



# Finance Act 2005

## 2005 CHAPTER 7

### PART 2

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

### CHAPTER 5

#### ALTERNATIVE FINANCE ARRANGEMENTS

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

#### **47 Alternative finance arrangements: [<sup>F1</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 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”),
  - 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”),
  - all or part of the sale price is not required to be paid until a date later than that of the sale, and
  - 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—
- that X is a financial institution, and
  - 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.

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- (4) For the purposes of this section “the effective return” is so much of the sale price as exceeds the purchase price.
- <sup>F2</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>F3</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>F4</sup>for the purposes of this Chapter] to include alternative finance return equal to the appropriate amount.
- (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

- F1** 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\(2\)\(c\)](#)
- F2** 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\(17\)](#)
- F3** 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\(2\)\(b\)](#)
- F4** 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>F5</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—

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- (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 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).]

#### Textual Amendments

- F5** S. 47A inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(3\)](#)

## 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

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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 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;”.

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