
STATUTORY INSTRUMENTS

2006 No. 3269

The Finance Act 2002, Schedule 26,
(Parts 2 and 9) (Amendment) Order 2006

Amendment of Part 9 of Schedule 26

Amendment of paragraph 45K of Schedule 26

23.—(1) Amend paragraph 45K(1) (issuers of securities with embedded derivatives: deemed contracts for differences) as follows.

(2) In sub-paragraph (1)—

(a) For paragraphs (a) and (b) substitute—

“(a) the derivative contract is a loan-contract embedded derivative to which the company is treated as party by virtue of a debtor relationship of the company (“the original relationship”),”.

(3) For sub-paragraph (1)(d) substitute—

“(d) the derivative contract is an exactly tracking contract within the meaning of sub-paragraph (2A), and”.

(4) In sub-paragraphs (2)(a), in both places, and (2)(e) for “debtor” substitute “original”.

(5) In sub-paragraph (2)(c) omit “land (wherever situated) or”.

(6) After sub-paragraph (2) insert—

“(2A) For the purposes of this paragraph “an exactly tracking contract” is a contract for differences where D is equal to the amount determined by applying R% to C where—

D is the amount that must be paid to discharge the rights and liabilities that fall to be treated as comprised in the contract;

R% is a relevant percentage change in the value of the underlying subject matter of the contract (see sub-paragraph (2B));

C is the amount falling for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 to be regarded in accordance with generally accepted accounting practice as the proceeds of issue of the liability which represents the original relationship.

(2B) In sub-paragraph (2A), the reference to a relevant percentage change in the value of the underlying subject matter of the contract is a reference to the percentage change (if any) over the relevant period in—

(a) the value of the assets which are the underlying subject matter of the contract, or

(b) any index of the value of those assets.

(2C) In sub-paragraph (2B) “the relevant period” means—

(a) the period between—

(1) Paragraph 45K was inserted by article 10 of [S.I. 2004/3270](#) and amended by article 17 of [S.I. 2005/646](#) and article 20 of [S.I. 2005/2082](#).

- (i) the date when the liability representing the original relationship came into existence, and
 - (ii) the date when the corresponding creditor relationship comes to an end; or
 - (b) any other period in which almost all of that period is comprised, and which differs from that period exclusively for purposes connected with giving effect to a valuation in relation to rights or liabilities under the liability representing the original relationship.”.
- (7) In sub-paragraphs (3A)(a) and (3B)(b) for “debtor” substitute “original”.
- (8) In sub-paragraph (3B) for paragraph (c) substitute—
- “(c) the consideration for the disposal of that asset—
 - (i) in a case where the company was party to the original relationship at the time it was created, is equal to the amount of the proceeds of issue of the security representing that relationship, and
 - (ii) in a case where the company became party to the original relationship after that time, is equal to the amount of the carrying value of the loan-contract host contract at that time, and”.