

Status: Point in time view as at 12/02/2019.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 365

ALTERNATIVE FINANCE ARRANGEMENTS

PART 1

NEW PART 10A OF ITA 2007

- 1 ITA 2007 is amended as follows.
- 2 After Part 10 insert—

“PART 10A

ALTERNATIVE FINANCE ARRANGEMENTS

Introduction

Introduction

564A(1) This Part—

- (a) contains provisions about the treatment as interest for certain income tax purposes of alternative finance return under alternative finance arrangements with financial institutions (see sections 564M to 564Q), and
 - (b) contains some special provisions about the treatment of investment bond arrangements (see sections 564R to 564U) and some other rules about alternative finance arrangements (see sections 564V to 564Y).
- (2) In this Part “alternative finance arrangements” means—
- (a) purchase and resale arrangements,
 - (b) diminishing shared ownership arrangements,
 - (c) deposit arrangements,
 - (d) profit share agency arrangements, and
 - (e) investment bond arrangements.
- (3) In this Part—
- (a) “purchase and resale arrangements” means arrangements to which section 564C applies,
 - (b) “diminishing shared ownership arrangements” means arrangements to which section 564D applies,

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- (c) “deposit arrangements” means arrangements to which section 564E applies,
- (d) “profit share agency arrangements” means arrangements to which section 564F applies, and
- (e) “investment bond arrangements” means arrangements to which section 564G applies.

(4) For the meaning of “alternative finance return”, see sections 564I to 564L.

(5) For the meaning of “financial institution”, see section 564B.

(6) Also, see section 366 of TIOPA 2010 (power to extend this Part and other provisions to other arrangements by order).”

3 After section 564A insert—

“564B Meaning of “financial institution”

- (1) In this Part “financial institution” means—
- (a) a bank, as defined by section 991,
 - (b) a building society,
 - (c) a wholly-owned subsidiary—
 - (i) of a bank within paragraph (a), or
 - (ii) of a building society,
 - (d) a person authorised by a licence under Part 3 of the Consumer Credit Act 1974 to carry on a consumer credit business or consumer hire business within the meaning of that Act,
 - (e) a bond-issuer, within the meaning of section 564G, but only in relation to any bond assets which are rights under purchase and resale arrangements, diminishing shared ownership arrangements or profit share agency arrangements,
 - (f) a person authorised in a jurisdiction outside the United Kingdom—
 - (i) to receive deposits or other repayable funds from the public, and
 - (ii) to grant credits for its own account,
 - (g) an insurance company as defined in section 431(2) of ICTA, or
 - (h) a person who is authorised in a jurisdiction outside the United Kingdom to carry on a business which consists of effecting or carrying out contracts of insurance or substantially similar business but not an insurance special purpose vehicle as defined in section 431(2) of ICTA.
- (2) For the purposes of subsection (1)(c) a company is a wholly-owned subsidiary of a bank or building society (“the parent”) if it has no members except—
- (a) the parent or persons acting on behalf of the parent, and
 - (b) the parent's wholly-owned subsidiaries or persons acting on behalf of the parent's wholly-owned subsidiaries.”

4 After section 564B insert—

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“Arrangements that are alternative finance arrangements

564C Purchase and resale arrangements

- (1) This section applies to arrangements if—
- (a) they are entered into between two persons (“the first purchaser” and “the second purchaser”), one or both of whom are financial institutions, and
 - (b) under the arrangements—
 - (i) the first purchaser purchases an asset and sells it to the second purchaser,
 - (ii) the sale occurs immediately after the purchase or in the circumstances mentioned in subsection (2),
 - (iii) all or part of the second purchase price is not required to be paid until a date later than that of the sale,
 - (iv) the second purchase price exceeds the first purchase price, and
 - (v) the excess equates, in substance, to the return on an investment of money at interest.
- (2) The circumstances are that—
- (a) the first purchaser is a financial institution, and
 - (b) the asset referred to in subsection (1)(b)(i) was purchased by the first purchaser for the purpose of entering into arrangements within this section.
- (3) In this section—
- “the first purchase price” means the amount paid by the first purchaser in respect of the purchase, and
 - “the second purchase price” means the amount payable by the second purchaser in respect of the sale.
- (4) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from this section and sections 564D to 564G).”

5 After section 564C insert—

“564D Diminishing shared ownership arrangements

- (1) This section applies to arrangements if under them—
- (a) a financial institution (“the first owner”) acquires a beneficial interest in an asset,
 - (b) another person (“the eventual owner”) also acquires a beneficial interest in it,
 - (c) the eventual owner is to make payments to the first owner amounting in aggregate to the consideration paid for the acquisition of the first owner's beneficial interest (but subject to any adjustment required for such a reduction as is mentioned in subsection (5)),
 - (d) the eventual owner is to acquire the first owner's beneficial interest (whether or not in stages) as a result of those payments,

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- (e) the eventual owner is to make other payments to the first owner (whether under a lease forming part of the arrangements or otherwise),
 - (f) the eventual owner has the exclusive right to occupy or otherwise to use the asset, and
 - (g) the eventual owner is exclusively entitled to any income, profit or gain arising from or attributable to the asset (including, in particular, an increase in its value).
- (2) For the purposes of subsection (1)(a) it does not matter if—
- (a) the first owner acquires its beneficial interest from the eventual owner,
 - (b) the eventual owner, or another person who is not the first owner, also has a beneficial interest in the asset, or
 - (c) the first owner also has a legal interest in it.
- (3) Subsection (1)(f) does not prevent the eventual owner from granting an interest or right in relation to the asset if the conditions in subsection (4) are met.
- (4) The conditions are that—
- (a) the grant is not to—
 - (i) the first owner,
 - (ii) a person controlled by the first owner, or
 - (iii) a person controlled by a person who also controls the first owner, and
 - (b) the grant is not required by the first owner or arrangements to which the first owner is a party.
- (5) Subsection (1)(g) does not prevent the first owner from—
- (a) having responsibility for any reduction in the asset's value, or
 - (b) having a share in a loss arising out of any such reduction.
- (6) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from section 564C, this section and sections 564E to 564G).”

6 After section 564D insert—

“564E Deposit arrangements

- (1) This section applies to arrangements if under them—
- (a) a person (“the depositor”) deposits money with a financial institution,
 - (b) the money, together with money deposited with the institution by other persons, is used by it with a view to producing a profit,
 - (c) from time to time the institution makes or credits a payment to the depositor out of profit resulting from the use of the money,
 - (d) the payment is in proportion to the amount deposited by the depositor, and
 - (e) the payments so made or credited by the institution equate, in substance, to the return on an investment of money at interest.

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- (2) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from sections 564C and 564D, this section and sections 564F and 564G).”

7 After section 564E insert—

“564F Profit share agency arrangements

- (1) This section applies to arrangements if under them—
- (a) a person (“the principal”) appoints an agent,
 - (b) one or both of the principal and agent is a financial institution,
 - (c) the agent uses money provided by the principal with a view to producing a profit,
 - (d) the principal is entitled, to a specified extent, to profits resulting from the use of the money,
 - (e) the agent is entitled to any additional profits resulting from its use (and may also be entitled to a fee paid by the principal), and
 - (f) payments made because of the principal's entitlement to profits equate, in substance, to the return on an investment of money at interest.
- (2) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from sections 564C to 564E, this section and section 564G).”

8 After section 564F insert—

“564G Investment bond arrangements

- (1) This section applies to arrangements if—
- (a) they provide for one person (“the bond-holder”) to pay a sum of money (“the capital”) to another (“the bond-issuer”),
 - (b) they 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) they 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”),
 - (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,

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- (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 becomes the bond-holder because of the transfer),
 - (h) the arrangements are a listed security on a recognised stock exchange, 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) the 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) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from sections 564C to 564F and this section).”

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“564H Provision not at arm's length: exclusion of arrangements from sections 564C to 564G

- (1) Arrangements to which this section applies are not—
 - (a) purchase and resale arrangements,
 - (b) diminishing shared ownership arrangements,
 - (c) deposit arrangements,
 - (d) profit share agency arrangements, or
 - (e) investment bond arrangements.
- (2) This section applies to arrangements if—
 - (a) apart from this section they would be alternative finance arrangements,
 - (b) subsection (3) or (5) of section 147 of TIOPA 2010 (tax calculations to be based on arm's length, not actual, provision) requires the profits and losses of a person who is a party to the arrangements to be calculated for tax purposes as if the arm's length provision (within the meaning of that section) had been made or imposed rather than in accordance with the arrangements,
 - (c) any person who is an affected person for the purposes of Part 4 of that Act (“the affected person”) is entitled to—
 - (i) relevant return in relation to the arrangements, or
 - (ii) an amount representing relevant return in relation to them, and
 - (d) the affected person is not subject—
 - (i) to income tax or corporation tax, or
 - (ii) to any corresponding tax under the law of a territory outside the United Kingdom,on the relevant return or the amount representing it.
- (3) In this section “relevant return”, in relation to arrangements, means any amount which would be alternative finance return if the arrangements were alternative finance arrangements.”

10 After section 564H insert—

“Meaning of “alternative finance return”

564I Purchase and resale arrangements

- (1) In the case of purchase and resale arrangements, so much of the second purchase price as is specified under the following provisions of this section is alternative finance return for the purposes of this Part.
- (2) If under the arrangements the whole of the second purchase price is paid on one day, the alternative finance return equals the amount by which the second purchase price exceeds the first purchase price.
- (3) If under the arrangements the second purchase price is paid by instalments, the alternative finance return in each instalment equals the appropriate amount.

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- (4) The appropriate amount is an amount equal to the interest which would have been included in the instalment on the assumptions in subsection (5).
- (5) The assumptions are that—
 - (a) interest is payable on a loan by the first purchaser to the second purchaser of an amount equal to the first purchase price,
 - (b) the total interest payable on the loan is equal to the amount by which the second purchase price exceeds the first purchase price,
 - (c) the instalment is a part repayment of the principal of the loan with interest, and
 - (d) the loan is made on arm's length terms and accounted for under generally accepted accounting practice.
- (6) In this section expressions used in section 564C have the same meaning as in that section.”

11 After section 564I insert—

“564J Purchase and resale arrangements where return in foreign currency

- (1) If, in the case of purchase and resale arrangements, alternative finance return is paid in a currency other than sterling—
 - (a) by or to a person other than a company, and
 - (b) otherwise than for the purposes of a trade, profession or vocation or a property business,
 subsections (2) and (3) apply as respects that person.
- (2) The amount of the excess referred to in section 564I(2) and (5)(b) and the appropriate amount for the purposes of section 564I(3) and (4) are to be calculated in that other currency.
- (3) The amount of each payment of alternative finance return is to be translated into sterling at a spot rate of exchange for the day on which the payment is made.”

12 After section 564J insert—

“564K Diminishing shared ownership arrangements

- (1) In the case of diminishing shared ownership arrangements, payments by the eventual owner under the arrangements are alternative finance return for the purposes of this Part, except so far as subsection (2) or (3) applies to them.
- (2) This subsection applies to the payments so far as they amount to payments of the kind described in section 564D(1)(c) (payments to be made by the eventual owner to the institution, amounting to the consideration paid for the acquisition of the institution's beneficial interest).
- (3) This subsection applies to the payments so far as they amount to payments in respect of any arrangement fee or legal or other expenses which the eventual owner is required under the arrangements to pay.
- (4) In this section “the eventual owner” has the same meaning as in section 564D.”

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13 After section 564K insert—

“564L Other arrangements

- (1) In the case of deposit arrangements, amounts paid or credited as mentioned in section 564E(1)(c) by a financial institution under the arrangements (payments to depositor out of profits resulting from use of money) are alternative finance return for the purposes of this Part.
- (2) In the case of profit share agency arrangements, amounts paid or credited by a financial institution in accordance with such an entitlement as is mentioned in section 564F(1)(d) (principal's entitlement to profits under the arrangements) are alternative finance return for the purposes of this Part.
- (3) In the case of investment bond arrangements, the additional payments under the arrangements are alternative finance return for the purposes of this Part, but subject to subsection (4).
- (4) If any part of the additional payments in respect of investment bond arrangements equates in substance to discount, that part is not treated as alternative finance return for income tax purposes.
- (5) In this section “additional payments” has the same meaning as in section 564G (see subsection (1)(d)(iii) of that section).
- (6) For the treatment of the part of the additional payments to which subsection (4) applies, see section 564R (treatment of discount).”

14 After section 564L insert—

“Treatment of alternative finance return as interest etc

564M Treatment of alternative finance return as interest for ITTOIA 2005

- (1) Alternative finance return is treated as interest for the purposes of ITTOIA 2005.
- (2) References to interest in section 380 of that Act (funding bonds) include references to alternative finance return.”

15 After section 564M insert—

“564N Alternative finance return under arrangements for trade or property business purposes

- (1) This section applies so far as a person is a party to alternative finance arrangements for the purposes of—
 - (a) a trade, profession or vocation carried on by that person, or
 - (b) a property business of that person.
- (2) Alternative finance return paid by that person is treated as an expense of the trade, profession, vocation or business.
- (3) In section 58 of ITTOIA 2005—

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- (a) references to a loan include references to alternative finance arrangements, and
- (b) references to interest include references to alternative finance return.”

16 After section 564N insert—

“564O Relief for some alternative finance return under Chapter 1 of Part 8 etc

- (1) Chapter 1 of Part 8 of this Act (interest payments) has effect as if—
 - (a) purchase and resale arrangements involved the making of a loan, and
 - (b) alternative finance return were interest.
- (2) Section 412 (information) has effect accordingly.”

17 After section 564O insert—

“564P Tax relief schemes and arrangements

Section 809ZG (tax relief schemes and arrangements) applies to alternative finance return as it applies to interest.”

18 After section 564P insert—

“564Q Deduction of income tax at source under Part 15

- (1) Chapter 2 of Part 15 (deduction of income tax at source: deduction by deposit-takers and building societies), and Chapter 19 of that Part so far as it has effect for the purposes of Chapter 2 of that Part, have effect as if—
 - (a) relevant alternative finance arrangements were a deposit,
 - (b) for the purposes of section 866(2)(a) such arrangements were a deposit consisting of a loan, and
 - (c) alternative finance return payable under such arrangements were interest.
- (2) For the purposes of subsection (1) alternative finance arrangements are relevant unless they are purchase and resale arrangements where the second purchaser is not a financial institution.
- (3) In subsection (2) “the second purchaser” has the same meaning as in section 564C.
- (4) In Chapter 12 of Part 15 (funding bonds) references to interest include references to alternative finance return.
- (5) Chapters 3 to 5 of Part 15, and Chapter 19 of that Part so far as it has effect for the purposes of those Chapters, apply to alternative finance return as they apply to interest.”

19 After section 564Q insert—

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“Special rules for investment bond arrangements

564R Treatment of discount

- (1) This section applies if any part of the additional payments in respect of investment bond arrangements is excluded from being alternative finance return by section 564L(4) because it equates in substance to discount.
- (2) That part is treated in accordance with section 381 of ITTOIA 2005 (discounts) unless subsection (3) applies.
- (3) If the arrangements are deeply discounted securities for the purposes of Chapter 8 of Part 4 of that Act (profits from deeply discounted securities), that part is treated in accordance with that Chapter.
- (4) In this section “additional payments” has the same meaning as in section 564G of this Act (see subsection (1)(d)(iii) of that section).”

20 After section 564R insert—

“564S Treatment of bond-holder and bond-issuer

- (1) This section applies for the purposes of the Income Tax Acts and irrespective of the position for other purposes.
- (2) The bond-holder under investment bond arrangements is not treated as having a legal or beneficial interest in the bond assets.
- (3) The bond-issuer under such arrangements is not treated as a trustee of the bond assets.
- (4) Profits accruing to the bond-issuer in connection with the bond assets are profits of the bond-issuer and not of the bond-holder (and do not arise to the bond-issuer in a fiduciary or representative capacity).
- (5) Payments made by the bond-issuer by way of redemption payment or additional payment are not made in a fiduciary or representative capacity.
- (6) The bond-holder is not entitled to relief for capital expenditure in connection with the bond assets.
- (7) Expressions used in this section have the same meaning as in section 564G.”

21 After section 564S insert—

“564T Treatment as securities

- (1) Investment bond arrangements are securities for the purposes of the Income Tax Acts (including Chapters 1 to 5 of Part 7 of ITEPA 2003).
- (2) For those purposes—
 - (a) a reference in an enactment to redemption is to be taken as a reference to making the redemption payment, and
 - (b) a reference in an enactment to interest is to be taken as a reference to alternative finance return.

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- (3) In subsection (2) “the redemption payment” has the same meaning as in section 564G (see subsection (1)(d)(ii) of that section).”

22 After section 564T insert—

“564U Arrangements not unit trust scheme or offshore fund

Investment bond arrangements are not—

- (a) a unit trust scheme for the purposes of section 1007 of this Act, or
- (b) an offshore fund for the purposes of section 354 of TIOPA 2010 so far as relating to income tax.”

23 After section 564U insert—

“Other rules

564V Exclusion of alternative finance return from consideration for sale of assets

- (1) If under purchase and resale arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of the Income Tax Acts (apart from section 564C).
- (2) If under diminishing shared ownership arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of the Income Tax Acts (apart from section 564D).
- (3) If under investment bond arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of the Income Tax Acts (apart from section 564G).
- (4) Subsections (1) to (3) do not affect the operation of any provision of the Tax Acts or TCGA 1992 that provides that the consideration for a sale or purchase is taken for any purpose to be an amount other than the actual consideration.”

24 After section 564V insert—

“564W Diminishing shared ownership arrangements not partnerships

Diminishing shared ownership arrangements are not treated as a partnership for the purposes of the Income Tax Acts.”

25 After section 564W insert—

“564X Treatment of principal under profit share agency arrangements

- (1) The principal under profit share agency arrangements is not treated for the purposes of the Income Tax Acts as entitled to profits to which the agent is entitled in accordance with section 564F(1)(e).

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(2) And the agent under such arrangements is treated for those purposes as entitled to those profits and the profits specified in section 564F(1)(d).

(3) In this section “the principal” and “the agent” are to be read in accordance with section 564F.”

26 After section 564X insert—

“564Y Provision not at arm's length: relevant return

(1) This section applies if arrangements to which section 564H (provision not at arm's length: exclusion of arrangements from sections 564C to 564G) applies would, but for that section, be alternative finance arrangements.

(2) A person paying relevant return under the arrangements is not entitled to—
(a) any deduction in respect of the relevant return in calculating profits or other income for income tax purposes, or
(b) any deduction in respect of the relevant return in calculating net income.

(3) In this section “relevant return” has the same meaning as in section 564H (see subsection (3) of that section).”

PART 2

NEW CHAPTER 4 OF PART 4 OF TCGA 1992

27 TCGA 1992 is amended as follows.

28 After Chapter 3 of Part 4 insert—

“CHAPTER 4

ALTERNATIVE FINANCE ARRANGEMENTS

Introduction

Introduction

151H) This Chapter makes provision about the treatment of alternative finance arrangements with financial institutions and alternative finance return under such arrangements for the purposes of this Act (see sections 151T to 151Y).

(2) In this Chapter “alternative finance arrangements” means—
(a) purchase and resale arrangements,
(b) diminishing shared ownership arrangements,
(c) deposit arrangements,
(d) profit share agency arrangements, and
(e) investment bond arrangements.

(3) In this Chapter—

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- (a) “purchase and resale arrangements” means arrangements to which section 151J applies,
- (b) “diminishing shared ownership arrangements” means arrangements to which section 151K applies,
- (c) “deposit arrangements” means arrangements to which section 151L applies,
- (d) “profit share agency arrangements” means arrangements to which section 151M applies, and
- (e) “investment bond arrangements” means arrangements to which section 151N applies.

(4) For the meaning of “alternative finance return”, see sections 151P to 151S.

(5) For the meaning of “financial institution”, see section 151I.

(6) Also, see—

- (a) section 366 of TIOPA 2010 (power to extend this Chapter and other provisions to other arrangements by order), and
- (b) Schedule 61 to FA 2009 (alternative finance investment bonds) which makes further provision about the treatment of investment bond arrangements for the purposes of this Act.”

29 After section 151H insert—

“151I Meaning of “financial institution”

(1) In this Chapter “financial institution” means—

- (a) a bank, as defined by section 1120 of CTA 2010,
- (b) a building society,
- (c) a wholly-owned subsidiary—
 - (i) of a bank within paragraph (a), or
 - (ii) of a building society,
- (d) a person authorised by a licence under Part 3 of the Consumer Credit Act 1974 to carry on a consumer credit business or consumer hire business within the meaning of that Act,
- (e) a bond-issuer, within the meaning of section 151N, but only in relation to any bond assets which are rights under purchase and resale arrangements, diminishing shared ownership arrangements or profit share agency arrangements,
- (f) a person authorised in a jurisdiction outside the United Kingdom—
 - (i) to receive deposits or other repayable funds from the public, and
 - (ii) to grant credits for its own account,
- (g) an insurance company as defined in section 431(2) of ICTA, or
- (h) a person who is authorised in a jurisdiction outside the United Kingdom to carry on a business which consists of effecting or carrying out contracts of insurance or substantially similar business but not an insurance special purpose vehicle as defined in section 431(2) of ICTA.

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- (2) For the purposes of subsection (1)(c) a company is a wholly-owned subsidiary of a bank or building society (“the parent”) if it has no members except—
- (a) the parent or persons acting on behalf of the parent, and
 - (b) the parent's wholly-owned subsidiaries or persons acting on behalf of the parent's wholly-owned subsidiaries.”

30 After section 151I insert—

“Arrangements that are alternative finance arrangements

151J Purchase and resale arrangements

- (1) This section applies to arrangements if—
- (a) they are entered into between two persons (“the first purchaser” and “the second purchaser”), one or both of whom are financial institutions, and
 - (b) under the arrangements—
 - (i) the first purchaser purchases an asset and sells it to the second purchaser,
 - (ii) the sale occurs immediately after the purchase or in the circumstances mentioned in subsection (2),
 - (iii) all or part of the second purchase price is not required to be paid until a date later than that of the sale,
 - (iv) the second purchase price exceeds the first purchase price, and
 - (v) the excess equates, in substance, to the return on an investment of money at interest.
- (2) The circumstances are that—
- (a) the first purchaser is a financial institution, and
 - (b) the asset referred to in subsection (1)(b)(i) was purchased by the first purchaser for the purpose of entering into arrangements within this section.
- (3) In this section—
- “the first purchase price” means the amount paid by the first purchaser in respect of the purchase, and
 - “the second purchase price” means the amount payable by the second purchaser in respect of the sale.
- (4) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from this section and sections 151K to 151N).”

31 After section 151J insert—

“151K Diminishing shared ownership arrangements

- (1) This section applies to arrangements if under them—
- (a) a financial institution (“the first owner”) acquires a beneficial interest in an asset,

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Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, SCHEDULE 2. (See end of Document for details)

- (b) another person (“the eventual owner”) also acquires a beneficial interest in it,
 - (c) the eventual owner is to make payments to the first owner amounting in aggregate to the consideration paid for the acquisition of the first owner’s beneficial interest (but subject to any adjustment required for such a reduction as is mentioned in subsection (5)),
 - (d) the eventual owner is to acquire the first owner’s beneficial interest (whether or not in stages) as a result of those payments,
 - (e) the eventual owner is to make other payments to the first owner (whether under a lease forming part of the arrangements or otherwise),
 - (f) the eventual owner has the exclusive right to occupy or otherwise to use the asset, and
 - (g) the eventual owner is exclusively entitled to any income, profit or gain arising from or attributable to the asset (including, in particular, an increase in its value).
- (2) For the purposes of subsection (1)(a) it does not matter if—
- (a) the first owner acquires its beneficial interest from the eventual owner,
 - (b) the eventual owner, or another person who is not the first owner, also has a beneficial interest in the asset, or
 - (c) the first owner also has a legal interest in it.
- (3) Subsection (1)(f) does not prevent the eventual owner from granting an interest or right in relation to the asset if the conditions in subsection (4) are met.
- (4) The conditions are that—
- (a) the grant is not to—
 - (i) the first owner,
 - (ii) a person controlled by the first owner, or
 - (iii) a person controlled by a person who also controls the first owner, and
 - (b) the grant is not required by the first owner or arrangements to which the first owner is a party.
- (5) Subsection (1)(g) does not prevent the first owner from—
- (a) having responsibility for any reduction in the asset’s value, or
 - (b) having a share in a loss arising out of any such reduction.
- (6) Section 1124 of CTA 2010 (meaning of “control”) applies for the purposes of this section.
- (7) This section is subject to section 151O (provision not at arm’s length: exclusion of arrangements from section 151J, this section and sections 151L to 151N).”

32

After section 151K insert—

“151L Deposit arrangements

- (1) This section applies to arrangements if under them—

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- (a) a person (“the depositor”) deposits money with a financial institution,
- (b) the money, together with money deposited with the institution by other persons, is used by it with a view to producing a profit,
- (c) from time to time the institution makes or credits a payment to the depositor out of profit resulting from the use of the money,
- (d) the payment is in proportion to the amount deposited by the depositor, and
- (e) the payments so made or credited by the institution equate, in substance, to the return on an investment of money at interest.

(2) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from sections 151J, 151K, this section and sections 151M and 151N).”

33 After section 151L insert—

“151M Profit share agency arrangements

- (1) This section applies to arrangements if under them—
 - (a) a person (“the principal”) appoints an agent,
 - (b) one or both of the principal and agent is a financial institution,
 - (c) the agent uses money provided by the principal with a view to producing a profit,
 - (d) the principal is entitled, to a specified extent, to profits resulting from the use of the money,
 - (e) the agent is entitled to any additional profits resulting from its use (and may also be entitled to a fee paid by the principal), and
 - (f) payments made because of the principal's entitlement to profits equate, in substance, to the return on an investment of money at interest.

(2) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from sections 151J to 151L, this section and section 151N).”

34 After section 151M insert—

“151N Investment bond arrangements

- (1) This section applies to arrangements if—
 - (a) they provide for one person (“the bond-holder”) to pay a sum of money (“the capital”) to another (“the bond-issuer”),
 - (b) they 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) they 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,

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- (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”),
 - (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 becomes the bond-holder because of the transfer),
 - (h) the arrangements are a listed security on a recognised stock exchange, 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) the 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-

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issuer or the bond-holder) by the issue or transfer of shares or other securities.

(3) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from sections 151J to 151M and this section)."

35 After section 151N insert—

“151O Provision not at arm's length: exclusion of arrangements from sections 151J to 151N

(1) Arrangements to which this section applies are not—

- (a) purchase and resale arrangements,
- (b) diminishing shared ownership arrangements,
- (c) deposit arrangements,
- (d) profit share agency arrangements, or
- (e) investment bond arrangements.

(2) This section applies to arrangements if—

- (a) apart from this section they would be alternative finance arrangements,
- (b) subsection (3) or (5) of section 147 of TIOPA 2010 (tax calculations to be based on arm's length, not actual, provision) requires the profits and losses of a person who is a party to the arrangements to be calculated for tax purposes as if the arm's length provision (within the meaning of that section) had been made or imposed rather than in accordance with the arrangements,
- (c) any person who is an affected person for the purposes of Part 4 of that Act (“the affected person”) is entitled to—
 - (i) relevant return in relation to the arrangements, or
 - (ii) an amount representing relevant return in relation to them, and
- (d) the affected person is not subject—
 - (i) to income tax or corporation tax, or
 - (ii) to any corresponding tax under the law of a territory outside the United Kingdom,on the relevant return or the amount representing it.

(3) In this section “relevant return”, in relation to arrangements, means any amount which would be alternative finance return if the arrangements were alternative finance arrangements.”

36 After section 151O insert—

“Meaning of “alternative finance return”

151P Purchase and resale arrangements

(1) In the case of purchase and resale arrangements, so much of the second purchase price as is specified under the following provisions of this section is alternative finance return for the purposes of this Chapter.

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- (2) If under the arrangements the whole of the second purchase price is paid on one day, the alternative finance return equals the amount by which the second purchase price exceeds the first purchase price.
- (3) If under the arrangements the second purchase price is paid by instalments, the alternative finance return in each instalment equals the appropriate amount.
- (4) The appropriate amount is an amount equal to the interest which would have been included in the instalment on the assumptions in subsection (5).
- (5) The assumptions are that—
 - (a) interest is payable on a loan by the first purchaser to the second purchaser of an amount equal to the first purchase price,
 - (b) the total interest payable on the loan is equal to the amount by which the second purchase price exceeds the first purchase price,
 - (c) the instalment is a part repayment of the principal of the loan with interest, and
 - (d) the loan is made on arm's length terms and accounted for under generally accepted accounting practice.
- (6) In this section expressions used in section 151J have the same meaning as in that section.”

37 After section 151P insert—

“151Q Purchase and resale arrangements where return in foreign currency

- (1) If, in the case of purchase and resale arrangements, alternative finance return is paid in a currency other than sterling—
 - (a) by or to a person other than a company, and
 - (b) otherwise than for the purposes of a trade, profession or vocation or a property business,
 subsections (2) and (3) apply as respects that person.
- (2) The amount of the excess referred to in section 151P(2) and (5)(b) and the appropriate amount for the purposes of section 151P(3) and (4) are to be calculated in that other currency.
- (3) The amount of each payment of alternative finance return is to be translated into sterling at a spot rate of exchange for the day on which the payment is made.”

38 After section 151Q insert—

“151R Diminishing shared ownership arrangements

- (1) In the case of diminishing shared ownership arrangements, payments by the eventual owner under the arrangements are alternative finance return for the purposes of this Chapter, except so far as subsection (2) or (3) applies to them.
- (2) This subsection applies to the payments so far as they amount to payments of the kind described in section 151K(1)(c) (payments to be made by the

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eventual owner to the institution, amounting to the consideration paid for the acquisition of the institution's beneficial interest).

(3) This subsection applies to the payments so far as they amount to payments in respect of any arrangement fee or legal or other expenses which the eventual owner is required under the arrangements to pay.

(4) In this section “the eventual owner” has the same meaning as in section 151K.”

39 After section 151R insert—

“151S Other arrangements

(1) In the case of deposit arrangements, amounts paid or credited as mentioned in section 151L(1)(c) by a financial institution under the arrangements (payments to depositor out of profits resulting from use of money) are alternative finance return for the purposes of this Chapter.

(2) In the case of profit share agency arrangements, amounts paid or credited by a financial institution in accordance with such an entitlement as is mentioned in section 151M(1)(d) (principal's entitlement to profits under the arrangements) are alternative finance return for the purposes of this Chapter.

(3) In the case of investment bond arrangements, the additional payments under the arrangements are alternative finance return for the purposes of this Chapter.

(4) In this section “additional payments” has the same meaning as in section 151N (see subsection (1)(d)(iii) of that section).”

40 After section 151S insert—

“Special rules for investment bond arrangements

151T Investment bond arrangements are qualifying corporate bonds

(1) For the purposes of section 117, investment bond arrangements are a corporate bond, issued on the date on which the arrangements are entered into, if each of conditions A to D is met.

(2) Condition A is that the capital is expressed in sterling.

(3) Condition B is that the arrangements do not include provision for the redemption payment to be in a currency other than sterling.

(4) Condition C is that 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 to which section 151N applies.

(5) Condition D is that the additional payments are not determined wholly or partly by reference to the value of the bond assets.

(6) Section 117(2) applies for the purposes of this section as it applies for the purposes of section 117(1).”

41 After section 151T insert—

Status: Point in time view as at 12/02/2019.

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“151U Treatment of bond-holder and bond-issuer

- (1) This section applies for the purposes of this Act and any other enactment about capital gains tax and irrespective of the position for other purposes.
- (2) The bond-holder under investment bond arrangements is not treated as having a legal or beneficial interest in the bond assets.
- (3) The bond-issuer under such arrangements is not treated as a trustee of the bond assets.
- (4) Gains accruing to the bond-issuer in connection with the bond assets are 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).
- (5) Payments made by the bond-issuer by way of redemption payment or additional payment are not made in a fiduciary or representative capacity.
- (6) The bond-holder is not entitled to relief for capital expenditure in connection with the bond assets.
- (7) Expressions used in this section have the same meaning as in section 151N.”

42 After section 151U insert—

“151V Treatment as securities

- (1) Investment bond arrangements are securities for the purposes of this Act and any other enactment about capital gains tax.
- (2) For those purposes—
 - (a) a reference in an enactment to redemption is to be taken as a reference to making the redemption payment, and
 - (b) a reference in an enactment to interest is to be taken as a reference to alternative finance return.
- (3) In subsection (2) “the redemption payment” has the same meaning as in section 151N (see subsection (1)(d)(ii) of that section).”

43 After section 151V insert—

“151W Investment bond arrangements not unit trust scheme or offshore fund

Investment bond arrangements are not—

- (a) a unit trust scheme for the purposes of this Act, or
- (b) an offshore fund for the purposes of section 354 of TIOPA 2010 so far as relating to capital gains tax.”

44 After section 151W insert—

Status: Point in time view as at 12/02/2019.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, SCHEDULE 2. (See end of Document for details)

“Other rules

151X Exclusion of some alternative finance return from sale consideration

- (1) If under purchase and resale arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of this Act so far as it applies for capital gains tax (apart from section 151J).
- (2) If under diminishing shared ownership arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of this Act so far as it applies for capital gains tax (apart from section 151K).
- (3) If under investment bond arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of this Act so far as it applies for capital gains tax (apart from section 151N).
- (4) Subsections (1) to (3) do not affect the operation of any provision of this Act or the Tax Acts that provides that the consideration for a sale or purchase is taken for any purpose to be an amount other than the actual consideration.”

45 After section 151X insert—

“151Y Diminishing shared ownership arrangements not partnerships

Diminishing shared ownership arrangements are not treated as a partnership for capital gains tax purposes.”

PART 3

OTHER AMENDMENTS

Income and Corporation Taxes Act 1988 (c. 1)

46 ICTA is amended as follows.

47 After section 367 insert—

“367A Alternative finance arrangements

- (1) Sections 353 and 365 have effect as if—
 - (a) purchase and resale arrangements involved the making of a loan, and
 - (b) alternative finance return were interest.
- (2) Section 366 has effect accordingly.
- (3) In this section—

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Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, SCHEDULE 2. (See end of Document for details)

“alternative finance return” has the meaning given in sections 564I to 564L of ITA 2007, and

“purchase and resale arrangements” means arrangements to which section 564C of ITA 2007 applies.”

Income Tax (Earnings and Pensions) Act 2003 (c. 1)

48 ITEPA 2003 is amended as follows.

49 After section 173 (loans to which Chapter 7 of Part 3 (taxable benefits: loans) applies) insert—

“173A Alternative finance arrangements

(1) For the purposes of this Chapter a reference to a loan includes a reference to arrangements—

- (a) to which section 564C of ITA 2007 or section 503 of CTA 2009 (purchase and resale arrangements) applies (or would apply assuming one of the parties were a financial institution), or
- (b) to which section 564D of ITA 2007 or section 504 of CTA 2009 (diminishing shared ownership arrangements) applies (or would apply on that assumption).

(2) In the application of this Chapter as a result of this section, a reference to interest is to be treated as including alternative finance return (or anything that would be such return on that assumption).

(3) In the application of this Chapter as a result of this section, a reference to the amount outstanding is to be taken—

- (a) in the case of arrangements within subsection (1)(a), as a reference to the purchase price minus such part of the aggregate payments made as does not represent alternative finance return (or anything that would be such return on that assumption),
- (b) in the case of arrangements to which section 564D of ITA 2007 or section 504 of CTA 2009 applies, as a reference to the amount of the financial institution's original beneficial interest minus such part of the aggregate payments made as does not represent alternative finance return, and
- (c) in the case of arrangements to which section 564D of ITA 2007 or section 504 of CTA 2009 would apply assuming one of the parties were a financial institution, as a reference to the amount of that party's original beneficial interest minus such part of the aggregate payments made as does not represent anything that would be alternative finance return on that assumption.

(4) In this section—

“alternative finance return” has the meaning given in sections 564I to 564L of ITA 2007 or sections 511 to 513 of CTA 2009, and

“financial institution” has the meaning given in section 564B of ITA 2007 or section 502 of CTA 2009.

(5) This section does not apply to arrangements entered into before 22 March 2006.”

Status: Point in time view as at 12/02/2019.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, SCHEDULE 2. (See end of Document for details)

Income Tax Act 2007 (c. 3)

50 ITA 2007 is amended as follows.

51 At the beginning of Chapter 7 of Part 7 (Community Investment Tax Relief: supplementary and general) insert—

“Alternative finance arrangements

Meaning of “loan” and “interest”

372A(1) In this Part and regulations made under Chapter 2 of this Part—

- (a) references to a “loan” include references to alternative finance arrangements, and
- (b) references to “interest” include references to alternative finance return.

(2) In subsection (1)—

“alternative finance arrangements” means arrangements to which any of the following applies—

- (a) section 564C (purchase and resale arrangements),
- (b) section 564E (deposit arrangements), and
- (c) section 564F (profit share agency arrangements), and

“alternative finance return” has the meaning given by section 564I and 564L(1) and (2).

(3) Subsection (1) needs to be read with—

- (a) section 372B, in the case of arrangements to which section 564C applies,
- (b) section 372C, in the case of arrangements to which section 564E applies, and
- (c) section 372D, in the case of arrangements to which section 564F applies.”

52 After section 372A insert—

“372B Purchase and resale arrangements

- (1) This section applies if, under arrangements to which section 564C applies, a person (“the first purchaser”) purchases an asset that is sold to another person (“the second purchaser”).
- (2) This Part and regulations made under Chapter 2 of this Part have effect in relation to the arrangements in accordance with subsections (3) to (9).
- (3) The first purchaser is treated as making a loan to the second purchaser.
- (4) The amount of the loan is treated as being equal to the first purchase price.
- (5) If the arrangements provide that the first purchaser will transfer ownership of the asset to the second purchaser in instalments—
 - (a) references to the loan being drawn down over a period of time include references to the asset being transferred to the second purchaser in instalments,

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- (b) 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 the second purchaser, and
 - (c) references to the amount drawn down at a given date include references to the value of the instalments transferred at that date.
- (6) In calculating the amount of capital outstanding on the loan, each payment of the second purchase price (or part of the second purchase price), as reduced by any amount of alternative finance return included within each payment, is treated as repayment of the loan capital.
- (7) References to the beneficial owner of the loan include references to the person beneficially entitled to payment of the second purchase price.
- (8) 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 second purchase price.
- (9) If arrangements to which section 564C applies are, as a result of this section, qualifying investments under Chapter 3 of this Part, paragraph (f) of section 366(1) is to be ignored in relation to the arrangements concerned.
- (10) In this section “the first purchase price” and “the second purchase price” have the same meaning as in section 564C.”

53 After section 372B insert—

“372C Deposit arrangements

- (1) This section applies if, under arrangements to which section 564E applies, a person (“the depositor”) deposits money with a financial institution.
- (2) This Part and regulations made under Chapter 2 of this Part have effect in relation to the arrangements in accordance with subsections (3) to (9).
- (3) The depositor is treated as making a loan to the financial institution.
- (4) The amount of the loan is treated as being equal to the money deposited under the arrangements.
- (5) If the arrangements provide that the depositor will deposit a sum of money with the financial institution in instalments—
 - (a) references to the loan being drawn down over a period of time include references to the depositor depositing a sum of money with the financial institution in instalments,
 - (b) 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
 - (c) references to the amount drawn down at a given date include references to the value of the instalments deposited with the financial institution at that date.
- (6) The capital outstanding on the loan is treated as being equal to the balance of the repayable deposit.

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Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, SCHEDULE 2. (See end of Document for details)

- (7) References to any repayment of the loan include references to any repayment of the deposit.
- (8) References to the beneficial owner of the loan include references to the person beneficially entitled to repayment of the deposit.
- (9) 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.
- (10) In this section “financial institution” has the same meaning as in Part 10A (see section 564B).”

54 After section 372C insert—

“372D Profit share agency arrangements

- (1) This section applies if, under arrangements to which section 564F applies, a person (“the principal”) appoints a financial institution as agent.
- (2) This Part and regulations made under Chapter 2 of this Part have effect in relation to the arrangements in accordance with subsections (3) to (9).
- (3) The principal is treated as making a loan to the agent.
- (4) The amount of the loan is treated as being equal to the money provided by the principal to the agent under the arrangements.
- (5) If the arrangements provide that the principal will provide a sum of money to the agent in instalments—
 - (a) 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,
 - (b) 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
 - (c) references to the amount drawn down at a given date include references to the value of the instalments provided to the agent at that date.
- (6) The capital outstanding on the loan is treated as being equal to the balance of the repayable money provided to the agent.
- (7) References to any repayment of the loan include references to any repayment of the money provided to the agent.
- (8) References to the beneficial owner of the loan include references to the person beneficially entitled to repayment of the money provided to the agent.
- (9) 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.
- (10) In subsection (1) “financial institution” has the same meaning as in Part 10A (see section 564B).”

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Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, SCHEDULE 2. (See end of Document for details)

55 In section 1005 (meaning of “recognised stock exchange” etc) after subsection (2) insert—

“(2A) An order under subsection (1) may designate a stock exchange for the purposes of this section in its application to section 564G of this Act, section 151N of TCGA 1992 and section 507 of CTA 2009 only.”

Status:

Point in time view as at 12/02/2019.

Changes to legislation:

There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, SCHEDULE 2.