



# Finance Act 2005

## 2005 CHAPTER 7

### PART 2

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 5

#### ALTERNATIVE FINANCE ARRANGEMENTS

##### *Introductory*

#### **46 Alternative finance arrangements**

- (1) In this Chapter “alternative finance arrangements” means arrangements falling within section 47 [<sup>F1</sup>, 47A, [<sup>F2</sup>48A,]] [<sup>F3</sup>, 49 or 49A].
- (2) In this Chapter “financial institution” means—
  - (a) a bank as defined by section 840A of ICTA,
  - (b) a building society within the meaning of the Building Societies Act 1986 (c. 53),
  - (c) a wholly-owned subsidiary of a bank within paragraph (a) or a building society within paragraph (b),
  - (d) a person authorised by a licence under Part 3 of the Consumer Credit Act 1974 (c. 39) to carry on a consumer credit business or consumer hire business within the meaning of that Act,
  - [<sup>F4</sup>(da) a bond-issuer within the meaning of section 48A below, but only in relation to any bond assets which are rights under arrangements falling within section 47 or 47A,] or
  - (e) a person authorised in a jurisdiction outside the United Kingdom to receive deposits or other repayable funds from the public and to grant credits for its own account.

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- (3) For the purposes of subsection (2)(c) a company is a wholly-owned subsidiary of a bank or building society (“the parent”) if it has no members except the parent and the parent's wholly-owned subsidiaries or persons acting on behalf of the parent or the parent's wholly-owned subsidiaries.

#### **Textual Amendments**

- F1** Words in s. 46(1) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(1\)](#)
- F2** Word in s. 46(1) inserted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 53\(3\)\(a\)](#)
- F3** Words in s. 46(1) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(1\)](#)
- F4** S. 46(2)(da) inserted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 53\(3\)\(b\)](#)

#### *Arrangements giving rise to alternative finance return*

#### **47 Alternative finance arrangements: [<sup>F5</sup>purchase and re-sale]**

- (1) Subject to subsection (3) and section 52, arrangements fall within this section if they are arrangements entered into between two persons under which—
- (a) a person (“X”) purchases an asset and sells it, either immediately or in circumstances in which the conditions in subsection (2) are met, to the other person (“Y”),
  - (b) the amount payable by Y in respect of the sale (“the sale price”) is greater than the amount paid by X in respect of the purchase (“the purchase price”),
  - (c) all or part of the sale price is not required to be paid until a date later than that of the sale, and
  - (d) the difference between the sale price and the purchase price equates, in substance, to the return on an investment of money at interest.
- (2) The conditions referred to in subsection (1)(a) are—
- (a) that X is a financial institution, and
  - (b) that the asset referred to in that provision was purchased by X for the purpose of entering into arrangements falling within this section.
- (3) Arrangements do not fall within this section unless at least one of the parties is a financial institution.
- (4) For the purposes of this section “the effective return” is so much of the sale price as exceeds the purchase price.
- <sup>F6</sup>(5) .....
- (6) If under arrangements falling within this section the whole of the sale price is paid on one day, that sale price is to be taken [<sup>F7</sup>for the purposes of this Chapter] to include alternative finance return equal to the effective return.
- (7) If under arrangements falling within this section the sale price is paid by instalments, each instalment is to be taken [<sup>F8</sup>for the purposes of this Chapter] to include alternative finance return equal to the appropriate amount.

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- (8) The appropriate amount, in relation to any instalment, is an amount equal to the interest that would have been included in the instalment if—
- (a) the effective return were the total interest payable on a loan by X to Y of an amount equal to the purchase price,
  - (b) the instalment were a part repayment of the principal with interest, and
  - (c) the loan were made on arm's length terms and accounted for under generally accepted accounting practice.

#### Textual Amendments

- F5** Words in s. 47 heading substituted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(2\)\(c\)](#)
- F6** S. 47(5) repealed (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(2\)\(a\), Sch. 26 Pt. 3\(17\)](#)
- F7** Words in s. 47(6) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(2\)\(b\)](#)
- F8** Words in s. 47(7) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(2\)\(b\)](#)

#### [<sup>F9</sup>47A Alternative finance arrangements: diminishing shared ownership

- (1) Subject to section 52, arrangements fall within this section if under them—
- (a) a financial institution acquires a beneficial interest in an asset, and
  - (b) another person (“the eventual owner”)—
    - (i) also acquires a beneficial interest in the asset,
    - (ii) is to make payments to the financial institution amounting in aggregate to the consideration paid for the acquisition of its beneficial interest,
    - (iii) is to acquire the financial institution's beneficial interest (whether or not in stages) as a result of those payments,
    - (iv) is to make other payments to the financial institution (whether in pursuance of a lease forming part of the arrangements, or otherwise),
    - (v) has the exclusive right to occupy or otherwise use the asset,
    - (vi) is exclusively entitled to any income, profit or gain arising from or attributable to the asset (including, in particular, any increase in the asset's value).
- (2) For the purposes of subsection (1)(a) it is immaterial—
- (a) whether or not the financial institution acquires its beneficial interest from the eventual owner,
  - (b) whether the eventual owner or another person other than the financial institution also has a beneficial interest in the asset, and
  - (c) whether or not the financial institution also has a legal interest in the asset.
- (3) Subsection (1)(b)(v) does not prevent the eventual owner from granting an interest or right in relation to the asset to someone other than—
- (a) the financial institution,
  - (b) a person controlled by the financial institution <sup>F10</sup> ..., and
  - (c) a person controlled by a person who also controls the financial institution <sup>F11</sup> ...;

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provided that the grant is not required by the financial institution or by arrangements to which the financial institution is party.

<sup>F12</sup> [ For the purposes of subsection (3) whether a person is controlled by another person is determined in accordance with section 840 of ICTA.]

- (4) Subsection (1)(b)(vi) does not prevent the financial institution from having responsibility for, or a share in any loss arising out of, any reduction in the asset's value (and subsection (1)(b)(ii) is subject to this subsection).
- (5) Payments by the eventual owner under arrangements to which this section applies are alternative finance return for the purposes of this Chapter except in so far as they amount to—
  - (a) payments of the kind described in subsection (1)(b)(ii), or
  - (b) payments in respect of any arrangement fee or legal or other costs or expenses which the eventual owner is required under the arrangements to pay.
- (6) Arrangements to which this section applies shall not be treated as a partnership for the purposes of the [<sup>F13</sup>Income Tax Acts, TCGA 1992 and all other enactments relating to capital gains tax].]

#### Textual Amendments

- F9** S. 47A inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(3\)](#)
- F10** Words in s. 47A(3)(b) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 597\(2\)\(a\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F11** Words in s. 47A(3)(c) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 597\(2\)\(b\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F12** S. 47A(3A) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 597\(3\)](#) (with [Sch. 2](#))
- F13** Words in s. 47A(6) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 649](#) (with [Sch. 2 Pts. 1, 2](#))

## 48 Arrangements within section 47: foreign currency and non-residents

- (1) If alternative finance return is paid in a currency other than sterling—
  - (a) by or to a person other than a company, and
  - (b) otherwise than for the purposes of a trade, profession or vocation or a property business,

then, as respects that person, the effective return for the purposes of section 47 and the appropriate amount for the purposes of subsection (7) of that section are to be calculated in the other currency and the amount of each payment of alternative finance return is to be translated into sterling at a spot rate of exchange for the day on which the payment is made.

- (2) In section 148 of FA 2003 (meaning of “permanent establishment”) after subsection (5) insert—

“(5A) Where alternative finance return as defined by subsection (5) of section 47 of the Finance Act 2005 is paid to a company that is not resident in the United Kingdom, the company is not regarded as having a permanent establishment in the United Kingdom merely by virtue of anything done for the purposes of the

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arrangements falling within that section by the other party to the arrangements or by any other person acting for the company in relation to the arrangements.”

(3) In section 127 of FA 1995 (persons not treated as UK representatives) in subsection (1), at the end of paragraph (c) but before the “and” insert—

“(cc) where the income consists of alternative finance return, as defined by subsection (5) of section 47 of the Finance Act 2005, the other party to the arrangements falling within that section or any other person acting for the non-resident in relation to the arrangements;”.

#### [<sup>F14</sup>48A Alternative finance arrangements: alternative finance investment bond: introduction

(1) Subject to section 52, arrangements fall within this section if—

- (a) the arrangements provide for one person (“the bond-holder”) to pay a sum of money (“the capital”) to another (“the bond-issuer”),
- (b) the arrangements identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly (“the bond assets”),
- (c) the arrangements specify a period at the end of which they cease to have effect (“the bond term”),
- (d) the bond-issuer undertakes under the arrangements—
  - (i) to dispose at the end of the bond term of any bond assets which are still in the bond-issuer’s possession,
  - (ii) to make a repayment of the capital (“the redemption payment”) to the bond-holder during or at the end of the bond-term (whether or not in instalments), and
  - (iii) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term (“additional payments”),
- (e) the amount of the additional payments does not exceed an amount which would be a reasonable commercial return on a loan of the capital,
- (f) under the arrangements the bond-issuer undertakes to arrange for the management of the bond assets with a view to generating income sufficient to pay the redemption payment and additional payments,
- (g) the bond-holder is able to transfer the rights under the arrangements to another person (who thereby becomes the bond-holder),
- (h) the arrangements are a listed security on a recognised stock exchange (within the meaning of section 1005 of ITA 2007), and
- (i) the arrangements are wholly or partly treated in accordance with international accounting standards as a financial liability of the bond-issuer (or would be if the bond-issuer applied those standards).

(2) For the purposes of subsection (1)—

- (a) the bond-issuer may acquire bond assets before or after the arrangements take effect,
- (b) bond assets may be property of any kind, including rights in relation to property owned by someone other than the bond-issuer,
- (c) the identification of the bond assets mentioned in subsection (1)(b) and the undertakings mentioned in subsection (1)(d) and (f) may (but need not) be described as, or accompanied by a document described as, a declaration of trust,

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- (d) a reference to the management of assets includes a reference to disposal,
  - (e) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them, before the end of the bond term,
  - (f) the amount of the additional payments may be—
    - (i) fixed at the beginning of the bond term,
    - (ii) determined wholly or partly by reference to the value of or income generated by the bond assets, or
    - (iii) determined in some other way,
  - (g) if the amount of the additional payments is not fixed at the beginning of the bond term, the reference in subsection (1)(e) to the amount of the additional payments is a reference to the maximum amount of the additional payments,
  - (h) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them, and
  - (i) entitlement to the redemption payment may (but need not) be capable of being satisfied (whether or not at the option of the bond-issuer or the bond-holder) by the issue or transfer of shares or other securities.
- (3) An order under section 1005 of ITA 2007 (recognised stock exchanges: designation) may designate a stock exchange for the purposes of that section in its application for the purposes of this section [<sup>F15</sup>and section 507 of CTA 2009 (investment bond arrangements)] only.]

#### Textual Amendments

**F14** Ss. 48A, 48B inserted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 53\(1\)](#)

**F15** Words in [s. 48A\(3\)](#) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [s. 1329\(1\)](#), [Sch. 1 para. 650](#) (with [Sch. 2 Pts. 1, 2](#))

#### [<sup>F14</sup>48B Alternative finance arrangements: alternative finance investment bond: effects

- (1) Additional payments under arrangements falling within section 48A are alternative finance return for the purpose of this Chapter (subject to the provisions in section 51A about the treatment of discount).
- (2) For the purposes of an enactment about any tax [<sup>F16</sup>other than the Corporation Tax Acts] (and irrespective of the position for other purposes)—
  - (a) a bond-holder shall not be treated as having a legal or beneficial interest in the bond assets,
  - (b) the bond-issuer shall not be treated as a trustee of the bond assets,
  - (c) profits and gains accruing to the bond-issuer in connection with the bond assets are profits and gains of the bond-issuer and not of the bond-holder (and do not arise to the bond-issuer in a fiduciary or representative capacity),
  - (d) payments made by the bond-issuer by way of redemption payment or additional payment are not made in a fiduciary or representative capacity, and
  - (e) a bond-holder shall not be entitled to relief for capital expenditure in connection with bond assets.

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- (3) Arrangements falling within section 48A are securities for the purposes of an enactment about any tax [<sup>F17</sup>other than the Corporation Tax Acts] (including Chapters 1 to 5 of Part 7 of ITEPA 2003); for which purpose—
- (a) a reference to redemption shall be taken as a reference to making the redemption payment,
  - (b) a reference to interest shall be taken as a reference to alternative finance return, and
  - (c) for the purposes of section 84 the bond issuer shall be treated as being party as debtor to a capital market arrangement.
- (4) Arrangements falling within section 48A [<sup>F18</sup>of this Act or section 507 of CTA 2009] are a corporate bond, issued on the date on which the arrangements are entered into, for the purposes of section 117 of TCGA 1992 (qualifying corporate bonds) if—
- (a) the capital is expressed in sterling,
  - (b) the arrangements do not include provision for the redemption payment to be in a currency other than sterling,
  - (c) entitlement to the redemption payment is not capable of conversion (directly or indirectly) into an entitlement to the issue of securities apart from other arrangements falling within section 48A [<sup>F18</sup>of this Act or section 507 of CTA 2009], and
  - (d) the additional payments are not determined wholly or partly by reference to the value of the bond assets;
- and section 117(2) shall have effect for the purposes of this subsection as for the purposes of section 117(1).
- (5) Arrangements falling within section 48A [<sup>F19</sup>of this Act or section 507 of CTA 2009] shall not be treated—
- (a) as a unit trust scheme for the purposes of TCGA 1992,
  - (b) as a unit trust scheme for the purposes of section 469 of ICTA or section 1007 of ITA 2007 (distributions), [<sup>F20</sup>or]
  - (c) as an offshore fund for the purposes of Chapter 5 of Part 17 of ICTA (offshore funds), <sup>F21</sup>...
  - <sup>F21</sup>(d) .....
- (6) A bond-issuer is not a securitisation company for the purposes of section 83 (unless it is one by virtue of arrangements which do not fall within section 48A).
- (7) For the purposes of section 417 of ICTA (close companies)—
- (a) a bond-holder is a loan creditor in respect of the bond-issuer;
  - (b) arrangements falling within section 48A shall be disregarded in the application of section 417(1)(d).
- (8) For the purposes of Schedule 18 to ICTA (group relief)—
- (a) a bond-holder is a loan creditor in respect of the bond-issuer;
  - (b) paragraph 1(5)(b) shall be disregarded in determining whether a person is an equity holder by virtue of arrangements falling within section 48A.]

#### Textual Amendments

**F14** Ss. 48A, 48B inserted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 53\(1\)](#)

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- F16** Words in s. 48B(2) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 651(a)** (with Sch. 2 Pts. 1, 2)
- F17** Words in s. 48B(3) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 651(a)** (with Sch. 2 Pts. 1, 2)
- F18** Words in s. 48B(4) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 651(b)** (with Sch. 2 Pts. 1, 2)
- F19** Words in s. 48B(5) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 651(c)(i)** (with Sch. 2 Pts. 1, 2)
- F20** Word in s. 48B(5) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 651(c)(ii)** (with Sch. 2 Pts. 1, 2)
- F21** S. 48B(5)(d) and word repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 651(c)(iii), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Arrangements giving rise to profit share return*

**49 Alternative finance arrangements: <sup>F22</sup>deposit**

- (1) Subject to section 52, arrangements fall within this section if they are arrangements under which—
- (a) a person (“the depositor”) deposits money with a financial institution,
  - (b) the money, together with money deposited with the institution by other persons, is used by the institution with a view to producing a profit,
  - (c) from time to time the institution makes or credits a payment to the depositor, in proportion to the amount deposited by him, out of any profit resulting from the use of the money, and
  - (d) the payments so made or credited by the institution equate, in substance, to the return on an investment of money at interest.

<sup>F23</sup>(2) Amounts paid or credited as mentioned in subsection (1)(c) by a financial institution under arrangements falling within this section are <sup>F24</sup>[alternative finance return] for the purposes of this Chapter.]

**Textual Amendments**

- F22** Word in s. 49 heading substituted (19.7.2006) by Finance Act 2006 (c. 25), s. 95(2)(b)
- F23** S. 49(2) substituted (19.7.2006) by Finance Act 2006 (c. 25), s. 95(2)(a)
- F24** Words in s. 49(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 652** (with Sch. 2 Pts. 1, 2)

**<sup>F25</sup>49A Alternative finance arrangements: profit share agency**

- (1) Subject to section 52, arrangements fall within this section if they are arrangements under which—
- (a) a person (“the principal”) appoints a financial institution as his agent,
  - (b) the agent uses money provided by the principal with a view to producing a profit,
  - (c) the principal is entitled, to a specified extent, to profits resulting from the use of the money,
  - (d) the agent is entitled to any additional profits resulting from the use of the money (and may also be entitled to a fee to be paid by the principal), and



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- (e) payments in pursuance of the entitlement specified in paragraph (c) equate, in substance, to the return on an investment of the money at interest.
- (2) Amounts paid or credited by a financial institution in accordance with an entitlement of the kind specified in subsection (1)(c) are [F26alternative finance return] for the purposes of this Chapter.
- (3) The principal shall not be treated for the purposes of the [F27Income Tax Acts] as entitled to profits to which the agent is entitled in accordance with subsection (1)(d) [F28(and the agent is treated as entitled to the profits specified in subsection (1)(c) and (d))] .]

**Textual Amendments**

- F25** S. 49A inserted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(3\)](#)
- F26** Words in s. 49A(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 653\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F27** Words in s. 49A(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 653\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F28** Words in s. 49A(3) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\), s. 54](#)

*Treatment of alternative finance arrangements*

**F29 50 Treatment of alternative finance arrangements: companies**

.....

**Textual Amendments**

- F29** [S. 50](#) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 654, Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

**51 Treatment of alternative finance arrangements: persons other than companies**

- (1) Alternative finance return <sup>F30</sup>... is to be treated for the purposes of ITTOIA 2005 as if it were interest.
- (2) Sections 353 to [F31367 of ICTA and Chapter 1 of Part 8 of ITA 2007 (interest payments)] (relief for payments of interest) have effect as if—
  - (a) arrangements falling within section 47 involved the making of a loan, and
  - (b) alternative finance return were interest;and section 366 [F32of ICTA and section 412 of ITA 2007] (information) shall have effect accordingly.
- (3) Subsections (4) and (5) apply to the extent that a person other than a company is a party to alternative finance arrangements for the purposes of a trade, profession or vocation carried on by him or for the purposes of a property business of his.
- (4) Alternative finance return <sup>F33</sup>... paid by him is to be treated as an expense of the trade, profession or vocation or of the property business.
- (5) Section 58 of ITTOIA 2005 (incidental costs of obtaining finance) has effect as if—

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- (a) references to a loan included references to alternative finance arrangements, and
- (b) references to interest included references to alternative finance return <sup>F34</sup>....

#### Textual Amendments

- F30** Words in s. 51(1) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 655, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F31** Words in s. 51(2) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 598(a)** (with Sch. 2)
- F32** Words in s. 51(2) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 598(b)** (with Sch. 2)
- F33** Words in s. 51(4) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 655, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F34** Words in s. 51(5)(b) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 655, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

#### <sup>F35</sup>51A Discount

- (1) This section applies where part of the additional payments in respect of arrangements falling within section 48A equates in substance to discount (“the discount element”).
- (2) The discount element shall not be treated as alternative finance return for the purposes of income tax.
- (3) The discount element shall be treated—
  - (a) in accordance with section 381 of ITTOIA 2005, or
  - (b) where the arrangements falling within section 48A are deeply discounted securities for the purpose of Chapter 8 of Part 4 of ITTOIA 2005, in accordance with that Chapter.]

#### Textual Amendments

- F35** S. 51A inserted (with effect in accordance with s. 53(13)(14) of the amending Act) by Finance Act 2007 (c. 11), s. 53(5)

#### 52 Provision not at arm's length

- (1) This section applies where—
  - (a) arrangements would apart from this section fall within section 47 [<sup>F36</sup>47A][<sup>F37</sup>, [<sup>F38</sup>48A,] 49 or 49A,]
  - (b) paragraph 1(2) of Schedule 28AA to ICTA (provision not at arm's length) requires the profits and losses of any person who is a party to the arrangements to be computed for tax purposes as if the arm's length provision referred to in paragraph 1(2)(a) of that Schedule had been made or imposed instead of the arrangements, and
  - (c) any person who is for the purposes of that Schedule an affected person is entitled to—
    - (i) relevant return, or
    - (ii) an amount representing relevant return,

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but is not subject to income tax or corporation tax, or any corresponding tax under the law of a territory outside the United Kingdom, on the relevant return or the amount representing it.

- (2) In this section “relevant return”, in relation to any arrangements, means any amount that would be alternative finance return<sup>F39</sup>... if the arrangements were alternative finance arrangements.
- (3) The arrangements are not to be regarded as falling within section 47<sup>F40</sup>, 47A<sup>F41</sup>, <sup>F42</sup>48A,] 49 or 49A.]
- (4) Where the arrangements would, but for subsection (3), fall within section <sup>F43</sup>47 <sup>F44</sup>[<sup>F44</sup>, 47A or 48A] ,] the person paying relevant return under the arrangements is not entitled—
  - (a) to any deduction in computing profits or gains for the purposes of income tax or corporation tax, or
  - (b) to any deduction <sup>F45</sup>[<sup>F45</sup> in calculating net income or, as the case may be, against] total profits,in respect of the relevant return.
- (5) Where the arrangements would, but for subsection (3), fall within section <sup>F46</sup>49 or 49A,] the person paying relevant return under the arrangements is not entitled—
  - (a) to any deduction in computing profits or gains for the purposes of income tax or corporation tax, or
  - (b) to any deduction <sup>F47</sup>[<sup>F47</sup> in calculating net income or, as the case may be, against] total profits,in respect of the relevant return.

<sup>F48</sup>(6) .....

#### Textual Amendments

- F36** Words in s. 52(1)(a) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(5\)\(a\)](#)
- F37** Words in s. 52(1)(a) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(5\)\(a\)](#)
- F38** Word in s. 52(1) inserted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 53\(6\)\(a\)](#)
- F39** Words in s. 52(2) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 656\(a\), Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F40** Words in s. 52(3) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(5\)\(b\)](#)
- F41** Words in s. 52(3) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(5\)\(b\)](#)
- F42** Word in s. 52(3) inserted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 53\(6\)\(b\)](#)
- F43** Words in s. 52(4) substituted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(5\)\(c\)](#)
- F44** Words in s. 52(4) substituted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 53\(6\)\(c\)](#)
- F45** Words in s. 52(4)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 599\(2\)](#) (with [Sch. 2](#))
- F46** Words in s. 52(5) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(5\)\(c\)](#)
- F47** Words in s. 52(5)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 599\(3\)](#) (with [Sch. 2](#))

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**F48** S. 52(6) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 656(b), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**53 Treatment of section 47 <sup>F49</sup>, 47A or 48A] arrangements: sale and purchase of asset**

(1) Where under arrangements falling within section 47 <sup>F50</sup>, 47A or 48A] an asset is sold by one party to the arrangements to the other party, the effective return shall be excluded in determining for the purposes of the Tax Acts (apart from that section) and of TCGA 1992 the consideration for the sale and purchase of the asset.

(2) Subsection (1) does not affect the operation of any provision of the Tax Acts or TCGA 1992 which provides that the consideration for a sale or purchase is to be taken for any purpose to be an amount other than the actual consideration.

<sup>F51</sup>(3) In the application of this section to section 47A <sup>F52</sup>or 48A] a reference to the effective return is a reference to the alternative finance return.]

**Textual Amendments**

**F49** Words in s. 53 heading substituted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 53(7)(a)

**F50** Words in s. 53(1) substituted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 53(7)(a)

**F51** S. 53(3) added (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. 96(6)(b)

**F52** Words in s. 53(3) inserted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 53(7)(b)

**<sup>F54</sup>54 <sup>F53</sup>Return not to be treated as distribution]**

**Textual Amendments**

**F53** S. 54 heading substituted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 53(8)(c)

**F54** S. 54 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 657, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**<sup>F55</sup>54A. Treatment of section 47, 49 and 49A arrangements as loans: Community Investment Tax Relief**

(1) This section has effect for the purposes of the following enactments (“the specified enactments”)—

- (a) Schedule 16 to FA 2002,
- (b) Part 7 of ITA 2007,
- (c) regulations made under or having effect as if made under paragraph 4 of Schedule 16 to FA 2002, and
- (d) regulations made under section 340 or 341 of ITA 2007.

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- (2) The specified enactments have effect as if—
- (a) references to a loan included references to arrangements falling within section 47, 49 or 49A [<sup>F56</sup>of this Act or section 503, 505 or 506 of CTA 2009], and
  - (b) references to interest included references to alternative finance return <sup>F57</sup>....
- (3) Where arrangements fall within section 47 [<sup>F58</sup>of this Act or section 503 of CTA 2009], the specified enactments have effect in relation to those arrangements as if—
- (a) X is treated as making a loan to Y equal to the purchase price paid by X for the asset,
  - (b) if the arrangements provide that X will transfer ownership of the asset to Y in instalments—
    - (i) references to the loan being drawn down over a period of time include references to the asset being transferred to Y in instalments,
    - (ii) references to the date on which the first amount of the loan is drawn down include references to the date on which the first instalment is transferred to Y, and
    - (iii) references to the amount drawn down at a given date include references to the value of the instalments transferred at that date,
  - (c) in calculating the amount of capital outstanding on the loan each payment of the sale price (or part thereof), less any amount of alternative finance return included within each payment, is treated as a repayment of the loan capital,
  - (d) references to the beneficial owner of the loan include references to the person beneficially entitled to payment of the sale price,
  - (e) references to the disposal of the whole or any part of the loan include references to the disposal of the right to receive payment of the whole or any part of the outstanding sale price.
- (4) If arrangements which fall within section 47 [<sup>F59</sup>of this Act or section 503 of CTA 2009] are, pursuant to the application of this section, qualifying investments under Part 3 of Schedule 16 to FA 2002 or Chapter 3 of Part 7 of ITA 2007, paragraph 35 of Schedule 16 to FA 2002 or section 366 of ITA 2007 has effect in relation to that arrangement as if sub-paragraph (1)(f) or subsection (1)(f) were omitted.
- (5) Where arrangements fall within section 49 [<sup>F60</sup>of this Act or section 505 of CTA 2009], the specified enactments have effect in relation to the arrangements as if—
- (a) the depositor is treated as making a loan to the financial institution equal to the money deposited,
  - (b) if the arrangements provide that the depositor will deposit a sum of money with the financial institution in instalments—
    - (i) references to the loan being drawn down over a period of time include references to the depositor depositing a sum of money to the financial institution in instalments,
    - (ii) references to the date on which the first amount of the loan is drawn down include references to the date on which the first instalment is deposited with the financial institution, and
    - (iii) references to the amount of an investment drawn down at a given date include references to the value of the instalments deposited with the financial institution at that date,

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- (c) the capital outstanding on the loan is equal to the balance of the repayable deposit and references to any repayment of the loan include references to any repayment of the deposit,
  - (d) references to the beneficial owner of the loan include references to the person beneficially entitled to repayment of the deposit,
  - (e) references to the disposal of the whole or any part of the loan include references to the disposal of the right to receive repayment of the whole or any part of the deposit.
- (6) Where arrangements fall within section 49A [<sup>F61</sup>of this Act or section 506 of CTA 2009], the specified enactments have effect in relation to the arrangements as if—
- (a) the principal is treated as making a loan to the agent equal to the money provided by the principal to the agent,
  - (b) if the arrangements provide that the principal will provide a sum of money to the agent in instalments—
    - (i) references to the loan being drawn down over a period of time include references to the principal providing a sum of money to the agent in instalments,
    - (ii) references to the date on which the first amount of the loan is drawn down include references to the date on which the first instalment is provided to the agent, and
    - (iii) references to the amount of an investment drawn down at a given date include references to the value of the instalments provided to the agent at that date,
  - (c) the capital outstanding on the loan is equal to the balance of the repayable money provided to the agent and references to any repayment of the loan include references to any repayment of the money provided to the agent,
  - (d) references to the beneficial owner of the loan include references to the person beneficially entitled to repayment of the money provided to the agent,
  - (e) references to the disposal of the whole or any part of the loan include references to the disposal of the right to receive repayment of the whole or any part of the money provided to the agent.]

#### Textual Amendments

- F55** S. 54A inserted (10.7.2008) by [The Alternative Finance Arrangements \(Community Investment Tax Relief\) Order 2008 \(S.I. 2008/1821\)](#), arts. 1, 2
- F56** Words in s. 54A(2)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 658\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F57** Words in s. 54A(2)(b) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 658\(b\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F58** Words in s. 54A(3) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 658\(c\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F59** Words in s. 54A(4) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 658\(c\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F60** Words in s. 54A(5) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 658\(d\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F61** Words in s. 54A(6) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 658\(e\)](#) (with [Sch. 2 Pts. 1, 2](#))

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## Supplementary

### 55 Further provisions

Schedule 2 (which contains further provision about the treatment of alternative finance arrangements for the purposes of income tax <sup>F62</sup>... and capital gains tax) has effect.

#### Textual Amendments

**F62** Words in s. 55 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 659, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

### 56 Application of Chapter

- (1) This Chapter has effect in relation to alternative finance arrangements entered into on or after 6th April 2005.
- (2) To the extent provided by subsections (3) to (6), this Chapter also has effect in relation to alternative finance arrangements falling within section 49 entered into before 6th April 2005 under which [<sup>F63</sup>alternative finance return] is payable on or after that date (“existing profit share arrangements”).
- (3) For the purposes of income tax, this Chapter has effect in relation to payments of [<sup>F64</sup>alternative finance return] made on or after 6th April 2005 under existing profit share arrangements to a person other than a company.
- (4) Where a company is a party to existing profit share arrangements—
  - (a) this Chapter has effect in relation to the company in relation to those arrangements with effect from 6th April 2005, <sup>F65</sup>...
  - <sup>F65</sup>(b) .....
- <sup>F66</sup>(5) .....
- (6) [<sup>F67</sup>Section 209(6A) of ICTA] has effect in relation to [<sup>F68</sup>alternative finance return] paid by a company on or after 6th April 2005 under existing profit share arrangements.

#### Textual Amendments

- F63** Words in s. 56(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 660(a)** (with Sch. 2 Pts. 1, 2)
- F64** Words in s. 56(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 660(a)** (with Sch. 2 Pts. 1, 2)
- F65** S. 56(4)(b) and word repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 660(b), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F66** S. 56(5) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 660(c), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F67** Words in s. 56(6) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 660(d)(i)** (with Sch. 2 Pts. 1, 2)
- F68** Words in s. 56(6) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 660(d)(ii)** (with Sch. 2 Pts. 1, 2)

#### Modifications etc. (not altering text)

**C1** S. 56 modified (19.7.2006) by Finance Act 2006 (c. 25), s. 95(11)

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**C2** S. 56 modified (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **s. 53(13)**

## 57 Interpretation of Chapter

In this Chapter—

“alternative finance arrangements” has the meaning given by section 46(1);

“alternative finance return” has the meaning given by [<sup>F69</sup>sections 47(6) and (7) [<sup>F70</sup>47A(5), 48B(1), 49(2) and 49A(2)]];

“financial institution” has the meaning given by section 46(2);

<sup>F71</sup>  
...

“property business” has the meaning given by section 263(6) of ITTOIA 2005.

### Textual Amendments

**F69** Words in s. 57 substituted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **s. 96(7)**

**F70** Words in s. 57 substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 661(a)** (with [Sch. 2 Pts. 1, 2](#))

**F71** Words in s. 57 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 661\(b\)](#), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))



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