

**EXPLANATORY MEMORANDUM TO THE  
FINANCE ACT 2002, SCHEDULE 26, PARTS 2 AND 9 (AMENDMENT) ORDER  
2005**

**2005 No. 646**

1. This explanatory memorandum has been prepared by the Commissioners of Inland Revenue and is laid before the House of Commons by Command of Her Majesty.
2. **Description**
  - 2.1 This Order provides amendments to Schedule 26 to the Finance Act (“FA”) 2002 (derivative contracts). The main purpose of the amendments is prevent avoidance of corporation tax by the use of contracts whose underlying subject matter is shares, either by themselves or in conjunction with holdings in shares.
3. **Matters of Special interest to the Select Committee on Statutory Instruments**
  - 3.1 The Department regrets that compliance with the 21-day rule is not possible in this case. These Regulations form part of a significant anti-avoidance package announced by the Chancellor of the Exchequer on Budget Day, 16<sup>th</sup> March 2005. Unless the Order comes into force immediately, there is significant risk that transactions would be entered into to exploit any gaps the Order is intended to fill. Other legislation which is complementary to and associated with this Order is to be included in the Finance Bill 2005 and was announced on Budget Day to have effect from that day.
4. **Legislative Background**
  4. These regulations are being made under powers conferred by paragraph 13 Schedule 26 Finance Act 2002.
5. **Extent**
  - 5.1 The instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**
  - 6.1 The Paymaster General (Dawn Primarolo) has stated that, in her view, this Order is compatible with the Convention rights.
7. **Policy Background**
  - 7.1 The main effect of the Order is to prevent avoidance using derivative whose underlying subject matter is shares. The Order does this by providing that all relevant contracts (options futures and contracts for differences) whose underlying subject matter is shares are within the

provisions of Schedule 26 FA 2002 except those contracts used to hedge assets which are shares on which chargeable gains arise.

- 7.3 There has been no consultation on this Order as is normal with anti-avoidance measures

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been published for this instrument.
- 8.2 The regulations are expected to have significant Exchequer impact by closing avoidance schemes that would otherwise have cost substantial amounts of tax yield and to protect revenues in the future.

## **9. Contact**

Richard Thomas at the Inland Revenue Tel 020 7147 2558 or e-mail [richard.thomas@ir.gsi.gov.uk](mailto:richard.thomas@ir.gsi.gov.uk)