

SCHEDULES

SCHEDULE 26

DERIVATIVE CONTRACTS

PART 9

MISCELLANEOUS

Derivative contracts ceasing to be held for purposes of trade

- 44 (1) This paragraph applies where—
- (a) a company is party to a relevant contract which is a derivative contract by virtue of paragraph 5 (contracts entered into or acquired by a company for the purposes of a trade carried on by it), and
 - (b) the purposes for which the company entered into or acquired the relevant contract cease at any time (“the relevant time”) to be the company’s purposes in relation to that relevant contract, but
 - (c) the company continues to be party to the relevant contract after the relevant time.
- (2) Where this paragraph applies, the company shall be deemed—
- (a) to have disposed of the relevant contract immediately before the relevant time for a consideration of an amount equal to the fair value of the contract at the relevant time, and
 - (b) to have reacquired it immediately after that time for the same consideration.

Contracts becoming held for purposes of trade

- 45 (1) This paragraph applies where a relevant contract of a company—
- (a) whose underlying subject matter consists, or is treated as consisting, wholly of—
 - (i) shares in a company,
 - (ii) rights of a unit holder under a unit trust scheme, or
 - (iii) assets representing a loan relationship to which either section 92 or 93 of the Finance Act 1996 (c. 8) applies,
 - (b) which is a chargeable asset, and
 - (c) which was entered into or acquired by the company otherwise than for the purposes of a trade carried on by it,
- is at any time appropriated by the company for the purposes of a trade carried on by it.
- (2) Where this paragraph applies—

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- (a) section 161 of the Taxation of Chargeable Gains Act 1992 (c. 12) (appropriations to and from stock) shall have effect in relation to the appropriation of that contract, but
 - (b) the company may not make an election under subsection (3) of that section in relation to that appropriation.
- (3) For the purposes of this paragraph an asset is a chargeable asset if any gain accruing on the disposal of the asset by the company would be a chargeable gain for the purposes of the Taxation of Chargeable Gains Act 1992 (and includes any obligations under futures contracts which, by virtue of section 143 of that Act, are regarded as assets to the disposal of which that Act applies).
- (4) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of the property referred to in sub-paragraph (1)(a).

Contracts where part of underlying subject matter of excluded type

- 46 (1) This paragraph applies to a relevant contract of a company—
- (a) which is an option or future,
 - (b) which satisfies the requirements of paragraph 3 (accounting requirements etc), and
 - (c) whose underlying subject matter falls within sub-paragraph (2).
- (2) The underlying subject matter of a relevant contract falls within this sub-paragraph if it consists of—
- (a) any one or more of the excluded types of property falling within paragraphs (a) to (f) of sub-paragraph (2) of paragraph 4, and
 - (b) underlying subject matter other than that referred to in paragraph (a).
- (3) Where this paragraph applies to a relevant contract of a company, it shall be treated for the purposes of the Corporation Tax Acts as if it were two separate contracts, namely—
- (a) a relevant contract of the company whose underlying subject matter consists of the excluded types of property referred to in sub-paragraph (2)(a), and
 - (b) a relevant contract of the company whose underlying subject matter consists of the underlying subject matter referred to in sub-paragraph (2)(b).
- (4) For the purposes of giving effect to sub-paragraph (3) all such apportionments as are just and reasonable shall be made.
- (5) This paragraph does not apply to a relevant contract if it is determined in accordance with paragraph 9 that the underlying subject matter of the relevant contract in question is to be treated as consisting wholly of any one or more of the excluded types of property referred to in sub-paragraph (2)(a).

Contracts where underlying subject matter of different excluded types

- 47 (1) This paragraph applies to a relevant contract of a company—
- (a) which is an option or future,
 - (b) which satisfies the requirements of paragraph 3 (accounting requirements etc), and
 - (c) whose underlying subject matter falls within sub-paragraph (2).

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- (2) The underlying subject matter of the relevant contract falls within this sub-paragraph if it consists, or is treated as consisting, wholly of—
 - (a) any one or more of the excluded types of property falling within paragraphs (a) to (c) of sub-paragraph (2) of paragraph 4, and
 - (b) any one or more of the excluded types of property falling within paragraphs (d) to (f) of that sub-paragraph.
- (3) Where this paragraph applies to a relevant contract of a company, it shall be treated for the purposes of the Corporation Tax Acts as if it were two separate contracts, namely—
 - (a) a relevant contract of the company whose underlying subject matter consists of the excluded types of property referred to in sub-paragraph (2)(a), and
 - (b) a relevant contract of the company whose underlying subject matter consists of the excluded types of property referred to in sub-paragraph (2)(b).
- (4) For the purposes of giving effect to sub-paragraph (3) all such apportionments as are just and reasonable shall be made.
- (5) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of the excluded types of property referred to in paragraphs (a) and (b) of sub-paragraph (2).
- (6) If a relevant contract of a company is one to which this paragraph applies in consequence of the application of paragraph 9 (as described in sub-paragraph (5)), any underlying subject matter of the contract which is subordinate or of small value and which is disregarded in accordance with that paragraph shall be apportioned in accordance with sub-paragraph (4).

But if and so far as the underlying subject matter of a relevant contract is disregarded in accordance with paragraph 9 by reason of being subordinate in relation to such property as is referred to in paragraph (a) or, as the case may be, paragraph (b) of sub-paragraph (3), it shall be apportioned accordingly.
- (7) This paragraph does not apply to a relevant contract if it is determined in accordance with paragraph 9 that the underlying subject matter of the relevant contract in question is to be treated as consisting wholly of—
 - (a) any one or more of the excluded types of property falling within paragraphs (a) to (c) of sub-paragraph (2) of paragraph 4, or
 - (b) any one or more of the excluded types of property falling within paragraphs (d) to (f) of that sub-paragraph.

Election to treat contract as two assets

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- (1) This paragraph applies to a relevant contract of a company if it would, but for an election under this paragraph, be a derivative contract to which paragraph 7 applies.
 - (2) Where this paragraph applies to a relevant contract of a company, the company may elect that its relevant contract shall be treated for the purposes of the Corporation Tax Acts as if it were—
 - (a) a creditor relationship of the company which is a relevant zero coupon bond, and

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- (b) an option of the company whose underlying subject matter is the same as the underlying subject matter of the relevant contract to which this paragraph applies.
- (3) For the purposes of sub-paragraph (2) a relevant zero coupon bond is a zero coupon bond—
- (a) issued at the time when the consideration for entering into, or acquiring, the relevant contract to which this paragraph applies was payable by the company,
 - (b) falling to be redeemed—
 - (i) on the date on which that relevant contract falls to be performed, or
 - (ii) in a case where that relevant contract may fall to be performed on more than one date, on the date which is the last of those dates, and
 - (c) issued at a price equal to the amount that would have been the market value of a zero coupon bond—
 - (i) issued at that time,
 - (ii) falling to be redeemed on that date or, as the case may be, on that last date, and
 - (iii) producing, by the time of its redemption, an amount equal to the amount which is the guaranteed amount in relation to that relevant contract.
- (4) The only accounting method authorised for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) for use by a company as respects a creditor relationship arising under sub-paragraph (2)(a) shall be an authorised mark to market basis of accounting.
- (5) None of paragraphs 6 to 8 shall apply to an option arising under paragraph (2)(b).
- (6) For the purposes of giving effect to sub-paragraph (2) all such apportionments as are just and reasonable shall be made.
- (7) An election under sub-paragraph (2) in relation to a relevant contract—
- (a) may only be made within the period of two years following the end of the company’s first accounting period in which it is party to the relevant contract;
 - (b) has effect for that accounting period and all subsequent accounting periods of the company; and
 - (c) is irrevocable.
- (8) For the purposes of this paragraph a “zero coupon bond” is a security—
- (a) whose issue price is less than the amount payable on redemption, and
 - (b) which does not provide for any amount to be payable by way of interest.
- (9) For the purposes of this paragraph “market value” has the same meaning as in the Taxation of Chargeable Gains Act 1992 (c. 12).

Partnerships involving companies

- 49 (1) This paragraph applies where—
- (a) a trade, profession or business is carried on by persons in partnership (“the firm”);
 - (b) any of those persons is a company (a “company partner”); and

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- (c) the firm is party to a contract which is a derivative contract or would be a derivative contract if the firm were a company.
- (2) In any such case—
- (a) in computing the profits and losses of the trade, profession or business for the purposes of corporation tax in accordance with section 114(1) of the Taxes Act 1988 (computation as if the partnership were a company) no credits or debits shall be brought into account under this Schedule in respect of the contract; but
 - (b) credits and debits shall be brought into account under this Schedule in respect of the contract in accordance with the following provisions of this paragraph by each company partner for each of its accounting periods in which the conditions in sub-paragraph (1) are satisfied.
- (3) The credits and debits to be brought into account as mentioned in sub-paragraph (2) (b) shall be determined separately in the case of each company partner.
- (4) For the purpose of determining those credits and debits in the case of any particular company partner—
- (a) the contract entered into or acquired by the firm shall be treated as if it were instead entered into or acquired by that company partner, for the purposes of the trade, profession or business which that company partner carries on,
 - (b) anything done by or in relation to the firm in connection with the contract shall be treated as done by or in relation to the company partner, and
 - (c) to the extent that any exchange gains or losses arising from the contract are carried to or sustained by a reserve maintained by the firm and are set off by or against another amount as described in paragraph 16(4), the exchange gains or losses shall to that extent be treated as carried to or sustained by such a reserve maintained by the company partner and set off by or against another amount,
- and credits and debits (the “gross credits and debits”) shall be determined accordingly.
- (5) The credits and debits to be brought into account under this Schedule pursuant to sub-paragraph (2)(b) in the case of any particular company partner shall be that company partner’s appropriate share of the gross credits and debits determined in accordance with sub-paragraph (4) in the case of that company partner.
- (6) For the purposes of sub-paragraph (5), the “appropriate share”, in the case of a company partner, is the share that would be apportioned to that company partner if—
- (a) the gross credits and debits determined in accordance with sub-paragraph (4) in the case of that company partner fell to be apportioned between the partners; and
 - (b) the apportionment fell to be made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 would be apportioned between them under subsection (2) of that section.

Partnerships involving companies: application of accounting methods

- 50 (1) This paragraph has effect where, in accordance with paragraph 49, credits and debits in respect of a contract of a firm are to be brought into account under this Schedule by a company partner for any accounting period of that company partner.

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- (2) Where this paragraph has effect, paragraph 18 shall apply in relation to the contract, subject to sub-paragraph (3).
- (3) Where as respects any accounting period or any part of an accounting period—
- (a) the credits and debits in respect of the contract, which fall to be brought into account under this Schedule by the company partner in accordance with paragraph 49, are not brought into account by the company partner for the purposes of its statutory accounts, but
 - (b) the company partner brings its share in the profits or loss of the firm into account on a mark to market basis of accounting for the purposes of its statutory accounts,
- the company partner must use in relation to that period or, as the case may be, that part of a period, an authorised mark to market basis of accounting in relation to the contract for the purposes of this Schedule.
- (4) For the purposes of this paragraph “company partner” and “firm” have the same meaning as in paragraph 49.

Prevention of deduction of tax

- 51 Notwithstanding anything in section 349 of the Taxes Act 1988 or any other provision of the Tax Acts, where the profits and losses arising from a derivative contract of a company are computed in accordance with this Schedule, the company shall not be required, on making a payment under the contract, to deduct out of it any sum representing an amount of income tax on it.