

EXPLANATORY MEMORANDUM TO
THE ALTERNATIVE FINANCE ARRANGEMENTS (AMENDMENT) ORDER 2009
2009 No. 2568

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The tax rules on alternative finance arrangements are set out in Chapter 5 of Part 2 of Finance Act 2005 (for income tax), and in Chapter 6 of Part 6 of the Corporation Tax Act 2009 (for corporation tax).

2.2 These tax rules require one party to the arrangements to be a "financial institution". This Order makes minor changes to the existing provisions by extending the definition of a "financial institution".

3. Matters of special interest to the Select Committee on Statutory Instruments

None

4. Legislative Context

This is the first Order made under powers conferred by section 98(1) and (1A)(a) Finance Act 2006 and under section 521 of the Corporation Tax Act 2009, which allow the Treasury to amend, respectively, Chapter 5 of Part 2 of the Finance Act 2005 and Chapter 6 of Part 6 of the Corporation Tax Act 2009.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Commissioners for Her Majesty's Revenue and Customs have made the following statement regarding Human Rights:

In our view the provisions of the Alternative Finance Arrangements (Amendment) Order 2009 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

- 7.1 The tax rules on alternative finance arrangements apply to Sharia'a compliant financial contracts that provide a return which is not, in legal form, interest on a loan or deposit of money, but which equates to interest in economic substance.
- 7.2 The rules cover a number of types of arrangements for borrowing and lending money. They aim to provide certainty in the tax treatment of such products and to ensure, as far as possible, a level playing field with the taxation of equivalent conventional financial products.
- 7.3 Current rules require one party to an alternative finance arrangement to be a financial institution. At present this includes a bank, building society or other credit provider.
- 7.4 Following discussions with the alternative finance sector, the Government has decided to extend the definition of "financial institution" to include insurers and non-UK equivalent entities, and to cover cases where a particular type of contract (a profit share agency contract) underlies an alternative finance investment bond.
- 7.5 These changes will extend the range of financial institutions that are able to provide alternative finance products and will allow profit-share agency contracts to be used both for bond issuance as well as for deposits.

- ***Consolidation***

- 7.6 This Order amends primary legislation so no consolidation is required.

8. Consultation outcome

There has been no formal consultation on this Order because the instrument makes only minor changes to the alternative finance legislation. HMRC holds regular informal discussions on the operation of the legislation with external stakeholders in the alternative finance sector.

9. Guidance

Guidance on the changes to the alternative finance legislation will be included in HMRC's Corporate Finance Manual.

10. Impact

- 10.1 There will be negligible impact on business, charities and voluntary bodies.
- 10.2 There will be negligible impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument in view of its negligible impact. Impact Assessments were prepared for the original legislation

introduced in Finance Act 2005 and Finance Act 2006. These can be viewed at <http://www.hmrc.gov.uk/ria/sharia.pdf> and <http://www.hmrc.gov.uk/ria/ria-alt-finance.pdf> respectively.

11. Regulating small business

The Order does not apply to small business.

12. Monitoring & review

The Government monitors the effects of the alternative finance legislation through its consultative arrangements with the alternative finance sector.

13. Contact

Nicola Rass at HM Revenue and Customs Tel: 020 7147 2802 or email: Nicola.Rass@hmrc.gsi.gov.uk can answer any queries regarding the instrument.