



Finance Act 2007

2007 CHAPTER 11

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Alternative finance

53 Alternative finance investment bond

(1) In FA 2005, after section 48 insert—

“48A Alternative finance arrangements: alternative finance investment bond: introduction

- (1) Subject to section 52, arrangements fall within this section if—
- (a) the arrangements provide for one person (“the bond-holder”) to pay a sum of money (“the capital”) to another (“the bond-issuer”),
 - (b) the arrangements identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly (“the bond assets”),
 - (c) the arrangements specify a period at the end of which they cease to have effect (“the bond term”),
 - (d) the bond-issuer undertakes under the arrangements—
 - (i) to dispose at the end of the bond term of any bond assets which are still in the bond-issuer's possession,
 - (ii) to make a repayment of the capital (“the redemption payment”) to the bond-holder during or at the end of the bond-term (whether or not in instalments), and
 - (iii) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term (“additional payments”),

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- (e) the amount of the additional payments does not exceed an amount which would be a reasonable commercial return on a loan of the capital,
 - (f) under the arrangements the bond-issuer undertakes to arrange for the management of the bond assets with a view to generating income sufficient to pay the redemption payment and additional payments,
 - (g) the bond-holder is able to transfer the rights under the arrangements to another person (who thereby becomes the bond-holder),
 - (h) the arrangements are a listed security on a recognised stock exchange (within the meaning of section 1005 of ITA 2007), and
 - (i) the arrangements are wholly or partly treated in accordance with international accounting standards as a financial liability of the bond-issuer (or would be if the bond-issuer applied those standards).
- (2) For the purposes of subsection (1)—
- (a) the bond-issuer may acquire bond assets before or after the arrangements take effect,
 - (b) bond assets may be property of any kind, including rights in relation to property owned by someone other than the bond-issuer,
 - (c) the identification of the bond assets mentioned in subsection (1)(b) and the undertakings mentioned in subsection (1)(d) and (f) may (but need not) be described as, or accompanied by a document described as, a declaration of trust,
 - (d) a reference to the management of assets includes a reference to disposal,
 - (e) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them, before the end of the bond term,
 - (f) the amount of the additional payments may be—
 - (i) fixed at the beginning of the bond term,
 - (ii) determined wholly or partly by reference to the value of or income generated by the bond assets, or
 - (iii) determined in some other way,
 - (g) if the amount of the additional payments is not fixed at the beginning of the bond term, the reference in subsection (1)(e) to the amount of the additional payments is a reference to the maximum amount of the additional payments,
 - (h) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them, and
 - (i) entitlement to the redemption payment may (but need not) be capable of being satisfied (whether or not at the option of the bond-issuer or the bond-holder) by the issue or transfer of shares or other securities.
- (3) An order under section 1005 of ITA 2007 (recognised stock exchanges: designation) may designate a stock exchange for the purposes of that section in its application for the purposes of this section only.

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48B Alternative finance arrangements: alternative finance investment bond: effects

- (1) Additional payments under arrangements falling within section 48A are alternative finance return for the purpose of this Chapter (subject to the provisions in section 51A about the treatment of discount).
- (2) For the purposes of an enactment about any tax (and irrespective of the position for other purposes)—
 - (a) a bond-holder shall not be treated as having a legal or beneficial interest in the bond assets,
 - (b) the bond-issuer shall not be treated as a trustee of the bond assets,
 - (c) profits and gains accruing to the bond-issuer in connection with the bond assets are profits and gains of the bond-issuer and not of the bond-holder (and do not arise to the bond-issuer in a fiduciary or representative capacity),
 - (d) payments made by the bond-issuer by way of redemption payment or additional payment are not made in a fiduciary or representative capacity, and
 - (e) a bond-holder shall not be entitled to relief for capital expenditure in connection with bond assets.
- (3) Arrangements falling within section 48A are securities for the purposes of an enactment about any tax (including Chapters 1 to 5 of Part 7 of ITEPA 2003); for which purpose—
 - (a) a reference to redemption shall be taken as a reference to making the redemption payment,
 - (b) a reference to interest shall be taken as a reference to alternative finance return, and
 - (c) for the purposes of section 84 the bond issuer shall be treated as being party as debtor to a capital market arrangement.
- (4) Arrangements falling within section 48A are a corporate bond, issued on the date on which the arrangements are entered into, for the purposes of section 117 of TCGA 1992 (qualifying corporate bonds) if—
 - (a) the capital is expressed in sterling,
 - (b) the arrangements do not include provision for the redemption payment to be in a currency other than sterling,
 - (c) entitlement to the redemption payment is not capable of conversion (directly or indirectly) into an entitlement to the issue of securities apart from other arrangements falling within section 48A, and
 - (d) the additional payments are not determined wholly or partly by reference to the value of the bond assets;and section 117(2) shall have effect for the purposes of this subsection as for the purposes of section 117(1).
- (5) Arrangements falling within section 48A shall not be treated—
 - (a) as a unit trust scheme for the purposes of TCGA 1992,
 - (b) as a unit trust scheme for the purposes of section 469 of ICTA or section 1007 of ITA 2007 (distributions),

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- (c) as an offshore fund for the purposes of Chapter 5 of Part 17 of ICTA (offshore funds), or
 - (d) as a relevant holding for the purposes of paragraph 4 of Schedule 10 to FA 1996 (loan relationships: collective investment schemes).
- (6) A bond-issuer is not a securitisation company for the purposes of section 83 (unless it is one by virtue of arrangements which do not fall within section 48A).
- (7) For the purposes of section 417 of ICTA (close companies)—
- (a) a bond-holder is a loan creditor in respect of the bond-issuer;
 - (b) arrangements falling within section 48A shall be disregarded in the application of section 417(1)(d).
- (8) For the purposes of Schedule 18 to ICTA (group relief)—
- (a) a bond-holder is a loan creditor in respect of the bond-issuer;
 - (b) paragraph 1(5)(b) shall be disregarded in determining whether a person is an equity holder by virtue of arrangements falling within section 48A.”
- (2) Chapter 5 of Part 2 of FA 2005 (alternative finance arrangements) is amended as follows.
- (3) In section 46 (introduction)—
- (a) in subsection (1), after “47A,” insert “ 48A, ”, and
 - (b) in subsection (2), after paragraph (d) (before “or” at the end) insert—
 - “(da) a bond-issuer within the meaning of section 48A below, but only in relation to any bond assets which are rights under arrangements falling within section 47 or 47A.”.
- (4) In section 50(1) (treatment of alternative finance arrangements: companies), for “or 47A” substitute “ , 47A or 48A ”.
- (5) After section 51 insert—

“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.”
- (6) In section 52 (provision not at arm's length)—
- (a) in subsection (1), after “47A,” insert “ 48A, ”,
 - (b) in subsection (3), after “47A,” insert “ 48A, ”, and
 - (c) in subsection (4), for “or 47A” substitute “ , 47A or 48A ”.

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- (7) In section 53 (sale and purchase of asset)—
- (a) in subsection (1) (and in the heading), for “or 47A” substitute “ , 47A or 48A ”, and
 - (b) in subsection (3), after “47A” insert “ or 48A ”.
- (8) In section 54 (return not to be treated as distribution)—
- (a) the existing provision becomes subsection (1),
 - (b) after that subsection insert—
 - “(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.”, and
 - (c) the heading accordingly becomes “ **Return not to be treated as distribution** ”.
- (9) In Schedule 2 (supplementary provision), in paragraph 1(b) (definition of “relevant arrangements”), after “section” insert “ 48A, ”.
- (10) In section 117 of TCGA 1992 (qualifying corporate bonds), after subsection (6C) insert—
 - “(6D) Section 48B(4) of the Finance Act 2005 (alternative finance arrangements) provides for certain arrangements falling within section 48A to be a corporate bond for the purposes of this section.”
- (11) In section 127(1)(ca) of FA 1995 (persons not treated as UK representatives), for “subsection (5) of section 47” substitute “ Chapter 5 of Part 2 ”.
- (12) In section 148(5A) of FA 2003 (meaning of “permanent establishment”), for “subsection (5) of section 47” substitute “ Chapter 5 of Part 2 ”.
- (13) 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 2007 in relation to corporation tax, and
 - (ii) 6th April 2007 in relation to income tax and capital gains tax, and
 - (c) as if references to section 49 were references to sections 48A and 48B.
- (14) But—
- (a) for the purposes of income tax and capital gains tax in relation to the disposal after 6th April 2007 of arrangements to which new section 48A applies (whenever entered into) that section and new section 48B shall be treated as always having had effect, and
 - (b) an order made after the passing of this Act under section 1005 of ITA 2007 (recognised stock exchanges: designation) and by virtue of new section 48A(3) may be expressed—
 - (i) to have effect as from 1st April 2007 for the purposes of arrangements entered into on or after that date, and
 - (ii) for the purposes mentioned in paragraph (a), as always having had effect.

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54 Profit share agency

In section 49A(3) of FA 2005 (profit share agency: principal not treated as entitled to agent's share of profits), insert at the end “ (and the agent is treated as entitled to the profits specified in subsection (1)(c) and (d)) ”.

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