
Status: Point in time view as at 21/07/2009.

Changes to legislation: Finance Act 2009, Cross Heading: Relief not available where bond-holder acquires control of underlying asset is up to date with all changes known to be in force on or before 02 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 61

ALTERNATIVE FINANCE INVESTMENT BONDS

PART 3

TRANSACTIONS RELATING TO UNDERLYING ASSETS CONSISTING OF LAND

SUPPLEMENTARY

Relief not available where bond-holder acquires control of underlying asset

- 20 (1) The reliefs provided by paragraphs 6 to 12 (and paragraph 18 so far as it relates to those paragraphs) are not available if control of the underlying asset is acquired by—
- (a) a bond-holder, or
 - (b) a group of connected bond-holders.
- (2) A bond-holder (“BH”), or a group of connected bond-holders, acquires control of the underlying asset if—
- (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
 - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.
- (3) In accordance with sub-paragraph (1), in the case of the reliefs provided by paragraphs 6 and 10—
- (a) if BH, or the group, acquires control of the underlying asset before the end of the period of 30 days beginning with the effective date of the first transaction, paragraphs 6 and 10 do not apply, and
 - (b) if BH, or the group, acquires control of the underlying asset after the end of that period and conditions A to C have been met, paragraphs 7 and 11 apply.
- 21 (1) But paragraph 20 does not prevent the reliefs being available in either of the following cases.
- (2) The first case is where—
- (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and
 - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that no longer to be possible.

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- (3) The second case is where BH—
- (a) underwrites a public offer of rights under the bond, and
 - (b) does not exercise the right of management and control of the bond assets.
- (4) In this paragraph—
- “connected” is to be read in accordance with section 839 of ICTA, and
 - “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

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