



Finance Act 2006

2006 CHAPTER 25

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 9

MISCELLANEOUS PROVISIONS

Leasing of plant or machinery

81 Leases of plant or machinery

- (1) Schedule 8 (which makes provision in relation to leases of plant or machinery) has effect.
- (2) Schedule 9 (which makes miscellaneous amendments relating to such leases) has effect.

Sale of lessors

82 Sale etc of lessor companies etc

Schedule 10 (which makes provision about the sale etc of lessor companies etc) has effect.

83 Restrictions on use of losses etc: leasing partnerships

- (1) In section 403 of ICTA (amounts which may be surrendered by way of group relief), in subsection (4) (section 403 subject to certain exceptions), at the end insert “ and section 785ZA (restrictions on use of losses: leasing partnerships) ”.

Status: Point in time view as at 21/07/2008.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, Chapter 9. (See end of Document for details)

- (2) After section 785 of ICTA (meaning of expressions for purposes of sections 781 to 784 (assets leased to traders and others)) insert—

“785ZA Restrictions on use of losses: leasing partnerships

- (1) This section applies for corporation tax purposes if—
- (a) a company carries on a business in respect of which the company is within the charge to corporation tax,
 - (b) the company carries on the business in partnership with other persons in an accounting period of the partnership,
 - (c) the business (“the leasing business”) is, on any day in that period, a business of leasing plant or machinery,
 - (d) the company incurs a loss in its notional business in any accounting period comprised (wholly or partly) in the accounting period of the partnership, and
 - (e) the interest of the company in the leasing business during the accounting period of the partnership is not determined on an allowable basis (see subsections (2) to (4)).
- (2) The interest of the company in the leasing business during the accounting period of the partnership is determined on an allowable basis if (and only if) the following condition is met.
- (3) The condition is met if, for the purposes of section 114(2),—
- (a) the company's share in the profits or loss of the leasing business for that period is determined wholly by reference to a single percentage, and
 - (b) the company's share in any relevant capital allowances for that period is determined wholly by reference to the same percentage.
- (4) For the purposes of this condition “profits” does not include chargeable gains.
- (5) The following restrictions apply in respect of so much of the loss incurred by the company in its notional business as derives from any relevant capital allowances (“the restricted part of the loss”).
- (6) Apart from by way of set off against any relevant leasing income, relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss.
- (7) If the leasing business is a trade, relief is not to be given to the company under section 393A(1) in respect of the restricted part of the loss.
- (8) The restricted part of the loss is not available for set off by way of group relief in accordance with section 403.
- (9) For the purpose of determining how much of a loss derives from any relevant capital allowances, the loss is to be calculated on the basis that any relevant capital allowances are the final amounts to be deducted.

785ZB Section 785ZA: definitions

- (1) This section applies for the purposes of section 785ZA.

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- (2) “Business of leasing plant or machinery” has the same meaning as in Part 3 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc).
 - (3) “Lease” has the same meaning as in section 785A.
 - (4) “Notional business”, in relation to a company, means the business—
 - (a) from which the company's share in the profits or loss of the leasing business is treated under section 114(2) as deriving for the purposes of the charge to corporation tax, and
 - (b) which is treated under that provision as carried on alone by the company for those purposes.
 - (5) “Plant or machinery” has the same meaning as in Part 2 of the Capital Allowances Act.
 - (6) “Relevant capital allowance” means an allowance under Part 2 of the Capital Allowances Act in respect of expenditure incurred on the provision of plant or machinery wholly or partly for the purposes of the leasing business.
 - (7) “Relevant leasing income” means any income of the company's notional business deriving from any lease—
 - (a) which is a lease of plant or machinery, and
 - (b) which was entered into before the end of the accounting period of the company in which the loss in its notional business was incurred.
 - (8) “Relevant loss relief provision” means any of the following provisions—
 - (a) section 392A (Schedule A losses),
 - (b) section 392B (losses from overseas property businesses),
 - (c) section 393 (trade losses),
 - (d) section 396 (Case VI losses).”.
- (3) After section 261 of CAA 2001 (special leasing: life assurance business) insert—

“261A Special leasing: leasing partnerships

- (1) This section applies for corporation tax purposes if—
 - (a) a company carries on a business in partnership with other persons in a chargeable period of the partnership,
 - (b) the business (“the leasing business”) is, on any day in that period, a business of leasing plant or machinery,
 - (c) the company is entitled to an allowance under section 19 (special leasing of plant or machinery) for any chargeable period comprised (wholly or partly) in the chargeable period of the partnership, and
 - (d) the interest of the company in the leasing business during the chargeable period of the partnership is not determined on an allowable basis.
- (2) Subsections (3) to (6) of section 260 do not apply in relation to the allowance.
- (3) For the purposes of this section—
 - (a) “business of leasing plant or machinery” has the same meaning as in Part 3 of Schedule 10 to FA 2006 (sale etc of lessor companies etc), and

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- (b) section 785ZA of ICTA applies for determining whether the interest of the company in the leasing business during the chargeable period of the partnership is determined on an allowable basis.”.
- (4) The amendments made by this section have effect in relation to any business carried on by a company in partnership in any accounting period of the partnership ending on or after 5th December 2005.
- (5) But, in relation to any accounting period of the partnership beginning before 5th December 2005 and ending on or after that date, those amendments have effect only if—
 - (a) the company starts to carry on the business in partnership on or after that date, or
 - (b) a relevant change in the interest of the company in the business occurs on or after that date.
- (6) A relevant change in the interest of the company in the business occurs at any time if—
 - (a) immediately before that time its interest in the business during any accounting period of the partnership is determined on an allowable basis (within the meaning given by section 785ZA of ICTA), and
 - (b) immediately after that time its interest in the business during that period is not so determined.

84 Disposal of plant or machinery subject to lease where income retained

- (1) CAA 2001 is amended as follows.
- (2) In section 66 (list of provisions outside Chapter 5 of Part 2 about disposal values), after the entry relating to section 222 of CAA 2001, insert—

“sections 228K to 228M	Disposal of plant or machinery subject to lease where income retained”.
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- (3) After section 228J (plant or machinery subject to further operating lease) insert—

“Disposal of plant or machinery subject to lease where income retained

228K Disposal of plant or machinery subject to lease where income retained

- (1) This section applies for corporation tax purposes if—
 - (a) on any day (“the relevant day”) a person (“the lessor”) carries on a business of leasing plant or machinery (the “leasing business”),
 - (b) on the relevant day the lessor sells or otherwise disposes of any relevant plant or machinery subject to a lease to another person,
 - (c) the lessor remains entitled immediately after the disposal to some or all of the rentals under the lease in respect of the plant or machinery which are payable on or after the relevant day, and
 - (d) the lessor is required to bring a disposal value of the plant or machinery into account under this Part.
- (2) The disposal value to be brought into account is determined as follows.

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- (3) If the amount or value of the consideration for the disposal exceeds the limit that would otherwise be imposed on the amount of the disposal value by section 62 (general limit) or 239 (limit on disposal value where additional VAT rebate)—
- (a) that limit is not to apply, and
 - (b) the whole of the amount or value of the consideration for the disposal is to be the disposal value to be brought into account.
- (4) In any other case, the disposal value to be brought into account is the sum of—
- (a) the amount or value of the consideration for the disposal, and
 - (b) the value of the rentals under the lease in respect of the plant or machinery (see subsections (7) and (8)) which are payable on or after the relevant day and to which the lessor remains entitled immediately after the disposal,
- but subject to the limit imposed on the amount of the disposal value by section 62 or 239.
- (5) If—
- (a) any of the rentals under the lease are receivable by the lessor on or after the relevant day, and
 - (b) the value of any of those rentals is represented in the amount of the disposal value under subsection (4)(b),
- the amount of those rentals that is equal to their value as so represented is left out of account in calculating the income of the lessor's leasing business for corporation tax purposes.
- (6) If, in determining under subsection (5) the amount of any rental to be so left out of account, it is necessary to apportion the amount of the rental, the apportionment is to be made on a just and reasonable basis.
- (7) For the purposes of this section, the value of any rentals under the lease in respect of the plant or machinery is taken to be the amount of the net present value of the rentals (see section 228L).
- (8) If any land or other asset which is not plant or machinery is subject to the lease, the value of any rentals under the lease in respect of the plant or machinery is taken to be so much of the amount of the net present value of the rentals as, on a just and reasonable basis, relates to the plant or machinery.
- (9) This section is supplemented by—
- (a) section 228L (which provides rules for determining the net present value of the rentals), and
 - (b) section 228M (which defines other expressions used in this section).

228L Determining the net present value of the rentals for purposes of s.228K

- (1) For the purposes of section 228K, the amount of the net present value of the rentals is calculated as follows—

Step 1

Find the amount (“RI”) of each rental payment—

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- (a) which is payable at any time during the term of the lease, and
- (b) which is payable on or after the relevant day.

Step 2

For each rental payment find the day (“the payment day”) on which it becomes payable.

Step 3

For each rental payment find the number of days in the period (“P”) which—

- (a) begins with the relevant day, and
- (b) ends with the payment day.

Step 4

Calculate the net present value of each payment (“NPVRI”) by applying the following formula—

$$\frac{RI}{(1 + T)^i}$$

where—

T is the temporal discount rate, and

i is the number of days in P divided by 365.

Step 5

Add together each amount of NPVRI determined under step 4.

- (2) For the purposes of this section the “term” of a lease has the meaning given in Chapter 6A of this Part.
- (3) For the purposes of this section the “temporal discount rate” is 3.5% or such other rate as may be specified by regulations made by the Treasury.
- (4) The regulations may make such provision as is mentioned in subsection (3) (b) to (f) of section 178 of FA 1989 (power of Treasury to set rates of interest).
- (5) Subsection (5) of that section (power of Commissioners to specify rate by order in certain circumstances) applies in relation to regulations under this section as it applies in relation to regulations under that section.

228M Other definitions for the purposes of s.228K

- (1) This section applies for the purposes of section 228K.
- (2) “Business of leasing plant or machinery”—
 - (a) has the same meaning as in Part 2 of Schedule 10 to FA 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), or
 - (b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership).

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- (3) “Lease” includes—
- (a) an underlease, sublease, tenancy or licence, and
 - (b) an agreement for any of those things.
- (4) “Relevant plant or machinery”, in relation to a business of leasing plant or machinery, means plant or machinery on whose provision expenditure is incurred wholly or partly for the purposes of the business.”.
- (4) In Schedule 1 (abbreviations and defined expressions), in Part 1 (abbreviations), insert at the end—

“FA 2006

The Finance Act 2006 (c. 25)”.

- (5) The amendments made by this section have effect in relation to any disposal made on or after 5th December 2005.
- (6) But any rentals that are receivable by the lessor before 22nd March 2006 are to be left out of account in calculating the income of the lessor's leasing business for corporation tax purposes.

85 Restrictions on effect of elections under section 266 of CAA 2001

- (1) CAA 2001 is amended as follows.
- (2) In section 266 (election where predecessor and successor are connected persons), in subsection (7) (sections 104, 108 and 265 not to apply if election is made), at the end insert “ (but see section 267A) ”.
- (3) In section 267 (effect of election), at the end insert—
- “(6) This section is subject to section 267A.”.
- (4) After that section insert—

“267A Restriction on effect of election

- (1) This section applies for corporation tax purposes if—
- (a) on any day (“the relevant day”) a person (“the predecessor”) carries on a business of leasing plant or machinery,
 - (b) on the relevant day another person (“the successor”) succeeds to the business, and
 - (c) the predecessor and the successor make an election under section 266.
- (2) Neither—
- (a) section 266(7), nor
 - (b) the provisions of section 267,
- have effect in relation to any plant or machinery which, in determining whether the business is a business of leasing plant or machinery on the relevant day, is qualifying leased plant or machinery.
- (3) In this section “business of leasing plant or machinery”—

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- (a) has the same meaning as in Part 2 of Schedule 10 to FA 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), or
 - (b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership).”.
- (5) The amendments made by this section have effect in relation to any succession occurring on or after 5th December 2005.

Insurance companies and policyholders

86 Insurance companies

Schedule 11 (which makes provision about insurance companies) has effect.

87 Qualifying policies: altering method for calculating benefits

- (1) Schedule 15 to ICTA (provisions for determining whether an insurance policy is a “qualifying policy” for the purposes of the Tax Acts) is amended as follows.
- (2) In paragraph 18 (variations), in sub-paragraph (3) (paragraph does not apply by reason of certain variations), at the end insert “; or
 - (d) any variation which alters the method for calculating the benefits secured by the policy.”.
- (3) In paragraph 22 (certificates from body issuing policy), in sub-paragraph (3) (sub-paragraph (2) does not apply by reason of certain variations), at the end insert “; or
 - (c) any variation which alters the method for calculating the benefits secured by the policy.”.
- (4) In the case of a variation effected as part of, or in connection with, an insurance business transfer scheme, the amendments made by this section are deemed always to have had effect.
- (5) In any other case, the amendments made by this section have effect in relation to variations effected on or after 7th October 2005.
- (6) In this section an “insurance business transfer scheme” means—
 - (a) a scheme falling within section 105 of the Financial Services and Markets Act 2000 (c. 8),
 - (b) a scheme sanctioned by a court under Part 1 of Schedule 2C to the Insurance Companies Act 1982 (c. 50), or
 - (c) a scheme sanctioned by a court under section 49 of that Act or under any earlier enactment corresponding to that section,

and for the purposes of this subsection any reference to an enactment is a reference to the enactment as it had effect from time to time.

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Settlements

88 Settlements, etc: chargeable gains

Schedule 12 (which amends TCGA 1992 in respect of settlors and trustees of settlements and makes other minor and consequential amendments) shall have effect.

89 Settlements, etc: income

Schedule 13 (which amends ICTA and ITTOIA 2005 in respect of settlors and trustees of settlements and makes other minor and consequential amendments) shall have effect.

90 Special trusts tax rates not to apply to social landlords' service charge income

F1

Textual Amendments

- F1** S. 90 repealed (6.4.2007 with effect as mentioned in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [s. 1031](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))

Investment reliefs

91 Venture capital schemes

(1) Schedule 14 contains amendments of the provisions relating to—

F2 . . .

F3 . . .

the corporate venturing scheme.

(2) Those amendments have effect as mentioned in that Schedule.

Textual Amendments

- F2** Words in [s. 91\(1\)](#) repealed (6.4.2007 with effect as mentioned in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [s. 1031](#), [Sch. 3 Pt. 2](#) (with transitional provisions and savings in [Sch. 2](#))
- F3** Words in [s. 91\(1\)](#) repealed (6.4.2007 with effect as mentioned in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [s. 1031](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))

Employment-related securities

92 Avoidance using options etc

(1) Section 420 of ITEPA 2003 (meaning of securities etc) is amended as follows.

(2) In subsection (1)(f), insert at the beginning “ options and ”.

(3) In subsection (5)(e), insert at the beginning “ securities ”.

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- (4) In subsection (8), in the definition of “securities option”, after “acquire securities” insert “ other than a right to acquire securities which is acquired pursuant to a right or opportunity made available under arrangements the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions ”.
- (5) This section has effect in relation to options acquired on or after 2nd December 2004; but subsection (4) also has effect in relation to an option acquired before that date where something is done on or after that date as part of the arrangements under which it was made available.

93 Corporation tax relief for shares acquired under EMI option

- (1) Schedule 23 to FA 2003 (corporation tax relief for employee share acquisition) is amended as follows.

- (2) In paragraph 21 (amount of relief in case of restricted shares), after sub-paragraph (4) insert—

“(4A) But if the option is a qualifying option, the amount mentioned in sub-paragraph (4) is increased by (or, if that amount is nil, is taken to be) the amount equal to any difference between—

- (a) the amount that would have counted as employment income of the employee under section 476 of the Income Tax (Earnings and Pensions) Act 2003 in respect of the acquisition apart from the EMI code, and
- (b) the amount (if any) that in fact counts as such income in accordance with the EMI code.”

- (3) In paragraph 22C (amount of relief in case of convertible shares), after sub-paragraph (4) insert—

“(4ZA) But if the option is a qualifying option, the amount mentioned in sub-paragraph (4) is increased by (or, if that amount is nil, is taken to be) the amount equal to any difference between—

- (a) the amount that would have counted as employment income of the employee under section 476 of the Income Tax (Earnings and Pensions) Act 2003 (as modified by section 437 of that Act) in respect of the acquisition apart from the EMI code, and
- (b) the amount (if any) that in fact counts as such income in accordance with the EMI code.”

- (4) In paragraph 30 (minor definitions) insert at the appropriate places—

““the EMI code” has the meaning given by section 527(3) of the Income Tax (Earnings and Pensions) Act 2003;”, and

““qualifying option” has the same meaning as in the EMI code (see section 527(4) of the Income Tax (Earnings and Pensions) Act 2003);”.

- (5) In paragraph 31 (index of defined expressions) insert at the appropriate places—

“the EMI code

paragraph 30”, and

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“qualifying option paragraph 30”.

- (6) This section applies in relation to an acquisition of shares made on or after 1st September 2003 (and for this purpose shares are acquired when the recipient acquires a beneficial interest in the shares and not, if different, the time the shares are conveyed or transferred).

PAYE

94 PAYE: retrospective notional payments

- (1) ITEPA 2003 is amended as follows.
- (2) In section 222 (payments by employer on account of tax where deduction not possible) —
- (a) in subsection (1)(c), for “date on which the employer is treated as making the notional payment” substitute “relevant date”,
 - (b) in subsection (2), for “date mentioned in subsection (1)(c)” substitute “relevant date”, and
 - (c) after subsection (3) insert—
 - “(4) In this section “the relevant date” means—
 - (a) if the employer is treated by virtue of any Act as making the notional payment before the date on which the Act is passed, that date, and
 - (b) in any other case, the date on which the employer is treated as making the notional payment.”
- (3) In section 684(2) (PAYE regulations), in item 1—
- (a) for “time of the payment” substitute “relevant time”, and
 - (b) after paragraph (b) insert—
 - ““The relevant time” is—
 - (a) if the payment is a notional payment for the purposes of section 710 and the person is treated by virtue of any Act as making it at a time before the date on which the Act is passed, that date, and
 - (b) in any other case, the time when the payment is made.”
- (4) In section 710 (notional payments: accounting for tax)—
- (a) in subsection (7), after “means” insert “(subject to subsection (7A))”, and
 - (b) after that subsection insert—
 - “(7A) In a case where the notional payment is treated by virtue of any Act as made before the date on which the Act is passed—
 - (a) the reference in sub-paragraph (i) of paragraph (a) of subsection (7) to the time when the notional payment is made is to the date on which the Act is passed,
 - (b) the reference in sub-paragraph (ii) of that paragraph to any occasion falling within the same income tax period is to any

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occasion falling before the end of the income tax period next after that in which that date falls, and

- (c) the reference in paragraph (b) of that subsection to the income tax period in which the notional payment was made is to the income tax period next after that in which that date falls.”

- (5) The provisions of ITEPA 2003 amended by this section have effect in relation to notional payments treated by virtue of this Act as made before the date on which this Act is passed as if for the references to the date on which the Act is passed in—

- (a) section 222(4)(a),
 (b) paragraph (a) of the definition of “the relevant time” in section 684(2), and
 (c) section 710(7A)(a), (b) and (c),

there were substituted references to such date as the Commissioners for Her Majesty's Revenue and Customs may by order made by statutory instrument appoint.

Subordinate Legislation Made

P1 S. 94(5) power fully exercised: 6.4.2007 appointed by {[S.I. 2007/1081](#)}, art. 2

Alternative finance arrangements

95 Profit share agency

- (1) In section 46(1) of FA 2005 (alternative finance arrangements: definition) for “or 49.” substitute “, 49 or 49A. ”
- (2) In section 49 of FA 2005 (profit share return)—
- (a) for subsection (2) substitute—
- “(2) Amounts paid or credited as mentioned in subsection (1)(c) by a financial institution under arrangements falling within this section are profit share return for the purposes of this Chapter.”, and
- (b) in the heading for “profit share return” substitute “ deposit ”.
- (3) After section 49 of FA 2005 insert—

“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 profit share return for the purposes of this Chapter.
- (3) The principal shall not be treated for the purposes of the Tax Acts as entitled to profits to which the agent is entitled in accordance with subsection (1)(d).”
- (4) After section 50(2) of FA 2005 (treatment of alternative finance arrangements: companies) insert—
 - “(2A) Where a company is a party to arrangements falling within section 49A, Chapter 2 of Part 4 of FA 1996 (loan relationships) has effect in relation to the arrangements as if—
 - (a) the arrangements were a loan relationship to which the company is a party,
 - (b) the amount provided under the arrangements were—
 - (i) in relation to a company which is the principal under the arrangements, the amount of a loan made by the company to the agent, and
 - (ii) in relation to a company which is the agent under the arrangements, the amount of a loan made to it by the principal, and
 - (c) profit share return payable to or by the company under the arrangements were interest payable under that loan relationship.”
- (5) In section 52 of FA 2005 (provision not at arm's length)—
 - (a) in subsection (1)(a) for “or section 49,” substitute “, 49 or 49A, ”,
 - (b) in subsection (3) for “or section 49.” substitute “, 49 or 49A. ”, and
 - (c) in subsection (5) for “49,” substitute “ 49 or 49A, ”.
- (6) In the heading to section 54 of FA 2005 “Section 49” becomes “Sections 49 and 49A”.
- (7) In the definition of “profit share return” in section 57 of FA 2005 for “section 49(2)” substitute “ sections 49(2) and 49A(2) ”.
- (8) In paragraph 1(b) of Schedule 2 to FA 2005 after “49” insert “ or 49A ”.
- (9) In section 148 of FA 2003 (meaning of “permanent establishment”) after subsection (5A) insert—
 - “(5B) Where profit share return is paid, in accordance with arrangements to which section 49A of FA 2005 applies (alternative finance arrangements: profit share agency), 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 arrangements by the other party to the arrangements or by any other person acting for the company in relation to the arrangements.”
- (10) In section 127(1) of FA 1995 (persons not treated as UK representatives) renumber paragraph (cc) as paragraph (ca) and insert after it—

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“(cb) where the income consists of profit share return in accordance with arrangements to which section 49A of FA 2005 applies (alternative finance arrangements: profit share agency), the other party to the arrangements or any other person acting for the non-resident in relation to the arrangements;”.

(11) Section 56 of FA 2005 (commencement and transitional) shall have effect in relation to the commencement of this section—

- (a) as if references to Chapter 5 of Part 2 of that Act were references to this section,
- (b) as if references to 6th April 2005 were references to—
 - (i) 1st April 2006 in relation to corporation tax, and
 - (ii) 6th April 2006 in relation to income tax, and
- (c) as if references to section 49 were references to section 49A.

96 Diminishing shared ownership

(1) In section 46(1) of FA 2005 (alternative finance arrangements: definition) after “47” insert “, 47A, ”.

(2) In section 47 of FA 2005 (alternative finance return)—

- (a) omit subsection (5),
- (b) in subsections (6) and (7) after “is to be taken” insert “ for the purposes of this Chapter ”, and
- (c) in the heading for “alternative finance return” substitute “ purchase and re-sale ”.

(3) After section 47 of FA 2005 insert—

“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,

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- (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 within the meaning of section 840 of ICTA, and
 - (c) a person controlled by a person who also controls the financial institution, in each case within the meaning of section 840 of ICTA; provided that the grant is not required by the financial institution or by arrangements to which the financial institution is party.
- (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 Taxes Acts (within the meaning of the Taxes Management Act 1970).”
- (4) In section 50 of FA 2005 (treatment of alternative finance arrangements: companies)—
 - (a) in subsection (1) after “section 47” insert “ or 47A ”,
 - (b) at the beginning of subsection (1)(b) add “ in the case of arrangements within section 47, ”, and
 - (c) after subsection (1)(b) insert—
 - “(ba) in the case of arrangements within section 47A, the consideration paid by the financial institution for the acquisition of its beneficial interest were the amount of a loan made (as the case requires) to the company by, or by the company to, the other party to the arrangements.”.
- (5) In section 52 of FA 2005 (provision not at arm's length)—
 - (a) in subsection (1)(a) after “47” insert “ , 47A ”,
 - (b) in subsection (3) after “47” insert “ , 47A ”, and
 - (c) in subsection (4) for “47,” substitute “ 47 or 47A, ”.
- (6) In section 53 of FA 2005 (sale and purchase of asset)—
 - (a) in subsection (1) after “47” insert “ or 47A ”,
 - (b) after subsection (2) add—
 - “(3) In the application of this section to section 47A a reference to the effective return is a reference to the alternative finance return.”, and

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(c) in the heading after “47” insert “ or 47A ”.

(7) In the definition of “alternative finance return” in section 57 of FA 2005 for “section 47(5)” substitute “ sections 47(6) and (7) and 47A(5) ”.

(8) This section shall have effect in relation to alternative finance arrangements entered into on or after—

- (a) 1st April 2006 in relation to corporation tax, and
- (b) 6th April 2006 in relation to income tax.

97 Beneficial loans to employees

(1) For the purposes of Chapter 7 of Part 3 of ITEPA 2003 (taxable benefits: loans) a reference to a loan includes a reference to an arrangement which—

- (a) is an alternative finance arrangement to which section 47 or 47A FA 2005 applies, or
- (b) would be an alternative finance arrangement to which one of those sections applied if one of the parties were a financial institution.

(2) In the application of that Chapter by virtue of subsection (1)—

- (a) a reference to interest shall be treated as including a reference to alternative finance return, and
- (b) a reference to the amount outstanding shall be taken to be—
 - (i) in the case of arrangements to which section 47 applies, a reference to the purchase price minus such part of the aggregate payments made as does not represent alternative finance return, and
 - (ii) in the case of arrangements to which section 47A applies, a reference to the amount of the financial institution's original beneficial interest minus such part of the aggregate payments made as does not represent alternative finance return.

(3) This section shall have effect in relation to arrangements entered into on or after 22nd March 2006.

98 [^{F4}Orders amending Chapter 5 of Part 2 of FA 2005]

[^{F5}(1) The Treasury may by order amend Chapter 5 of Part 2 of FA 2005 (alternative finance arrangements).

(1A) The amendments that may be made by an order under subsection (1) include—

- (a) the variation of provision already included in Chapter 5, and
- (b) the introduction into Chapter 5 of new provision relating to alternative finance arrangements.]

(2) An order under subsection (1) may, in particular—

- (a) include provision of a kind similar to provision already made by Chapter 5 of Part 2;
- (b) make other provision about the treatment for the purposes of the Tax Acts of arrangements to which the order applies;
- (c) make provision generally or only in relation to specified cases or circumstances;
- (d) make different provision for different cases or circumstances;

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- (e) include consequential provision (which may include provision amending a provision of the Tax Acts);
- (f) include incidental or transitional provision.

[^{F6}(3) An order under this section shall be made by statutory instrument.

- (4) If a statutory instrument containing an order under this section—
 - (a) introduces into Chapter 5 of Part 2 of FA 2005 new provision relating to alternative finance arrangements, or
 - (b) amends an enactment which is not contained in that Chapter, but is contained in an Act,it shall not be made unless a draft has been laid before and approved by resolution of the House of Commons.
- (5) In any other case, a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (6) In this section “ alternative finance arrangements ” means arrangements which in the Treasury's opinion—
 - (a) equate in substance to a loan, deposit or other transaction of a kind that generally involves the payment of interest, and
 - (b) achieve a similar effect without including provision for the payment of interest.]

Textual Amendments

- F4** S. 98 heading substituted (21.7.2008) by [Finance Act 2008 \(c. 9\), s. 156\(2\)](#)
- F5** S. 98(1)(1A) substituted for s. 98(1) (21.7.2008) by [Finance Act 2008 \(c. 9\), s. 156\(3\)](#)
- F6** S. 98(3)-(6) substituted for s. 98(3) (21.7.2008) by [Finance Act 2008 \(c. 9\), s. 156\(4\)](#)

Nuclear decommissioning

99 Amendment of section 29 of the Energy Act 2004

- (1) Section 29 of the Energy Act 2004 (c. 20) (disregard for tax purposes of cancellation etc of decommissioning provisions) is amended as follows.
- (2) In subsection (1)—
 - (a) in paragraph (a), for “relevant company” substitute “BNFL company”;
 - (b) for paragraphs (b) and (c) substitute—
 - “(b) that provision—
 - (i) relates to decommissioning or cleaning-up which the NDA acquires or has acquired responsibility for securing by virtue of a direction under section 3, but
 - (ii) is not provision recognised in order to reflect the terms or effect of a management contract between the company and the NDA;
 - and
 - (c) the responsibility referred to in paragraph (b)(i)—

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- (i) includes the financial responsibility under section 21, or
- (ii) would do so but for the fact that the amount of the financial responsibility is for the time being subject to a limit imposed by a capping agreement.”

(3) For subsections (3) and (4) substitute—

“(3) This subsection applies to a credit or debit if it arises from—

- (a) the recognition in the accounts of the company for a relevant period beginning on or after 1st April 2005 of—
 - (i) the relevant provision, or
 - (ii) an asset that, in accordance with generally accepted accounting practice, is recognised in connection with the relevant provision in order to reflect the acquisition of financial responsibility referred to in subsection (1) (a “matching asset”);
- (b) an adjustment made in the accounts of the company for such a period of—
 - (i) the relevant provision, or
 - (ii) a matching asset;
 or
- (c) the removal from the accounts of the company for such a period of—
 - (i) the relevant provision,
 - (ii) a matching asset, or
 - (iii) an asset or liability recognised in order to reflect the terms or effect of a contract falling within subsection (3A).

(3A) A contract falls within this subsection if—

- (a) it is a contract made before 1st April 2005 and having effect between two or more BNFL companies under which a party to the contract assumed responsibility for securing decommissioning or cleaning-up; and
- (b) the rights and obligations under the contract are extinguished by reason of a transfer made under a nuclear transfer scheme.”

(4) In subsection (5)—

(a) for the definition of “BNFL company” substitute—

““BNFL company” means—

- (a) BNFL,
- (b) a company that immediately before 1st April 2005 was a wholly-owned subsidiary of BNFL, or
- (c) a wholly-owned subsidiary of a company falling within paragraph (b);”;

(b) after that definition insert—

““capping agreement” means an agreement under subsection (9) of section 21, entered into on 1st April 2005, the sole or main effect of which is to impose a limit on the NDA's financial responsibility under that section;

“management contract” has the same meaning as in section 27;”;

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(c) for the definition of “relevant company” substitute—

““relevant period”, in relation to a company, means an accounting period during the whole of which the company is publicly owned;”.

(5) After that subsection insert—

“(5A) Where a company ceases to be publicly owned otherwise than at the end of an accounting period—

- (a) the accounting period during which it ceases to be publicly owned is treated for the purposes of corporation tax as ending when it so ceases; and
- (b) its profits and losses are to be computed accordingly for those purposes.”

(6) The amendments made by this section have effect in relation to accounting periods of a BNFL company ending on or after 22nd March 2006.

“BNFL company” has the same meaning as in section 29 of the Energy Act 2004 (c. 20) as amended by this section.

100 Amendment of section 30 of the Energy Act 2004

(1) Section 30 of the Energy Act 2004 (disregard for tax purposes of decommissioning provisions recognised by Nuclear Decommissioning Authority) is amended as follows.

(2) In subsection (1)—

(a) for paragraph (b) substitute—

“(b) that responsibility—

- (i) includes the financial responsibility under section 21, or
- (ii) would do so but for the fact that the amount of the financial responsibility is for the time being subject to a limit imposed by a capping agreement;”;

(b) in paragraph (c) omit “on the coming into force of the direction mentioned in paragraph (a),”;

(c) at the end of that paragraph insert “; and

(d) the provision is recognised—

- (i) in order to reflect the coming into force of the direction mentioned in paragraph (a), or
- (ii) in consequence of the variation or removal of a limit on the NDA's financial responsibility under section 21 imposed by a capping agreement.”

(3) For subsection (3) substitute—

“(3) In computing the profits, gains or losses of the NDA for the purposes of corporation tax, no amount shall be brought into account in connection with—

(a) the recognition made in the accounts of the NDA of—

- (i) the relevant provision, or
- (ii) an asset that, in accordance with generally accepted accounting practice, is recognised in order to reflect a limit on

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- the NDA's financial responsibility under section 21 imposed by a capping agreement;
- (b) any adjustment made in those accounts (including the removal from the accounts of an asset falling within paragraph (a)(ii)) in consequence of a variation or removal of the limit mentioned in paragraph (a)(ii).”
- (4) In subsection (4), for the words after “in connection with” substitute “ an adjustment not falling within paragraph (b) of that subsection ”.
- (5) In subsection (5), after the definition of “BNFL company” insert—
- ““capping agreement” has the same meaning as in section 29;”.
- (6) The amendments made by this section have effect in relation to accounting periods of the Nuclear Decommissioning Authority ending on or after 22nd March 2006.

Accounting practice

101 Securitisation companies

- (1) Section 83 of FA 2005 (application of accounting standards to securitisation companies) is amended as follows.
- (2) In subsection (1)(b) (periods of account in relation to which old UK GAAP is to apply) for “1st January 2007” substitute “ 1st January 2008 ”.
- (3) In subsection (3) (meaning of “note-issuing company”)—
- (a) omit “and” at the end of paragraph (c);
- (b) after paragraph (d) insert—
- “, and
- (e) if it has any business apart from the activity mentioned in paragraph (a) (and any incidental activities) it consists in one or both of the following—
- (i) acquiring, holding and managing assets forming the whole or part of the security for the capital market arrangement;
- (ii) acting as guarantor in respect of loan relationships, derivative contracts, finance leases or other liabilities of other companies where the whole, or substantially the whole, of the company's rights in respect of the guarantee (including any right of subrogation) form the whole or part of the security for the capital market arrangement.”.
- (4) In subsection (5) (meaning of “intermediate borrowing company”)—
- (a) in paragraph (a) after “asset-holding company”, and
- (b) in paragraph (b) after “note-issuing company”,
- insert “ (or another intermediate borrowing company) ”.
- (5) In section 84 of that Act (power to make provision as to application of Corporation Tax Acts in relation to securitisation companies)—

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- (a) in subsection (3)(d)—
 - (i) at the end of sub-paragraph (i) insert “, and”, and
 - (ii) omit sub-paragraph (ii) and the word “and” following it;
 - (b) in subsection (5), omit paragraph (a).
- (6) The amendments in this section shall be deemed always to have had effect, subject as follows.
- (7) A company that would have been a securitisation company for the purposes of section 83 of FA 2005 if the amendments in this section had not been made, being either—
- (a) a note-issuing company that—
 - (i) had become party as debtor to the capital market investment before 22nd March 2006, or
 - (ii) had before that date entered into a binding arrangement to become a party as debtor to the capital market investment, or
 - (b) another description of securitisation company by virtue of its connection with a company within paragraph (a),
- may elect to be taxed as if the amendments in subsection (3) had not been made.
- (8) Any such election must be made not later than 31st March 2007 and has effect for all relevant periods of account.

102 Accountancy change: spreading of adjustment

- (1) Schedule 15 to this Act (accountancy change: spreading of adjustment) has effect.
- (2) In that Schedule—
 - Part 1 makes provision for income tax purposes, and
 - Part 2 makes provision for corporation tax purposes.
- (3) In section 21B of ICTA (corporation tax: application to Schedule A business of other rules applicable to Case 1 of Schedule D) for “section 44 of and Schedule 6 to the Finance Act 1998” substitute “ section 64 of and Schedule 22 to the Finance Act 2002 ”.

Status:

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Changes to legislation:

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