



# Finance Act 2005

## 2005 CHAPTER 7

### PART 2

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

### CHAPTER 5

#### ALTERNATIVE FINANCE ARRANGEMENTS

##### *Treatment of alternative finance arrangements*

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

- (1) Where a company is a party to arrangements falling within section 47 [<sup>F1</sup>, 47A or 48A], 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) [<sup>F2</sup>in the case of arrangements within section 47,] any amount which is the purchase price for the purposes of section 47(1)(b) 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, and
  - [<sup>F3</sup>(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,]
  - (c) alternative finance return payable to or by the company under the arrangements were interest payable under that loan relationship.
- (2) Where a company is a party to arrangements falling within section 49, 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) any amount deposited under the arrangements were—

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- (i) in relation to a company which is the depositor under the arrangements, the amount of a loan made by the company to the financial institution, and
  - (ii) in relation to a company which is the financial institution with which the depositor deposits money under the arrangements, the amount of a loan made to it by the depositor, and
  - (c) profit share return payable to or by the company under the arrangements were interest payable under that loan relationship.
- [<sup>F4</sup>(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.]
- (3) Accordingly, references in the Corporation Tax Acts to a loan relationship include references to alternative finance arrangements.
- (4) In subsection (2)(b), “depositor” is to be read in accordance with section 49(1)(a).

#### Textual Amendments

- F1** Words in s. 50(1) substituted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 53\(4\)](#)
- F2** Words in s. 50(1)(b) added (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(4\)\(b\)](#)
- F3** S. 50(1)(ba) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(4\)\(c\)](#)
- F4** S. 50(2A) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(4\)](#)

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

- (1) Alternative finance return or profit share return is to be treated for the purposes of ITTOIA 2005 as if it were interest.
- (2) Sections 353 to [<sup>F5</sup>367 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 [<sup>F6</sup>of 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.

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- (4) Alternative finance return or profit share return 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—
  - (a) references to a loan included references to alternative finance arrangements, and
  - (b) references to interest included references to alternative finance return or profit share return.

#### Textual Amendments

- F5** 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](#))
- F6** 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](#))

### [<sup>F7</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

- F7** 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>F8</sup>, 47A][<sup>F9</sup>, [<sup>F10</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 or profit share return if the arrangements were alternative finance arrangements.
- (3) The arrangements are not to be regarded as falling within section 47<sup>[F11]</sup>, 47A<sup>[F12]</sup>, <sup>[F13]</sup>48A,] 49 or 49A.]
- (4) Where the arrangements would, but for subsection (3), fall within section <sup>[F14]</sup>47 <sup>[F15]</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>[F16]</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>[F17]</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>[F18]</sup>in calculating net income or, as the case may be, against] total profits,
- in respect of the relevant return.
- (6) Where the person paying relevant return under the arrangements is a company, an amount may not be surrendered by way of group relief if a deduction in respect of it is prohibited by subsection (4) or (5).

#### Textual Amendments

- F8** 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\(5\)\(a\)](#)
- F9** Words in s. 52(1)(a) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(5\)\(a\)](#)
- F10** 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\(6\)\(a\)](#)
- F11** 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\(5\)\(b\)](#)
- F12** Words in s. 52(3) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(5\)\(b\)](#)
- F13** 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\(6\)\(b\)](#)
- F14** 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\(5\)\(c\)](#)
- F15** 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\(6\)\(c\)](#)
- F16** 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](#))
- F17** Words in s. 52(5) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(5\)\(c\)](#)

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**F18** 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](#))

### **53 Treatment of section 47 <sup>[F19]</sup>, 47A or 48A] arrangements: sale and purchase of asset**

(1) Where under arrangements falling within section 47 <sup>[F20]</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>[F21]</sup>(3) In the application of this section to section 47A <sup>[F22]</sup> or 48A] a reference to the effective return is a reference to the alternative finance return.]

#### **Textual Amendments**

**F19** 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\(7\)\(a\)](#)

**F20** 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\(7\)\(a\)](#)

**F21** S. 53(3) added (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 96\(6\)\(b\)](#)

**F22** 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\(7\)\(b\)](#)

### **54 <sup>[F23]</sup>Return not to be treated as distribution]**

<sup>[F24]</sup>(1) Profit share return is not to be treated by virtue of section 209(2)(e)(iii) of ICTA as being a distribution for the purposes of the Corporation Tax Acts.

<sup>[F25]</sup>(2) Neither additional payments nor any part of the redemption payment under arrangements falling within section 48A are to be treated by virtue of section 209(2)(e)(iii) of ICTA as being a distribution for the purposes of the Corporation Tax Acts.]

#### **Textual Amendments**

**F23** 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\(8\)\(c\)](#)

**F24** S. 54(1): s. 54 renumbered as s. 54(1) (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 53\(8\)\(a\)](#)

**F25** S. 54(2) inserted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 53\(8\)\(b\)](#)

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**[<sup>F26</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.
- (2) The specified enactments have effect as if—
  - (a) references to a loan included references to arrangements falling within section 47, 49 or 49A, and
  - (b) references to interest included references to alternative finance return or profit share return.
- (3) Where arrangements fall within section 47, 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 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, 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—

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- (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,
- (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, 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**

**F26** S. 54A inserted (10.7.2008) by [The Alternative Finance Arrangements \(Community Investment Tax Relief\) Order 2008 \(S.I. 2008/1821\)](#), arts. 1, 2

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