

# FINANCE ACT 2009

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## EXPLANATORY NOTES

### INTRODUCTION

#### *Section 123 and Schedule 61: Alternative Finance Investment Bonds*

#### **Details of the Schedule** Supplementary

83. This section of the Schedule explains:
- the conditions that need to be satisfied for the relief to remain available if an asset is substituted; and
  - the circumstances in which relief may be denied where a bond-holder, or a group of connected bond-holders, acquires control of the asset.
84. Paragraph 18 provides rules for the case where the interest in land that was subject of the first transaction ceases to be a bond asset (before the termination of the bond) and is replaced as bond asset by an interest in other land. These rules allow such a substitution of bond assets to take place without disturbing the reliefs under paragraphs 6 to 17.
85. Sub-paragraph (1) lists the circumstances in which the paragraph applies. These are that:
- conditions A to C and G are met in relation to an interest in land (described as “the original land”), so that the interest in land is transferred from Q to P (condition G) at some time after conditions A to C have been satisfied;
  - the interest in land ceases to be held by Q as a bond asset and hence is transferred by Q to P before the termination of the life of the bond;
  - P and Q enter into further arrangements that fall within paragraph 5(2) (condition A) in relation to an interest in other land (described as “the replacement land”); and
  - the value of the replacement land when transferred from P to Q is at least as great as the value of the interest in the original land at the time of the first transaction.
86. Sub-paragraph (2) provides modifications to the application of paragraphs 6 to 17 to the original land and the replacement land. The purpose of these modifications is that the replacement land is able to become the bond asset in place of the original land, without disturbing the effects of paragraphs 6 to 17 in relation to the relevant alternative finance investment bond arrangements. The modifications in respect of the original land are in sub-paragraph (3), and those in respect of the replacement land in sub-paragraph (4).
87. Sub-paragraph (3) provides that condition F (the requirement that Q should hold the original land as a bond asset throughout the life of the bond) need not be met in relation to the original land, provided that conditions A, B, C, F and G (taking account of the modifications made by sub-paragraph (4)) are met in relation to the replacement land.
88. Sub-paragraph (4) provides that following the substitution of the replacement land for the original land:

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which received Royal Assent on 21 July 2009*

- condition E continues to apply by reference to the value of the original land at the time of the first transaction relating to that land (so that the amount of capital that Q must receive to satisfy condition E is unchanged by the substitution of land); and
  - the ten year time limit for condition G continues to apply by reference to the first transaction relating to the original land.
89. Sub-paragraph (5) provides that, if the replacement land is in the UK, the charge on the original land will be discharged when, Q provides HMRC with the prescribed evidence that the original land has been returned to P and a charge has been registered in relation to the replacement land,.
90. Sub-paragraph (6) provides that, if the replacement land is not in the UK, the charge on the original land will be discharged when Q provides HMRC with the prescribed evidence that all of conditions A to C are met for the replacement land and that the original land had been returned to the original owner.
91. Sub-paragraph (7) provides for the rules in relation to asset substitution to apply where there is more than one substitution of land during the lifetime of a bond.
92. Paragraph 19 provides that, where a charge on the land is discharged because the land has ceased to be a bond asset, either at the expiration of the bond with all of conditions A to G having been met, or because of a substitution of land to which paragraph 18 applies, HMRC must take the necessary action to remove the charge from the land register. This must be done within 30 days of Q providing the prescribed evidence that enables the charge to be removed.
93. Paragraph 20 provides rules for the situation where a bond-holder, or a group of connected bond-holders, acquires control of the bond assets. The circumstances in which the paragraph applies are the same as for paragraphs 3 and 4 of the Schedule.
94. Sub-paragraph (2) explains what is meant by a single bond-holder, or a group of connected bond-holders, acquiring control of the underlying asset. This happens if:
- the rights of bond-holders under an alternative finance investment bond include rights of control and management over the bond; and
  - a bond-holder, or a group of connected bond-holders, acquires sufficient rights to enable them to exercise management and control over the bond assets, regardless of any other bond-holders.
95. Sub-paragraph (3) provides that:
- if a bond-holder, or the group, acquires control before the termination of 30 days from the first transaction, no relief for SDLT or TCGA purposes is available in relation to the arrangements; and
  - if a bond-holder, or the group, acquires control after that period of 30 days, and conditions A to C have been met within that 30 day period, paragraphs 8 and 12 apply to withdraw the reliefs under paragraph 6 (for SDLT purposes) and 11 (for TCGA purposes) respectively.
96. Paragraph 21(2) provides that where, at the time the rights under the bond were acquired, a bond-holder, or all of a group of connected bond-holders, did not know or had no reason to suspect that the bonds enabled the exercise of the rights of management and control of the bond assets and, having subsequently become aware of the rights attached to the bonds, the bond-holder(s) transferred sufficient bonds, as soon as reasonably possible so that they could no longer exercise such control.
97. Paragraph 21(3) provides for the second exclusion for persons acting as underwriters of the bond issuance providing they do not exercise the right of control and management of the bond asset.

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98. Paragraph 22 is an anti-avoidance provision. It provides that the reliefs under paragraphs 6 to 12 (extended where appropriate by paragraph 18 in relation to substitutions of land) are not available unless the arrangements:
- are entered into for genuine commercial reasons; and
  - are not part of arrangements whose main purpose, or one of whose main purposes, is the avoidance of liability to any of a number of taxes (which are listed in paragraph 22(2)).
99. Paragraph 23 provides rules in relation to regulations that can be made under provisions of this Schedule.