

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 28. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 28

Section 83

#### DERIVATIVE CONTRACTS: TRANSITIONAL PROVISIONS ETC

##### Modifications etc. (not altering text)

**C1** Sch. 28 extended (retrospective to 30.9.2002) by [Finance Act 2003 \(c. 14\), s. 177\(6\)-\(8\)\(11\)](#)

##### *Anti-avoidance: change of accounting period*

<sup>F1</sup> .....

##### Textual Amendments

**F1** [Sch. 28 para. 1](#) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 544\(2\), Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

##### *Qualifying contracts to which company ceases to be party before commencement day*

- 2 (1) This paragraph applies if the conditions in sub-paragraphs (2) and (3) are satisfied in relation to any contract of a company.
- (2) The first condition is that the company was a party to a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994) before its commencement day, but is not a party to it on that commencement day.
- (3) The second condition is that, if the company had been a party to the contract on its commencement day, the contract would have been a derivative contract.
- (4) To the extent that amounts have been brought into account in computing, in accordance with Chapter 2 of Part 4 of the Finance Act 1994, the profits or losses accruing to the company from the contract in an old period of the company, they shall not be brought into account again by the company as credits or debits given in respect of that contract for the first new period or any subsequent accounting period of the company by Schedule 26.

[<sup>F2</sup>(4A) In relation to a subsequent accounting period ending on or after 1 April 2009, the reference in sub-paragraph (4) to Schedule 26 is to be read as a reference to Part 7 of the Corporation Tax Act 2009.]

##### Textual Amendments

**F2** [Sch. 28 para. 2\(4A\)](#) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 544\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

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*Qualifying contracts which become derivative contracts*

<sup>F3</sup> .....

**Textual Amendments**

**F3** Sch. 28 para. 3 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 544(4), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

*Contracts which become derivative contracts: chargeable assets*

- 4 (1) This paragraph applies if the conditions in sub-paragraphs (2) to (4) are satisfied in relation to any contract of a company.
- (2) The first condition is that the company is a party to the contract immediately before and on its commencement day.
- (3) The second condition is that the contract—
- (a) was not a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994) immediately before the company's commencement day, but
  - (b) as from that day is a derivative contract.
- (4) The third condition is that the contract was, immediately before the company's commencement day, a chargeable asset.
- (5) Where this paragraph applies, the company shall, when it ceases to be a party to the contract, bring into account, for the accounting period in which it ceases to be a party to the contract, the amount of any chargeable gain or allowable loss which would have been treated as accruing to the company on the assumption—
- (a) that it had made a disposal of the asset immediately before its commencement day, and
  - (b) that the disposal had been for a consideration 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 new period.
- (6) Sub-paragraph (5) has effect subject to sub-paragraph (7).
- (7) The company may elect that a debit representing the amount of any allowable loss, which under sub-paragraph (5) is to be brought into account for the accounting period in which it ceases to be a party to the contract, shall be brought into account for that accounting period as if it were a non-trading debit falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of a loan relationship of the company.
- [<sup>F4</sup>(7A) In relation to an accounting period ending on or after 1 April 2009, the reference in sub-paragraph (7) to Chapter 2 of Part 4 of the Finance Act 1996 is to be read as a reference to Part 5 of the Corporation Tax Act 2009.]
- (8) An election under sub-paragraph (7) may only be made within the period of two years following the end of the accounting period in which the company ceases to be a party to the contract.
- (9) 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

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purposes of the Taxation of Chargeable Gains Act 1992 (c. 12) (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).

(10) This paragraph has effect subject to paragraph 5.

#### Textual Amendments

**F4** Sch. 28 para. 4(7A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 544(5) (with Sch. 2 Pts. 1, 2)

*Contracts: election to treat as two assets*

- 5 (1) This paragraph applies if the conditions in sub-paragraphs (2) to (4) are satisfied in relation to any contract of a company.
- (2) The first condition is that the company is a party to the contract immediately before and on its commencement day.
- (3) The second condition is that the contract—
- (a) was not a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)) immediately before the company's commencement day, but
  - (b) as from that day would, but for an election under sub-paragraph (5) of this paragraph, be a derivative contract to which paragraph 7 of Schedule 26 (contracts designed to secure guaranteed amount) applies.
- (4) The third condition is that the contract was, immediately before the company's commencement day, a chargeable asset.
- (5) Where this paragraph applies the company may elect that its 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 zero coupon bond (within the meaning of paragraph 48 of Schedule 26), and
  - (b) an option of the company whose underlying subject matter is the same as the underlying subject matter of the contract to which this paragraph applies;
- and sub-paragraphs (4) to (6) of that paragraph shall apply to a creditor relationship and an option arising under this sub-paragraph as they apply to a creditor relationship and an option arising under paragraph 48(2) of Schedule 26.
- (6) An election under sub-paragraph (5) in relation to a contract—
- (a) may only be made within the period of two years following the end of the company's first new period;
  - (b) has effect for the company's first new period and all subsequent accounting periods of the company; and
  - (c) is irrevocable.
- (7) Where an election under sub-paragraph (5) has been made by a company in relation to a contract, the company shall, when it ceases to be a party to the contract, bring into account, for the accounting period in which it ceases to be a party to the contract, the amount of any chargeable gain or allowable loss which would have been treated as accruing to the company on the assumption—

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- (a) that it had made a disposal of the asset immediately before its commencement day, and
  - (b) that the disposal had been for a consideration 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 new period.
- (8) Sub-paragraph (7) has effect subject to sub-paragraph (9).
- (9) The company may elect that a debit representing the amount of any allowable loss, which under sub-paragraph (7) is to be brought into account for the accounting period in which it ceases to be a party to the contract, shall be brought into account for that accounting period as if it were a non-trading debit falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of a loan relationship of the company.
- [<sup>F5</sup>(9A) In relation to an accounting period ending on or after 1 April 2009, the reference in sub-paragraph (9) to Chapter 2 of Part 4 of the Finance Act 1996 is to be read as a reference to Part 5 of the Corporation Tax Act 2009.]
- (10) An election under sub-paragraph (9) may only be made within the period of two years following the end of the accounting period in which the company ceases to be a party to the contract.
- (11) For the purposes of this paragraph references to an asset being a chargeable asset shall be construed in accordance with paragraph 4(9).
- (12) In this paragraph “option” and “underlying subject matter” have the same meaning as in Schedule 26.

#### **Textual Amendments**

**F5** Sch. 28 para. 5(9A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 544(6) (with Sch. 2 Pts. 1, 2)

#### *Contracts which become derivative contracts: contracts within Schedule 5AA to the Taxes Act 1988*

- 6 (1) This paragraph applies if the conditions in sub-paragraphs (2) to (5) are satisfied in relation to any contract of a company.
- (2) The first condition is that the company is a party to the contract immediately before and on its commencement day.
- (3) The second condition is that the contract—
- (a) was not a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)) immediately before the company's commencement day, but
  - (b) as from that day is a derivative contract.
- (4) The third condition is that the contract was, immediately before the company's commencement day, a transaction to which Schedule 5AA to the Taxes Act 1988 applied.
- (5) The fourth condition is that, on or after the company's commencement day, a relevant event occurs.

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- (6) For the purposes of this paragraph a relevant event is an event which would, if Schedule 5AA to the Taxes Act 1988 had continued to apply to the contract for the purposes of corporation tax, have given rise to an amount of profits falling to be charged under that Schedule.
- (7) A credit representing that amount of profits (“a relevant credit”) shall be brought into account by virtue of paragraph 14(3) of Schedule 26 for the accounting period in which the relevant event occurs as if it were a non-trading credit falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in respect of a loan relationship of the company.
- (8) The amount of the relevant credit is the sum of—
- (a) the amount of profits which would have been chargeable under Schedule 5AA to the Taxes Act 1988 if it had continued to apply to the contract, and
  - (b) the amount of any debits given by Schedule 26 in respect of the contract for the first new period and any subsequent accounting period ending with the accounting period in which the relevant event occurred,
- less the amount of any credits given by Schedule 26 in respect of the contract for those accounting periods.
- [<sup>F6</sup>(8A) In relation to an accounting period ending on or after 1 April 2009—
- (a) the reference in sub-paragraph (7) to paragraph 14(3) of Schedule 26 is to be read as a reference to section 574 of the Corporation Tax Act 2009,
  - (b) the reference in that sub-paragraph to Chapter 2 of Part 4 of the Finance Act 1996 is to be read as a reference to Part 5 of the Corporation Tax Act 2009, and
  - (c) the references in sub-paragraph (8) to Schedule 26 are to be read as references to Part 7 of the Corporation Tax Act 2009.]

#### Textual Amendments

- F6** Sch. 28 para. 6(8A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 544(7) (with Sch. 2 Pts. 1, 2)

#### Interpretation

- 7 For the purposes of this Schedule—
- (a) a company’s commencement day is the first day of its first accounting period to begin on or after 1st October 2002,
  - (b) a company’s first new period is its first accounting period to begin on or after that date, and
  - (c) an old period of the company is any accounting period of the company ending before the first day of its first new period.

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