: FA 2002 Sch.26 para.45H(6); drafting.

- (3) L is the sum of the amounts of any allowable losses treated as accruing to the company under section 66(3)(b) in respect of the derivative contract in each relevant accounting period, so far as so referable. 5

Origin: FA 2002 Sch.26 para.45H(6).

- (4) CV is the amount by which the carrying value of the [section [j061094Aaa](#)] host contract at the date on which the option is exercised exceeds the carrying value of that contract at – 10
- (a) the date on which the company became party to the creditor relationship mentioned in section 70(2), or
  - (b) (if later) the date on which the derivative contract became one to which section 70 applies.

Origin: FA 2002 Sch.26 para.45H(7); drafting. 15

- (5) In this section “relevant accounting period” means –
- (a) the accounting period in which the disposal in question is made, or
  - (b) any previous accounting period.

Origin: FA 2002 Sch.26 para.45H(7).

- (6) For the meaning of “[section [j061094Aaa](#)] host contract”, see section 133(2). 20

Origin: Drafting.

## 102 Treatment of net gains and losses on disposal of certain embedded derivatives [j72645HZA](#)

- (1) This section applies if –
- (a) a derivative contract is one to which section 73 (creditor relationships: embedded derivatives which are exactly tracking contracts for differences) applies for an accounting period, and 25
  - (b) the asset representing the creditor relationship mentioned in section 73(2) is disposed of in the accounting period.

Origin: FA 2002 Sch.26 para.45HZA(1). 30

- (2) For the purpose of calculating 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) must –
- (a) if the sum of G and CV exceeds L, be increased by the amount of that excess, 35
  - (b) if L exceeds the sum of G and CV, be reduced by the amount of that excess.

Origin: FA 2002 Sch.26 para.45HZA(2), (5); drafting.

- (3) If the amount of the excess in subsection (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 must, for the purpose mentioned in subsection (2), be added to the amount of the consideration for the disposal. 40

Origin: FA 2002 Sch.26 para.45HZA(3).

- (4) Sections 37 and 39 of TCGA 1992 do not apply in relation to the disposal.

Origin: FA 2002 Sch.26 para.45HZA(4).

- (5) For the meaning of “G”, “L” and “CV”, see section 103.

Origin: Drafting.

5

### 103 Meaning of G, L and CV in section 102 [j72645HZAa]

- (1) This section applies for the purposes of section 102.

Origin: Drafting.

- (2) G is the sum of the amounts of any chargeable gains treated as accruing to the company under section 66(3)(a) in respect of the derivative contract in each relevant accounting period.

10

Origin: FA 2002 Sch.26 para.45HZA(5); drafting.

- (3) L is the sum of the amounts of any allowable losses treated as accruing to the company under section 66(3)(b) in respect of the derivative contract in each relevant accounting period.

15

Origin: FA 2002 Sch.26 para.45HZA(5).

- (4) CV is the amount by which the carrying value of the [section j061094Aaa] 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 creditor relationship mentioned in section 73(2).

20

Origin: FA 2002 Sch.26 para.45HZA(6); drafting.

- (5) In this subsection “relevant accounting period” means –  
 (a) the accounting period in which the disposal is made, or  
 (b) any previous accounting period.

Origin: FA 2002 Sch.26 para.45HZA(6).

25

- (6) For the meaning of “[section j061094Aaa] host contract”, see section 133(2).

Origin: Drafting.

## CHAPTER 8

### CONTRACTS WHICH BECAME DERIVATIVE CONTRACTS AT CERTAIN DATES

### 104 Contracts which became derivative contracts on 16 March 2005 [j7264A]

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- (1) This section applies in relation to a company if conditions A to C are met in relation to a relevant contract.

Origin: FA 2002 Sch.26 para.4A(1).

- (2) Condition A is that the company was party to the relevant contract both immediately before and at 3.00pm on 16 March 2005.

35

Origin: FA 2002 Sch.26 para.4A(2).

- (3) Condition B is that the relevant contract –
- (a) was not a derivative contract immediately before 3.00pm on that date, but
  - (b) has been a derivative contract as from that time.
- Origin: FA 2002 Sch.26 para.4A(2). 5
- (4) Condition C is that immediately before that time the relevant contract was a chargeable asset.
- Origin: FA 2002 Sch.26 para.4A(2).
- (5) If the company ceases to be party to the contract, it must bring into account for the accounting period in which it so ceases the amount of any chargeable gain or allowable loss which would have been treated as accruing to it on the assumptions specified in subsection (6). 10
- Origin: FA 2002 Sch.26 para.4A(3).
- (6) Those assumptions are that –
- (a) the company made a disposal of the contract immediately before 3.00pm on 16 March 2005, and 15
  - (b) the disposal was for a consideration of an amount equal to the value (if any) given to the contract in the accounts of the company at the end of the company’s accounting period immediately before its first accounting period beginning on or after 1 January 2005. 20
- Origin: FA 2002 Sch.26 para.4A(3).
- 105 Contracts which became derivative contracts on 28 July 2005 [j7264B]**
- (1) This section applies in relation to a company if conditions A to C are met in relation to a relevant contract.
- Origin: FA 2002 Sch.26 para.4B(1). 25
- (2) Condition A is that the company was party to the contract both immediately before and on 28 July 2005.
- Origin: FA 2002 Sch.26 para.4B(2).
- (3) Condition B is that the contract –
- (a) was not a derivative contract immediately before that date, but 30
  - (b) apart from this section, would have been a derivative contract on that date if an accounting period of the company began on that date.
- Origin: FA 2002 Sch.26 para.4B(2).
- (4) Condition C is that the contract was a chargeable asset immediately before that date. 35
- Origin: FA 2002 Sch.26 para.4B(2).
- (5) The relevant contract is treated for the purposes of this Part as a derivative contract entered into by the company on 28 July 2005 for a consideration of an amount equal to the fair value of the contract on that date.
- Origin: FA 2002 Sch.26 para.4B(4). 40

- (6) If the company ceases to be party to the contract, it must bring into account for the accounting period in which it so ceases the amount of any chargeable gain or allowable loss which would have been treated as accruing to it on the assumptions specified in subsection (7).  
 Origin: FA 2002 Sch.26 para.4B(3). 5
- (7) Those assumptions are that –  
 (a) the company made a disposal of the contract immediately before 28 July 2005, and  
 (b) the disposal was for a consideration of an amount equal to the fair value of the contract on that date. 10  
 Origin: FA 2002 Sch.26 para.4B(3).
- 106 Plain vanilla contracts which became derivative contracts before 30 December 2006 [j7264d]**
- (1) This section applies if –  
 (a) a company is party to a plain vanilla contract which (not having been a derivative contract) became a derivative contract before 30 December 2006, 15  
 (b) the company disposes of the derivative contract by ceasing to be party to it, and  
 (c) sections 104 and 105 do not apply in relation to the contract. 20  
 Origin: FA 2002 Sch.26 para.4D(1).
- (2) Section 8(1) (priority of rules under this Part for corporation tax) does not apply for the purpose of calculating any chargeable gain accruing to the company on the disposal.  
 Origin: FA 2002 Sch.26 para.4D(2). 25
- (3) For the purpose of calculating 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) are adjusted by reference any credits and debits brought into account under section 5 (non-trading credits and debits brought into account under Part [6]). 30  
 Origin: FA 2002 Sch.26 para.4D(2).
- (4) If G exceeds L, those sums are increased by the amount of the excess.  
 Origin: FA 2002 Sch.26 para.4D(2).
- (5) If L exceeds G, those sums are reduced by the amount of the excess.  
 Origin: FA 2002 Sch.26 para.4D(2). 35
- (6) If –  
 (a) subsection (5) applies, and  
 (b) the difference between L and G exceeds the amount of the expenditure allowable under section 38(1)(a) of TCGA 1992,  
 for the purpose of calculating any chargeable gain accruing to the company on the disposal of the contract the amount of the excess that cannot be deducted from the expenditure is added to the consideration for the disposal. 40

Origin: FA 2002 Sch.26 para.4D(3).

- (7) In this section –  
G is the sum of the credits brought into account under section 5 in respect of the derivative contract in each relevant accounting period, and  
L is the sum of the debits brought into account under section 5 in respect of the derivative contract in each such period. 5

Origin: FA 2002 Sch.26 para.4D(4).

- (8) In subsection (7) “relevant accounting period” means –  
(a) the accounting period in which the disposal is made, or  
(b) any previous accounting period. 10

Origin: FA 2002 Sch.26 para.4D(5).

## CHAPTER 9

### CONTINUITY OF TREATMENT: GROUPS AND SE MERGERS

*Continuity of treatment where group member replaces another as party to derivative contract*

#### **107 Group member replacing another as party to derivative contract [j72628] 15**

- (1) This section applies if –  
(a) there is a transaction within section 108(2) or a series of transactions within section 108(3),  
(b) as a result, one of the companies involved (“the transferee”) directly or indirectly replaces the other (“the transferor”) as party to a derivative contract. 20

Origin: FA 2002 Sch.26 para.28(1).

- (2) The credits and debits to be brought into account in accordance with this Part in respect of the derivative contract are determined in accordance with subsections (3) to (5). 25

Origin: FA 2002 Sch.26 para.28(3).

- (3) For the accounting period in which the transaction or, as the case may be, the first of the transactions takes place, the transferor is treated as having entered into that transaction for a consideration of an amount equal to the notional carrying value of the contract (see subsection (6)). 30

Origin: FA 2002 Sch.26 para.28(3).

- (4) For any accounting period in which the transferee is party to the contract, it is treated as if it had acquired the contract for a consideration of an amount equal to its notional carrying value.

Origin: FA 2002 Sch.26 para.28(3). 35

- (5) If a discount arises in respect of the transaction or series of transactions, the consideration for the purposes of subsection (3) must be increased by the amount of the discount.

Origin: FA 2002 Sch.26 para.28(3ZA).

- (6) For the purposes of this section –
- (a) “discount” has same meaning as in [section [j0610100ab](#)],
  - (b) the notional carrying value of a contract is the amount that would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the company ceased to be party to the contract, and 5
  - (c) references to a company replacing another need to be read with section 109.

[Origin: FA 2002 Sch.26 para.28\(3\), \(5\); drafting.](#)

- (7) If the credits or debits to be brought into account in accordance with this Part in respect of any amounts recognised for accounting purposes fall to be determined in accordance with subsections (2) to (5), Schedule 28AA to ICTA (provision not at arm’s length) does not apply in relation to those amounts. 10

[Origin: FA 2002 Sch.26 para.28\(3A\).](#)

- (8) This section is subject to section 110 (exceptions to this section where transferor uses fair value accounting). 15

[Origin: FA 2002 Sch.26 para.28\(7\).](#)

- (9) See also section 123 (which modifies this section and section 108 for insurance companies).

[Origin: Drafting.](#) 20

#### **108 Transactions to which section 107 applies [j72628e](#)**

- (1) This section applies for the purposes of section 107(1)(a).

[Origin: Drafting.](#)

- (2) A transaction is within this subsection if it is a related transaction between two companies that are – 25
- (a) members of the same group, and
  - (b) within the charge to corporation tax in respect of that transaction.

[Origin: FA 2002 Sch.26 para.28\(2\).](#)

- (3) A series of transactions is within this subsection if it is a series of transactions having the same effect as a related transaction between two companies each of which – 30

- (a) has been a member of the same group at any time in the course of that series of transactions, and
- (b) is within the charge to corporation tax in respect of the related transaction. 35

[Origin: FA 2002 Sch.26 para.28\(2\).](#)

- (4) In this section, references to a company which is a member of a group of companies must be read in accordance with section 170 of TCGA 1992.

[Origin: FA 2002 Sch.26 para.28\(6\).](#)

**109 Meaning of company replacing another as party to derivative contract [j72628c]**

- (1) The reference in section 107 to one company (“A”) replacing another company (“B”) as party to a derivative contract includes references to A becoming party to a derivative contract which – 5
- (a) confers rights within subsection (2),
  - (b) imposes liabilities within subsection (2), or
  - (c) both confers such rights and imposes such liabilities.

Origin: FA 2002 Sch.26 para.28(4).

- (2) Rights or liabilities are within this subsection if they are equivalent to those of B under a derivative contract to which B has previously ceased to be party. 10

Origin: FA 2002 Sch.26 para.28(4).

**110 Exception to section 107 where transferor uses fair value accounting [j72630]**

- (1) This section applies instead of section 107(2) to (7) if, in a case within section 107(1), the transferor uses fair value accounting as respects the derivative contract. 15

Origin: FA 2002 Sch.26 para.30(1).

- (2) The amount that is to be brought into account by the transferor in respect of – 20
- (a) the transaction mentioned in that section, or
  - (b) the series of transactions mentioned in that section taken together,
- is the fair value of the derivative contract as at the date of transfer to the transferee.

Origin: FA 2002 Sch.26 para.30(1).

- (3) If a discount arises in respect of the transaction or series of transactions, the amount to be brought into account under subsection (2) must be increased by the amount of the discount. 25

Origin: FA 2002 Sch.26 para.30(1A).

- (4) For any accounting period in which the transferee is party to the derivative contract, for the purpose of determining the credits and debits to be brought into account in respect of the contract in accordance with this Part, the transferee is treated as if it had acquired the contract for a consideration of an amount equal to the fair value of the derivative contract as at the date of transfer to it. 30

Origin: FA 2002 Sch.26 para.30(1).

- (5) In this section – 35
- “discount” has the same meaning as in [section j0610100ab],
  - “the transferor” and “the transferee” have the same meaning as in section 107.

Origin: FA 2002 Sch.26 para.30(1A), (2); drafting.

*Transferee leaving group after replacing transferor***111 Transferee leaving group after replacing transferor as party to contract: introduction [j72630A]**

- (1) Sections 112 and 113 apply if –
- (a) section 107 (group member replacing another as party to derivative contract) applies because of a transaction or series of transactions within section 108(2) or (3), and 5
  - (b) before the end of the relevant 6 year period, the transferee ceases to be a member of the relevant group.

Origin: FA 2002 Sch.26 para.30A(1). 10

- (2) In this section and sections 112 and 113 –
- “the relevant 6 year period” means the period of 6 years following –
- (a) in a case where section 107 applies because of a transaction within section 108(2) (“case A”), that transaction, or
  - (b) in a case where section 107 applies because of a series of transactions within section 108(3) (“case B”), the last transaction of that series, 15
- “the relevant derivative contract” means the derivative contract mentioned in section 107(1),
- “the relevant group” means – 20
- (a) in case A, the group mentioned in section 108(2),
  - (b) in case B, the group mentioned in section 108(3),
- “the transferee” has the same meaning as in section 107.

Origin: FA 2002 Sch.26 para.30A(8); drafting.

**112 Replacement of transferor otherwise than because of exempt distribution [j72630Aa]** 25

- (1) This section applies if –
- (a) the transferee ceases to be a member of the relevant group, and
  - (b) it does not so cease just because of a distribution which is exempt because of section 213(2) of ICTA. 30
- Origin: FA 2002 Sch.26 para.30A(1), (5).
- (2) If condition A or B is met, this Part applies as if –
- (a) the transferee had assigned its rights and liabilities under the relevant derivative contract immediately before so ceasing,
  - (b) the assignment had been for a consideration of an amount equal to their fair value at that time, and 35
  - (c) the transferee had immediately reacquired them for a consideration of the same amount.

Origin: FA 2002 Sch.26 para.30A(2), (4).

- (3) Condition A is that if subsection (2) applied a credit would fall to be brought into account in accordance with this Part by the transferee because of subsection (2)(a) and (b). 40

Origin: FA 2002 Sch.26 para.30A(3).

- (4) Condition B is that—
- (a) the transferee has a hedging relationship between the relevant derivative contract and a creditor relationship, and
  - (b) because of [section [j0696912Aba](#)](2)(a) and (b)] a credit must be brought into account by the transferee for the purposes of Part [6] (loan relationships) in respect of the creditor relationship. 5

Origin: FA 2002 Sch.26 para.30A(4).

- (5) For the meaning of—
- (a) “creditor relationship”, see section 128(1),
  - (b) “hedging relationship”, see section 130. 10

Origin: Drafting.

### 113 Replacement of transferor because of exempt distribution [\[j72630Ab\]](#)

- (1) This section applies if—
- (a) the transferee ceases to be a member of the relevant group just because of a distribution which is exempt because of section 213(2) of ICTA, and 15
  - (b) there is a chargeable payment within the meaning of section 214(2) of ICTA within 5 years after the making of the distribution.

Origin: FA 2002 Sch.26 para.30A(5).

- (2) If condition A or B is met, this Part applies as if—
- (a) the transferee had assigned its rights and liabilities under the relevant derivative contract immediately before that chargeable payment was made, 20
  - (b) the assignment had been for a consideration of an amount equal to their fair value immediately before the transferee ceased to be a member of the relevant group, and 25
  - (c) the transferee had immediately reacquired them for a consideration of the same amount.

Origin: FA 2002 Sch.26 para.30A(6), (7).

- (3) Condition A is that if subsection (2) applied a credit would fall to be brought into account in accordance with this Part by the transferee because of subsection (2)(a) and (b). 30

Origin: FA 2002 Sch.26 para.30A(3), (7).

- (4) Condition B is that—
- (a) the transferee has a hedging relationship between the relevant derivative contract and a creditor relationship, and 35
  - (b) because of [section [j0696912Ab](#)](2)(a) and (b)] a credit must be brought into account by the transferee for the purposes of Part [6] (loan relationships) in respect of the creditor relationship.

Origin: FA 2002 Sch.26 para.30A(4), (7).

- (5) For the meaning of—
- (a) “creditor relationship”, see section 128(1),
  - (b) “hedging relationship”, see section 130. 40

Origin: Drafting.

*Formation of SE by merger***114 Formation of SE by merger: disregard of incidental transfers of derivative contracts [j72630B]**

- (1) This section applies if –
- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No. 2157/2001 on the Statute for a European Company, 5
  - (b) each merging company is resident in a member State,
  - (c) the merging companies are not all resident in the same State,
  - (d) immediately after formation the SE is within the charge to corporation tax, and 10
  - (e) in the course of the merger there is a transfer of rights or liabilities under a derivative contract.

*Origin:* FA 2002 Sch.26 para.30B(1), (2).

- (2) The transfer is ignored except for the purposes of – 15
- (a) determining the credits or debits to be brought into account in respect of exchange gains or losses,
  - (b) identifying the company which is to bring them into account, and
  - (c) identifying the company in whose case a credit or debit which does not relate to the transfer is to be brought into account. 20

*Origin:* FA 2002 Sch.26 para.30B(2).

- (3) The transferor and the transferee are treated as being the same company, except for the purposes specified in subsection (2).

*Origin:* FA 2002 Sch.26 para.30B(3).

- (4) For the purposes of this section, a company is resident in a member State if – 25
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory not within a member State. 30

*Origin:* FA 2002 Sch.26 para.30B(7).

- (5) For exceptions to this section, see –
- (a) section 115 (transferor using fair value accounting), and
  - (b) section 116 (tax avoidance etc).

*Origin:* Drafting. 35

**115 Exception to section 114: transferor using fair value accounting [j72630ba]**

- (1) This section applies instead of section 114(2) and (3) if, in a case within section 114(1), the transferor uses fair value accounting as respects the derivative contract.

*Origin:* FA 2002 Sch.26 para.30B(4). 40

- (2) The amount that is to be brought into account by the transferor in respect of the transfer is the fair value of the derivative contract as at the date of transfer to the transferee.  
[Origin: FA 2002 Sch.26 para.30B\(4\).](#)
- (3) For any accounting period in which the transferee is party to the derivative contract, for the purpose of determining the credits and debits to be brought into account in respect of the contract in accordance with this Part, the transferee is treated as if it had acquired the contract for a consideration of an amount equal to the fair value of the derivative contract as at the date of transfer to it. 5  
10  
[Origin: FA 2002 Sch.26 para.30B\(4\).](#)
- (4) If a discount arises in respect of the transfer, the amount to be brought into account under subsection (2) must be increased by the amount of the discount.  
[Origin: FA 2002 Sch.26 para.30B\(4\).](#)
- (5) In this section – 15  
    “discount” has the same meaning as in [section [j0610100ab](#)],  
    “the transferor” and “the transferee” have the same meaning as in section 114.  
[Origin: FA 2002 Sch.26 para.30B\(4\).](#)
- 116 Exception to section 114: tax avoidance etc [j72630bb](#)** 20
- (1) Section 114 does not apply in relation to the formation of an SE by merger if condition A or B is met.  
[Origin: FA 2002 Sch.26 para.30B\(5\).](#)
- (2) Condition A is that the merger is not effected for genuine commercial reasons.  
[Origin: FA 2002 Sch.26 para.30B\(5\).](#) 25
- (3) Condition B is that the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.  
[Origin: FA 2002 Sch.26 para.30B\(5\).](#)
- (4) This section does not prevent section 114 from applying if before the merger – 30  
    (a) the merging companies have applied to Her Majesty’s Revenue and Customs, and  
    (b) they have notified the companies that they are satisfied this section will not have that effect.  
[Origin: FA 2002 Sch.26 para.30B\(6\).](#) 35

## CHAPTER 10

### SPECIAL KINDS OF COMPANY

#### 117 Investment trusts: profits or losses of a capital nature [j72638]

- (1) Profits or losses of a capital nature arising to an investment trust from a derivative contract must not be brought into account as credits or debits in accordance with this Part. 5

Origin: FA 2002 Sch.26 para.38(1).

- (2) In relation to an investment trust that prepares accounts in accordance with UK generally accepted accounting practice, for the purposes of this section “profits or losses of a capital nature” means profits or losses which are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice. 10

Origin: FA 2002 Sch.26 para.38(2), (3).

- (3) In relation to an investment trust that prepares accounts in accordance with international accounting standards, for the purposes of this section “profits or losses of a capital nature” means profits or losses which – 15
- (a) are accounted for through the capital column of the income statement in accordance with the Statement of Recommended Practice, or
  - (b) would have been so accounted for if that Statement had been applied correctly. 20

Origin: FA 2002 Sch.26 para.38(2); SI 2006/1182 arts.2(1), (2), 3(1), (2), (3).

- (4) In relation to an accounting period for which it is required or permitted to be used, “the Statement of Recommended Practice” means – 25
- (a) the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2003 and revised in December 2005, as from time to time modified, amended or revised, or
  - (b) any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.

Origin: FA 2002 Sch.26 para.38(4); SI 2006/1182 art.3(5). 30

- (5) The Treasury may by order amend the definition of “profits or losses of a capital nature” in subsection (3).

Origin: FA 2002 Sch.26 para.38(2).

#### 118 Venture capital trusts: profits or losses of a capital nature [j72638A]

- (1) Profits or losses of a capital nature arising to a venture capital trust from a derivative contract must not be brought into account as credits or debits in accordance with this Part. 35

Origin: FA 2002 Sch.26 para.38A(1).

- (2) In relation to a venture capital trust that prepares accounts in accordance with UK generally accepted accounting practice, for the purposes of this section “profits or losses of a capital nature” means profits or losses which – 40

- (a) are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice as if the venture capital trust were an investment trust, or
  - (b) would be so carried to or sustained by a capital reserve if the venture capital trust were an investment trust using the Statement of Recommended Practice. 5
- Origin: FA 2002 Sch.26 para.38A(2), (3).
- (3) In relation to a venture capital trust that prepares accounts in accordance with international accounting standards, for the purposes of this section “profits or losses of a capital nature” means profits or losses which – 10
    - (a) are accounted for through the capital column of the income statement in accordance with the Statement of Recommended Practice, or
    - (b) would have been so accounted for if that Statement had been applied correctly.
- Origin: FA 2002 Sch.26 para.38A(2); SI 2006/1182 arts.2(1), (2), 3(1), (2), (4). 15
- (4) In this section “the Statement of Recommended Practice” has the meaning given by section 117(4) (investment trusts: profits or losses of a capital nature).  
Origin: FA 2002 Sch.26 para.38A(4); SI 2006/1182 art. 3(5).
- (5) The Treasury may by order amend the definition of “profits or losses of a capital nature” in subsection (3). 20  
Origin: FA 2002 Sch.26 para.38A(2).

## CHAPTER 11

### MUTUAL TRADING COMPANIES AND INSURANCE COMPANIES

#### *Mutual trading companies*

- 119 Modifications for mutual trading companies [J726mtc] 25**
    - (1) This Part has effect in relation to mutual trading companies with the following modifications.  
Origin: Drafting.
    - (2) Subsections (3) to (5) of section 26 (conditions B to D mentioned in section 24(3)) have effect as if for paragraph (a) there were substituted – 30
      - “(a) the relevant contract is entered into or acquired by a mutual trading company,”.
- Origin: FA 2002 Sch.26 para.4(2B), (2C), (2CA).
- (3) Section 68 (derivative contracts relating to land or certain tangible movable property) has effect as if for subsection (2) (condition A) there were substituted – 35
    - “(2) Condition A is that the company is a mutual trading company.”
- Origin: FA 2002 Sch.26 para.45C(1), (2).
- (4) Section 70 (creditor relationships: embedded derivatives which are options)

has effect as if for subsection (4) (condition C) there were substituted –

“(4) Condition C is that the company is a mutual trading company.”

Origin: FA 2002 Sch.26 para.45D(2), (3).

- (5) Section 73 (creditor relationships: embedded derivatives which are exactly tracking contracts for differences) has effect as if for subsection (6) (condition E) there were substituted – 5

“(6) Condition E is that the company is a mutual trading company.”

Origin: FA 2002 Sch.26 para.45F(2), (3).

- (6) Section 75 (property based total return swaps) has effect as if for subsection (6) (condition E) there were substituted – 10

“(6) Condition E is that the company is a mutual trading company.”

Origin: FA 2002 Sch.26 para.45G(1A), (1B).

#### *Insurance companies*

### **120 Modifications for insurance companies [J726insurance]**

This Part has effect in relation to insurance companies with the modifications in sections 121 to 123. 15

Origin: Drafting.

### **121 Modification of section 26 [J726insurance1]**

- (1) This section contains a modification of section 26 for insurance companies.

Origin: Drafting. 20

- (2) Section 26(4) (condition C mentioned in section 24(3)) has effect as if for paragraph (a) there were substituted –

“(a) the relevant contract is entered into or acquired by a company for the purposes of its life assurance business, and”.

Origin: FA 2002 Sch.26 para.4(2C). 25

### **122 Modifications of Chapter 6 [J726insurance2]**

- (1) This section contains modifications of Chapter 6 for insurance companies.

Origin: Drafting.

- (2) Section 68 (derivative contracts relating to land or certain tangible movable property) has effect as if for subsection (2) (condition A) there were substituted – 30

“(2) Condition A is that the company is party to the derivative contract for the purposes of its life assurance business.”

Origin: FA 2002 Sch.26 para.45C(1), (2).

- (3) Section 70 (creditor relationships: embedded derivatives which are options) 35

has effect as if for subsection (4) (condition C) there were substituted –

“(4) Condition C is that the company is party to the creditor relationship for the purposes of its life assurance business.”

Origin: FA 2002 Sch.26 para.45D(2), (3).

- (4) Section 73 (creditor relationships: embedded derivatives which are exactly tracking contracts for differences) has effect as if for subsection (6) (condition E) there were substituted – 5

“(6) Condition E is that the company is party to the creditor relationship for the purposes of its life assurance business.”

Origin: FA 2002 Sech.26 para.45F(2), (3). 10

- (5) Section 75 (property based total return swaps) has effect as if for subsection (6) (condition E) there were substituted –

“(6) Condition E is that the company is party to the derivative contract for the purposes of its life assurance business.”

Origin: FA 2002 Sch.26 para.45G(1A), (1B). 15

### 123 Modifications of Chapter 9 [J726insurance3]

- (1) This section contains modifications of Chapter 9 for insurance companies.

Origin: Drafting.

- (2) Section 107(1)(a) (which sets out one of the conditions for that section to apply) has effect as if for “section 108(2)” there were substituted “section 108(2), (2A) or (2B)”. 20

Origin: FA 2002 Sch.26 para.28(1).

- (3) Section 108 (transactions to which section 107 applies) has effect as if after subsection (2) there were inserted –

“(2A) A transaction is within this subsection if it is a transfer between two companies of business consisting of the effecting or carrying out of contracts of long-term insurance which has effect under an insurance business transfer scheme. 25

(2B) A transaction is within this subsection if it is a transfer between two companies which is a qualifying overseas transfer within the meaning given by the definition treated as inserted into section 431(2) of ICTA by paragraph 6(9) of Schedule 19AC to that Act (transfer of business of overseas life insurance company).” 30

Origin: FA 2002 Sch.26 para.28(2).

- (4) Section 107 does not apply as a result of a transaction or series of transactions within section 108(2) or (3) in relation to any transfer of an asset, or of any rights or duties under or interest in an asset, if the asset was within one of the categories set out in section 440(4)(a) to (e) of ICTA (assets held for certain categories of long term business) – 35

- (a) immediately before the transfer, or 40  
(b) immediately after it.

Origin: FA 2002 Sch.26 para.29(1).

- (5) Section 107 does not apply as a result of a transaction within section 108(2A) or (2B) in relation to any transfer of an asset, or of any rights or duties under or interest in an asset, if the asset –
- (a) was within one of the categories set out in section 440(4) of ICTA immediately before the transfer, and 5
  - (b) is not within that category immediately after it.

Origin: FA 2002 Sch.26 para.29(2).

- (6) Subsection (7) applies for the purposes of subsection (5) if one of the companies is an overseas life insurance company (within the meaning of Chapter 1 of Part 12 of ICTA). 10

Origin: FA 2002 Sch.26 para.29(3), (4).

- (7) An asset is taken to be within the same category both immediately before the transfer and immediately after it if the asset –
- (a) was within one category immediately before the transfer, and 15
  - (b) is within the corresponding category immediately after it.

Origin: FA 2002 Sch.26 para.29(3).

#### 124 Application of Part 1 of Schedule 11 to FA 1996 [J72642]

- (1) Part 1 of Schedule 11 to FA 1996 (special provision with respect to loan relationships for insurance companies) has effect in relation to derivative contracts as it has effect in relation to loan relationships, but with the following modifications. 20

Origin: FA 2002 Sch.26 para.42(1).

- (2) Any provision of that Part which applies only to debtor relationships does not have effect in relation to derivative contracts. 25

Origin: FA 2002 Sch.26 para.42(2).

- (3) References in that Part to Chapter 2 of Part 4 of FA 1996 must be read as references to this Part.

Origin: FA 2002 Sch.26 para.42(3).

- (4) References in that Part to section 80(5) of that Act must be read as references to section 8(1). 30

Origin: FA 2002 Sch.26 para.42(3).

- (5) References in that Part to section 82(2) of that Act must be read as references to section 4.

Origin: FA 2002 Sch.26 para.42(3). 35

- (6) References in that Part to credits and debits given in respect of a loan relationship by Chapter 2 of Part 4 of that Act must be read as references to the credits and debits given in respect of a derivative contract by this Part.

Origin: FA 2002 Sch.26 para.42(3).

## CHAPTER 12

### GENERAL AND SUPPLEMENTARY PROVISION

#### *Power to amend certain provisions*

#### **125 Power to amend certain provisions [j72613cgt]**

- (1) The Treasury may by order amend – 5
- (a) sections 10 to 20 (but not section 12(1) and (3) to (5)),
  - (b) sections 24 to 31,
  - (c) Chapter 4 (but not sections 44 to 49 and 53(4)),
  - (d) Chapter 6,
  - (e) Chapter 7 (but not section 90), 10
  - (f) Chapter 8,
  - (g) Chapter 11 (but not sections 123 and 124),
  - (h) section 126,
  - (i) section 130,
  - (j) section 131, 15
  - (k) section 132,
  - (l) section 133, and
  - (m) the relevant definitions in section 134.
- [Origin: FA 2002 Sch.26 para.13\(1\).](#)
- (2) The relevant definitions are the definitions of the following expressions – 20
- capital redemption policy,
  - depository receipt (in relation to shares),
  - designated,
  - intangible fixed assets,
  - Insurance Prudential Sourcebook, 25
  - shares in a company, and
  - warrant.
- [Origin: FA 2002 Sch.26 para.13\(1\); drafting.](#)
- (3) The provision that may be made by an order under this section includes provision – 30
- (a) adding to or varying the descriptions of contract which are derivative contracts within section 10 or removing any such description of contract, or
  - (b) adding to or varying the descriptions of contract which are excluded under section 24 or removing any such description of contract. 35
- [Origin: FA 2002 Sch.26 para.13\(2\).](#)
- (4) The provision that may be made under subsection (3)(b), in relation to contracts which are excluded under section 24, includes provision –
- (a) adding to the provisions which qualify the exclusion of contracts under that section, 40
  - (b) varying any such provisions, or
  - (c) removing any such provision.

Origin: FA 2002 Sch.26 para.13(3).

- (5) An order under this section may provide for any of its provisions to have effect in relation to –
- (a) accounting periods ending on or after the day on which the order comes into force (whenever they begin), 5
  - (b) periods of account beginning before the order is made, but not earlier than the beginning of the calendar year in which it is made.

Origin: FA 2002 Sch.26 para.13(4); FA 2005 Sch.4 para.52.

- (6) The power to make an order under this section includes power –
- (a) to make different provision for different cases, and 10
  - (b) to make such consequential, supplementary, incidental or transitional provisions or such savings as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under an enactment).

Origin: FA 2002 Sch.26 para.13(5). 15

*Other general definitions*

**126 Meaning of “carrying value” [j72650Ad]**

- (1) For the purposes of this Part, the “carrying value” of a contract includes amounts recognised for accounting purposes in relation to the contract in respect of – 20
- (a) accrued amounts,
  - (b) amounts paid or received in advance, or
  - (c) impairment losses (including provisions for bad or doubtful debts).

Origin: FA 2002 Sch.26 para.50A(3A).

- (2) In determining the profits and losses to be recognised in determining the carrying value of the contract for the purposes of this Part, the provisions specified in subsection (3) apply as they apply for the purposes of determining the credits and debits to be brought into account in accordance with this Part. 25

Origin: FA 2002 Sch.26 para.50A(3B).

- (3) Those provisions are – 30
- (a) section 21(2) and (3) (loan relationships with embedded derivatives), and
  - (b) sections 107 to 109 (transactions within groups).

Origin: FA 2002 Sch.26 para.50A(3B).

- (4) In this section “impairment loss” means a debit in respect of the impairment of a financial asset, and “impairment” includes uncollectability. 35

Origin: Annex 1, Change 5.

**127 Meaning of “chargeable asset” [j72637b]**

- (1) For the purposes of this Part, an asset is a chargeable asset if any gain accruing on its disposal would be a chargeable gain for corporation tax purposes. 40

Origin: FA 2002 Sch.26 paras.4A(4), 4B(5), 37(6), 43A(3).

- (2) For the purposes of this section, “asset” includes any obligations under futures contracts which are regarded because of section 143 of TCGA 1992 as assets to the disposal of which that Act applies.

Origin: FA 2002 Sch.26 paras.4A(4), 4B(5), 37(6), 43A(3).

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## 128 Meaning of “creditor relationship” and “debtor relationship” [j72612b]

- (1) In this Part “creditor relationship” has the same meaning as in Part [6] (loan relationships) (see [section {j061081}(5)]).

Origin: FA 2002 Sch.26 paras.30A(7), 54(1).

- (2) In this Part “debtor relationship” has the same meaning as in that Part (see [section {j061081}(6)]).

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Origin: FA 2002 Sch.26 para.54(1).

## 129 Meaning of expressions relating to exchange gains and losses [j72654]

- (1) References in this Part to exchange gains or exchange losses, in relation to a company, are references respectively to –

15

- (a) gains which arise as a result of comparing at different times the expression in one currency of the whole or part of the valuation put by the company in another currency on an asset or liability of the company, or  
(b) losses which so arise.

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Origin: FA 2002 Sch.26 para.54(2).

- (2) If the result of such a comparison is that neither an exchange gain nor an exchange loss arises, for the purposes of this Part an exchange gain of nil is taken to arise in the case of that comparison.

Origin: FA 2002 Sch.26 para.54(2).

25

- (3) The Treasury may make provision by regulations as to the way in which –

- (a) exchange gains or losses, and  
(b) any other profits or gains or losses

are to be calculated for the purposes of this section in a case where fair value accounting is used by the company.

30

Origin: FA 2002 Sch.26 para.54(2A).

- (4) The regulations may be made so as to apply to periods of account beginning before the regulations are made, but not earlier than the beginning of the calendar year in which they are made.

Origin: FA 2002 Sch.26 para.54(2A).

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- (5) Any reference in this Part to an exchange gain or loss from a company’s derivative contract is a reference to an exchange gain or loss arising to a company in relation to a derivative contract of the company.

Origin: FA 2002 Sch.26 para.54(3).

### 130 Meaning of “hedging relationship” [j72612e]

- (1) This section applies for the purposes of this Part.  
*Origin: Drafting.*
- (2) A company has a “hedging relationship” between a relevant contract (“the hedging instrument”) and an asset or liability (“the hedged item”) so far as condition A or B is met. 5  
*Origin: FA 2002 Sch.26 para.12(14)*
- (3) Condition A is that the hedging instrument and the hedged item are designated by the company as a hedge. 10  
*Origin: FA 2002 Sch.26 para.12(14).*
- (4) Condition B is that—  
 (a) the hedging instrument is intended to act as a hedge of the exposure to changes in fair value of the hedged item that is attributable to a particular risk and could affect the profit or loss of the company, and  
 (b) the hedged item is an asset or liability recognised for accountancy purposes or is an identified portion of such an asset or liability. 15  
*Origin: FA 2002 Sch.26 para.12(14).*
- (5) For the purposes of subsections (2) and (4), the liabilities of a company include its own share capital. 20  
*Origin: FA 2002 Sch.26 para.12(14).*

### 131 Meaning of “original creditor relationship” [j72612c]

In this Part “original creditor relationship” means a creditor relationship which is treated by section 21 as divided between a host contract and one or more embedded derivatives.

*Origin: FA 2002 Sch.26 para.12(1), (11D).* 25

### 132 Meaning of “relevant credits” and “relevant debits” [j72645Ga]

- (1) This section applies for the purposes of this Part.  
*Origin: Drafting.*
- (2) In the case of a derivative contract which is not one to which section 75 applies for an accounting period, the relevant credits and debits are the credits and debits which are given in relation to the derivative contract for the accounting period by section 32. 30  
*Origin: FA 2002 Sch.26 paras.45A(3), 45FA(2), 45J(3), 45K(3), 45KA(2), 45L(1B).*
- (3) In the case of a derivative contract to which section 75 applies for an accounting period, the relevant credit and debits are the credits and debits which— 35  
 (a) are given in relation to the derivative contract for the accounting period by section 32, and  
 (b) are within subsection (4).  
*Origin: FA 2002 Sch.26 paras.45A(3), 45G(2).*

- (4) 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.

5

Origin: FA 2002 Sch.26 para.45G(3).

- (5) In subsection (4) “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.

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Origin: FA 2002 Sch.26 para.45G(4).

- (6) For the meaning of “the capital value index”, see section 75(4).

Origin: Drafting.

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### 133 Meaning of “section 21 embedded derivative” and “[section {j061094Aaa}] host contract” [j72612A]

- (1) In this Part “section 21 embedded derivative” means a relevant contract to which a company is treated as party because of section 21(2).

Origin: FA 2002 Sch.26 para.12(1), (11A); drafting.

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- (2) In this Part “[section {j061094Aaa}] host contract” means a loan relationship to which a company is treated as party because of [section {j061094Aaa}(2)].

Origin: FA 2002 Sch.26 para.12(1), (11B); drafting.

### 134 Other definitions [j72612]

In this Part –

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“bank” means –

- (a) the Bank of England,
- (b) a person within section 840A(1)(b) of ICTA, or
- (c) a firm within section 840A(1)(c) of that Act,

“capital redemption policy” means a contract effected in the course of capital redemption business (within the meaning of section 458 of ICTA),

30

“contract of insurance” has the meaning given by Article 3(1) of FISMA(RA)O 2001,

“contract of long-term insurance” means a contract within Part 2 of Schedule 1 to FISMA(RA)O 2001,

35

“depository receipt”, in relation to shares (as defined in this section), has the same meaning as it has in Part 4 of FA 1986 in relation to shares (within the meaning of that Part),

“designated” has the meaning it has for accounting purposes,

40

“equity instrument” has the meaning it has for accounting purposes,

“fair value”, in relation to a derivative contract of a company, means the amount which, at the time the value falls to be determined, is the

- amount that the company would obtain from or, as the case may be, would have to pay to an independent person for –
- (a) the transfer of the company’s rights under the contract, and
  - (b) the release of all the company’s liabilities under it,
- “fair value accounting” means a basis of accounting under which assets and liabilities are shown in the company’s balance sheet at their fair value, 5
- “financial instrument” has the meaning it has for accounting purposes,
- “financial trader” means –
- (a) a person who – 10
    - (i) is within section 31(1)(a), (b) or (c) of FISMA 2000, and
    - (ii) has permission under that Act to carry on one or more of the activities specified in Article 14 and, in so far as it applies to that Article, Article 64 of FISMA(RA)O 2001, or 15
  - (b) a person not within paragraph (a) who is approved by Her Majesty’s Revenue and Customs for the purposes of this section,
- “income statement” has the meaning it has for accounting purposes,
- “insurance business transfer scheme” means a scheme within section 105 of FISMA 2000, including an excluded scheme within Case 2, 3 or 4 of subsection (3) of that section, 20
- “insurance company” means a company which effects or carries out contracts of insurance,
- “Insurance Prudential Sourcebook” means the Prudential Sourcebook for Insurance made by the Financial Services Authority under FISMA 2000, 25
- “intangible fixed assets” has the same meaning as in Schedule 29 to FA 2002, and paragraphs 73 to 76 of that Schedule (and paragraph 72 of that Schedule so far as it relates to those paragraphs) have effect for the purposes of this Part as they have effect for the purposes of that Schedule, 30
- “investment trust” means a company approved for the purposes of section 842 of ICTA (investment trusts) for an accounting period,
- “life assurance business” has the same meaning as in section 431 of ICTA,
- “long-term insurance business” means business which consists of the effecting and carrying out of contracts which are within Part 2 of Schedule 1 to FISMA(RA)O 2001, 35
- “non-life mutual business” means any mutual trading, or any mutual insurance or other mutual business, which (in either case) is not life assurance business, 40
- “open-ended investment company” has the meaning given by section 468A(2) of ICTA,
- “profit-sharing arrangements”, in relation to a partnership, has the meaning given by [section {j190303}(2)] (allocation of firm’s profits or losses between partners), 45
- “shares”, in relation to a company, means any shares in the company under which an entitlement to receive distributions may arise, including –
- (a) a depositary receipt for shares under which such an entitlement may arise, and 50

(b) in the case of a company which has no share capital, any interests in the company possessed by members of the company,

“statement of changes in equity” has the meaning it has for accounting purposes, 5

“statement of total recognised gains and losses” has the meaning it has for accounting purposes,

“UK company” means a company incorporated or formed under the law of a part of the United Kingdom, and

“warrant” means an instrument which entitles the holder to subscribe for – 10

(a) shares in a company, or

(b) assets representing a loan relationship of a company, whether or not the shares or assets exist or are identifiable.

Origin: FA 2002 Sch.26 para.12(1), (2), (9), (11), (11C), (12), (13), (15), (17), 54(1), (4). 15