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STATUTORY INSTRUMENTS

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**2004 No. 2201**

**The Finance Act 2002, Schedule 26,  
Parts 2 and 9 (Amendment) Order 2004**

**PART 2**

**Amendment of Part 2 of Schedule 26 to the Finance Act 2002**

2. Part 2 of Schedule 26 to the Finance Act 2002 is amended as follows.
3. In paragraph 2, for sub-paragraph (1) substitute—
  - “(1) For the purposes of the Corporation Tax Acts, a company’s derivative contracts are those of its relevant contracts—
    - (a) which satisfy any of the conditions in paragraphs (a) to (c) of paragraph 3(1), and
    - (b) which are not prevented from being derivative contracts by paragraph 4 or any other provision of the Corporation Tax Acts.”.
4. In paragraph 3—
  - (a) for sub-paragraph (1)(b) substitute—
    - “(b) in the case of a relevant contract which is not treated as mentioned in paragraph (a), it is a relevant contract to which paragraph 6, 7, or 8 applies, or”;
  - (b) in sub-paragraph (1)(c) for “is not treated as described in” substitute “does not fall within”;
  - (c) for sub-paragraph (2)(b) substitute—
    - “(b) it is a contract for differences whose underlying subject matter is—
      - (i) land (wherever situated),
      - (ii) tangible movable property, other than commodities which are tangible assets,
      - (iii) intangible fixed assets,
      - (iv) weather conditions, and
      - (v) creditworthiness.”;
  - (d) omit sub-paragraph (4); and
  - (e) in sub-paragraph (5)—
    - (i) for “sub-paragraphs (3) and (4)” substitute “sub-paragraph (3)”; and
    - (ii) in paragraph (b) omit “or financial assets”.
5. In paragraph 4—
  - (a) after sub-paragraph (1) insert—
    - “(1A) Nothing in this paragraph prevents a relevant contract to which paragraph 6, 7 or 8 applies from being a derivative contract.”;
  - (b) in sub-paragraph (2)—

- (i) omit paragraphs (a) and (b);
    - (ii) at the end of paragraph (d) add “and”;
    - (iii) at the end of paragraph (e) omit “and”; and
    - (iv) omit paragraph (f);
  - (c) in sub-paragraph (3)—
    - (i) omit “(a), (b) and”; and
    - (ii) for “(d) to (f)” substitute “(d) and (e)”; and
  - (d) in sub-paragraph (5) for “paragraphs 5 to 8” substitute “paragraphs 5 and 5A”.
6. In paragraph 5(2)(b)—
- (a) at the end of sub-paragraph (i) add “or”;
  - (b) at the end of sub-paragraph (ii) omit “, or”; and
  - (c) omit sub-paragraph (iii).
7. After paragraph 5 insert—
- “Qualified exclusion: embedded derivatives whose underlying subject matter is shares
- 5A.**—(1) Paragraph 4 does not prevent a relevant contract to which this paragraph applies from being a derivative contract.
- (2) This paragraph applies to a relevant contract of a company if—
- (a) it is a deemed relevant contract to which the company is treated as party under section 94A(2)(b) of the Finance Act 1996,
  - (b) its underlying subject matter consists, or is treated as consisting, wholly of shares in a company, and
  - (c) the company is party as a creditor to the host contract under section 94A(2)(a) of that Act.
- (3) 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 shares in a company.”.
8. In paragraph 6—
- (a) omit sub-paragraph (1);
  - (b) at the end of sub-paragraph (2)(a)(i) add “or”;
  - (c) at the end of sub-paragraph (2)(a)(ii) for “or” substitute “and”;
  - (d) omit sub-paragraph (2)(a)(iii);
  - (e) in sub-paragraph (3)(b)(i)—
    - (i) for “company,” substitute “company or”;
    - (ii) omit from “or assets” to “applies”; and
    - (iii) at the end add “and”;
  - (f) in sub-paragraph (3)(b) for sub-paragraphs (ii) and (iii) substitute—
    - “(ii) one or more assets representing loan relationships to which section 94A of the Finance Act 1996 applies, but only to the extent that each of those assets represents the rights and liabilities of a host contract within the meaning of that section,”;
  - (g) omit sub-paragraph 8(a) and (b);

- (h) omit sub-paragraph (9); and
  - (i) in the heading to the paragraph, for “*Qualified exclusion:*” substitute “*Derivative contracts:*”.
9. In paragraph 7—
- (a) omit sub-paragraph (1);
  - (b) at the end of sub-paragraph (2)(a)(i) add “or”;
  - (c) at the end of sub-paragraph (2)(a)(ii) for “or” substitute “and”;
  - (d) omit sub-paragraph (2)(a)(iii);
  - (e) in sub-paragraph (3)(b)(i)—
    - (i) for “company,” substitute “company or”;
    - (ii) omit from “or assets” to “applies”; and
  - (f) in sub-paragraph (3)(b) for sub-paragraphs (ii) and (iii) substitute—
    - “(ii) one or more assets representing loan relationships to which section 94A of the Finance Act 1996 applies, but only to the extent that each of those assets represents the rights and liabilities of a host contract within the meaning of that section,”; and
  - (g) in the heading to the paragraph, for “*Qualified exclusion:*” substitute “*Derivative contracts:*”.
10. In paragraph 8—
- (a) omit sub-paragraph (1);
  - (b) in sub-paragraph (2)(c)—
    - (i) at the end of sub-paragraph (i) add “or”;
    - (ii) at the end of sub-paragraph (ii) omit “, or”; and
    - (iii) omit sub-paragraph (iii); and
  - (c) in the heading to the paragraph, for “*Qualified exclusion:*” substitute “*Derivative contracts:*”.
11. In paragraph 9—
- (a) in sub-paragraph (1) for “any of sub-paragraphs (2) to (4)” substitute “sub-paragraph (2) or (4)”;
  - (b) in sub-paragraph (2)(a)—
    - (i) for “(a)”, where first occurring, substitute “(c)”;
    - (ii) for “(f)”, where first occurring, substitute “(e)”;
    - (iii) omit “(a), (b) and”; and
    - (iv) for “to (f)”, in the second place where it occurs, substitute “and (e)”;
  - (c) omit sub-paragraph (3);
  - (d) in sub-paragraph (4)(a) for “paragraphs (d) to (f)” substitute “paragraphs (d) and (e)”;
  - (e) in sub-paragraph (5)—
    - (i) at the end of paragraph (a), insert “or”; and
    - (ii) omit paragraph (b).
12. At the end of paragraph 11 add—

“(7) Where the underlying subject matter of a relevant contract consists of or includes income from any of the following—

- (a) land (wherever situated),
- (b) shares in a company,
- (c) rights of a unit holder under a unit trust scheme,

the underlying subject matter shall not be treated, by reason only of that income, as being land or such shares or rights (as the case may be).”.

**13.—**(1) Paragraph 12 is amended as follows.

(2) For sub-paragraph (1) substitute—

“(1) This paragraph defines the following expressions for the purposes of this Schedule—

- (a) a capital redemption policy (see sub-paragraph (2));
- (b) a contract for differences (see sub-paragraphs (3) to (5));
- (c) a future (see sub-paragraphs (6), (7) and (10));
- (d) intangible fixed assets (see sub-paragraph (11));
- (e) an option (see sub-paragraphs (8) and (10));
- (f) shares in a company (see sub-paragraph (12));
- (g) a warrant (see sub-paragraph (9)).”.

(3) For sub-paragraph (11) substitute—

“(11) “Intangible fixed assets” has the same meaning as in Schedule 29 to this Act; 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.”.