



Finance Act 2006

2006 CHAPTER 25

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 9

MISCELLANEOUS PROVISIONS

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,

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- (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
 - (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

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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—

“(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.

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