

SCHEDULES

SCHEDULE 2

TRANSITIONALS AND SAVINGS

PART 10

DERIVATIVE CONTRACTS

Interpretation

- 79 Expressions used in this Part of this Schedule and in Part 7 of this Act have the same meaning as in Part 7.

Extended meaning of reference in section 591(6)(b)

- 80 The reference in section 591(6)(b) (condition E) to the provisions in section 591(7) includes a reference to paragraphs 82 and 86 of this Schedule.

Disapplication of section 645

- 81 Section 645 (creditor relationships: embedded derivatives which are options) does not apply to a derivative contract of a company for an accounting period if the asset representing the creditor relationship is an asset in relation to which paragraph 9(2) of Schedule 10 to FA 2004 has effect.

Existing assets representing creditor relationships: options

- 82 (1) This paragraph applies if section 645 would apply to a derivative contract of a company for an accounting period but for the fact that the asset representing the creditor relationship is an asset in relation to which paragraph 9(2) of Schedule 10 to FA 2004 has effect.
- (2) Section 574 (non-trading credits and debits to be brought into account under Part 5) does not apply to the credits and debits which are given in relation to the derivative contract for the accounting period by section 595.
- (3) The asset representing the creditor relationship is treated for corporation tax purposes as not being a qualifying corporate bond.
- (4) 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 creditor relationship is reduced by so much of that amount or value as, on a just and reasonable apportionment, relates to interest within sub-paragraph (5).
- (5) Interest is within this sub-paragraph if—

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- (a) it falls to be brought into account under Part 5 of this Act (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.
 - (6) 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 sub-paragraph (4)—
 - (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.
 - (7) If the amount of the relevant exchange gains falling to be deducted under sub-paragraph (6)(b) exceeds the amount required to reduce the amount or value of the consideration to nil, the excess is treated for the purposes of section 38(1)(c) of TCGA 1992 as incidental costs of the disposal of the asset mentioned in sub-paragraph (4).
- 83 (1) This paragraph applies for the purposes of paragraph 82.
- (2) “Relevant exchange gains” means an amount within sub-paragraph (4) or (5).
 - (3) “Relevant exchange losses” means an amount which would be within sub-paragraph (4) or (5) if references in those sub-paragraphs to exchange gains were read as references to exchange losses.
 - (4) An amount is within this sub-paragraph if it is the amount of any exchange gains in respect of the asset mentioned in paragraph 82(4) which are brought into account under Part 5 of this Act (loan relationships) by the company for an accounting period throughout which the company holds that asset.
 - (5) For any accounting period not within sub-paragraph (4) in which the company holds that asset, an amount is within this sub-paragraph 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 for that period as is referable to the part of the period for which the company holds that asset.
- 84 (1) This paragraph applies if—
- (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 paragraph 82(4) is treated as the original shares.
- (2) The reference in paragraph 82(4) to the disposal of that asset is 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.

Disapplication of section 648

- 85 Section 648 (creditor relationships: embedded derivatives which are exactly tracking contracts for differences) does not apply to a derivative contract of a company for an accounting period if the asset representing the creditor relationship is an asset in relation to which paragraph 11(2) of Schedule 10 to FA 2004 has effect.

Existing assets representing creditor relationships: contracts for differences

- 86 (1) This paragraph applies if section 648 would apply to a derivative contract of a company for an accounting period but for the fact that the asset representing the creditor relationship is an asset in relation to which paragraph 11(2) of Schedule 10 to FA 2004 has effect.
- (2) Section 574 (non-trading credits and debits to be brought into account under Part 5) does not apply to the credits and debits which are given in relation to the derivative contract for the accounting period by section 595.
- (3) The asset representing the creditor relationship is treated for corporation tax purposes as not being a qualifying corporate bond.
- (4) 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 creditor relationship is reduced by so much of that amount or value as, on a just and reasonable apportionment, relates to interest within sub-paragraph (5).
- (5) Interest is within this sub-paragraph if—
- (a) it falls to be brought into account under Part 5 of this Act (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.
- 87 (1) This paragraph applies if—
- (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 paragraph 86(4) is treated as the original shares.
- (2) The reference in paragraph 86(4) to the disposal of that asset is 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.

Disapplication of section 658

- 88 (1) Section 658 (chargeable gain or allowable loss treated as accruing) does not apply to a derivative contract of a company for an accounting period if the liability representing the debtor relationship was owed by the company immediately before its first accounting period to begin on or after 1 January 2005.
- (2) If section 658 would apply to a derivative contract for an accounting period but for sub-paragraph (1), section 574 (non-trading credits and debits to be brought into account under Part 5) does not apply to the credits and debits which are given in relation to the derivative contract for the accounting period by section 595.

Disapplication of section 661

- 89 Section 661 (contract which becomes derivative contract) does not apply if the relevant contract became a derivative contract before 30 December 2006.

Disapplication of section 666

- 90 Section 666 (allowable loss treated as accruing) does not apply to a company if the liability representing the debtor relationship was owed by the company immediately before its first accounting period to begin on or after 1 January 2005.

Contracts which became derivative contracts on 16 March 2005

- 91 (1) This paragraph applies in relation to a company if conditions A, B and C are met in relation to a relevant contract.
- (2) Condition A is that the company was a party to the relevant contract both immediately before and at 3.00pm on 16 March 2005.
- (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.
- (4) Condition C is that the relevant contract was a chargeable asset immediately before that time.
- (5) If the company ceases to be a 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 in sub-paragraph (6).
- (6) Those assumptions are that—
- (a) the company disposed of the contract immediately before 3.00pm on 16 March 2005, and
 - (b) the disposal was for 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—
 - (i) beginning on or after 1 January 2005, and
 - (ii) ending on or after 16 March 2005.

Contracts which became derivative contracts on 28 July 2005

- 92 (1) This paragraph applies in relation to a company if conditions A, B and C are met in relation to a relevant contract.
- (2) Condition A is that the company was a party to the contract both immediately before and on 28 July 2005.
- (3) Condition B is that the contract—
- (a) was not a derivative contract immediately before that date, but
 - (b) apart from this paragraph, would have been a derivative contract on that date if an accounting period of the company began on that date.
- (4) Condition C is that the contract was a chargeable asset immediately before that date.
- (5) The relevant contract is treated for the purposes of Part 7 of this Act as a derivative contract entered into by the company on 28 July 2005 for consideration of an amount equal to the fair value of the contract on that date.

- (6) If the company ceases to be a 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 in sub-paragraph (7).
- (7) Those assumptions are that—
 - (a) the company disposed of the contract immediately before 28 July 2005, and
 - (b) the disposal was for consideration of an amount equal to the fair value of the contract on that date.

Plain vanilla contracts which became derivative contracts before 30 December 2006

- 93 (1) This paragraph applies if—
- (a) a company is a party to a plain vanilla contract which (not having been a derivative contract) became a derivative contract before 30 December 2006,
 - (b) the company disposes of the derivative contract by ceasing to be a party to it, and
 - (c) paragraphs 91 and 92 do not apply in relation to the contract.
- (2) Section 699(1) (priority of this Part for corporation tax purposes) does not apply for the purpose of calculating any chargeable gain accruing to the company on the disposal.
- (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—
- (a) if G exceeds L, increased by the amount of that excess,
 - (b) if L exceeds G, reduced by the amount of that excess.
- (4) If the amount of the excess in sub-paragraph (3)(b) is greater than the amount of the expenditure allowable under section 38(1)(a) of TCGA 1992, the amount of the excess which cannot be deducted from the expenditure so allowable is, for the purpose mentioned in sub-paragraph (3), added to the consideration for the disposal.
- (5) In this paragraph—
- G is the sum of the credits brought into account under section 574 of this Act (non-trading credits and debits to be brought into account under Part 5) in respect of the derivative contract in each relevant accounting period, and
- L is the sum of the debits brought into account under that section in respect of the derivative contract in each such period.
- (6) In sub-paragraph (5) “relevant accounting period” means—
- (a) the accounting period in which the disposal is made, or
 - (b) any previous accounting period.

Issuers of securities with embedded derivatives: deemed options

- 94 (1) This paragraph applies if the company mentioned in section 652(1) was a party to the debtor relationship mentioned in section 652(2) immediately before its first accounting period to begin on or after 1 January 2005.
- (2) Section 653 (shares issued or transferred as a result of exercise of deemed option) does not apply.

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- (3) If section 654(2) (payment instead of disposal on exercise of deemed option) applies—
 - (a) CV is taken to be nil, and
 - (b) an allowable loss of an amount equal to X is treated as accruing to the company in the accounting period mentioned in section 654(2).
- (4) Section 655 (ceasing to be party to debtor relationship when deemed option not exercised) does not apply.

Contract becoming derivative contract on 12 March 2008

- 95 (1) This paragraph applies if a company was, immediately before 12 March 2008, a party to a relevant contract which became a derivative contract by virtue of the amendments made by paragraph 20 of Schedule 22 to FA 2008.
- (2) The contract is to be regarded for the purposes of Part 7 as having been entered into by the company on 12 March 2008 for consideration of an amount equal to its notional carrying value (within the meaning of section 622) on that date.

Avoidance relying on continuity of treatment provisions: transactions before 16 May 2008

- 96 Section 629 (disapplication of section 625 where transferor party to avoidance involving subsequent transfer by transferee) does not have effect in relation to transactions taking place, or a series of transactions of which the first takes place, before 16 May 2008.

Disposals for consideration not fully recognised by accounting practice: disposals before 16 May 2008

- 97 Section 698 (disposals for consideration not fully recognised by accounting practice) does not have effect in relation to disposals before 16 May 2008.

References to Companies Act 2006

- 98 Until section 658 of the Companies Act 2006 (c. 46) (rule against limited company acquiring own shares) comes into force, references to that section in sections 674(3)(g)(ii) and 682(6)(b) have effect as if they were references to section 143 of the Companies Act 1985 (c. 6).

Repeal of provisions concerning exchange gains and losses from derivative contracts

- 99 (1) The following provisions of this Act (which rewrite provisions prospectively repealed by F(No.2)A 2005) cease to have effect—
- (a) section 606 (exchange gains and losses), and
 - (b) in section 690(6) (derivative contracts for unallowable purposes) the words from “which are” to the end.
- (2) For the power to make an order bringing this paragraph into force, see section 1329(3).