



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, 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 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
 - (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—
 - (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

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- (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).

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 368 of ICTA (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 (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 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.

52 Provision not at arm’s length

- (1) This section applies where—
 - (a) arrangements would apart from this section fall within section 47 or section 49,
 - (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,
 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.

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- (3) The arrangements are not to be regarded as falling within section 47 or section 49.
- (4) Where the arrangements would, but for subsection (3), fall within section 47, 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 against total income or, as the case may be, total profits, in respect of the relevant return.
- (5) Where the arrangements would, but for subsection (3), fall within section 49, 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 against total income or, as the case may be, 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).

53 Treatment of section 47 arrangements: sale and purchase of asset

- (1) Where under arrangements falling within section 47 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.

54 Section 49 arrangements: profit share return not to be treated as distribution

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.