

2022 No. 572

INCOME TAX

CAPITAL GAINS TAX

CORPORATION TAX

The Alternative Finance (Income Tax, Capital Gains Tax and Corporation Tax) Order 2022

Made - - - - - *23rd May 2022*

Coming into force - - - - - *24th May 2022*

The Treasury, in exercise of the powers conferred by section 366 of the Taxation (International and Other Provisions) Act 2010(a), make the following Order.

In accordance with section 366(7) of that Act, a draft of the instrument was laid before, and approved by a resolution of, the House of Commons.

Citation, commencement and saving

1.—(1) This Order may be cited as the Alternative Finance (Income Tax, Capital Gains Tax and Corporation Tax) Order 2022.

(2) It comes into force on the day after the day on which it is made.

(3) The amendments made by this Order do not have effect in relation to arrangements entered into before 30th November 2021.

Diminishing shared ownership arrangements: income tax

2.—(1) Section 564D of ITA 2007(b) (diminishing shared ownership arrangements) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), for “financial institution” substitute “person”, and

(b) after that paragraph insert—

“(aa) either—

(a) 2010 c. 8.

(b) 2007 c. 3; section 564D was inserted by paragraph 5 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010. Section 500 of that Act defines abbreviations of various Acts including TCGA 1992 (the Taxation of Chargeable Gains Act 1992 (c. 12)), ITEPA 2003 (the Income Tax (Earnings and Pensions) Act 2003 (c. 1)), ITA 2007 (the Income Tax Act 2007) and CTA 2009 (the Corporation Tax Act 2009).

- (i) the first owner is a financial institution or a regulated home purchase plan provider, or
- (ii) the arrangements are regulated electronic system facilitated arrangements.”.

(3) After that subsection insert—

“(1A) Arrangements are regulated electronic system facilitated arrangements if—

- (a) the arrangements substantially consist of an article 36H agreement in relation to the enjoyment by the eventual owner of the rights referred to in subsection (1)(f) and (g) before the eventual owner’s acquisition of the first owner’s beneficial interest,
- (b) the eventual owner would be regarded, for the purposes of that agreement, as the borrower under it,
- (c) the first owner would be regarded, for the purposes of that agreement, as the lender under it, and
- (d) those owners becoming parties to the agreement was facilitated by an electronic system operated by a person who has permission under Part 4A of FISMA 2000(a) to carry on, in relation to that system, the regulated activity specified in article 36H(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)(b) (operating an electronic system in relation to lending).”.

(4) After subsection (6) insert—

“(7) In this section—

“article 36H agreement” has the meaning given by article 36H(4) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“borrower” and “lender” are to be construed in accordance with article 36H(9) of that Order;

“regulated home purchase plan provider” means a person who—

- (a) is carrying on the regulated activity specified in article 63F(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c) (entering into regulated home purchase plans as home purchase provider), and
- (b) has permission under Part 4A of FISMA 2000 to do so.”.

Diminishing shared ownership arrangements: capital gains tax

3.—(1) Section 151K of TCGA 1992(d) (diminishing shared ownership arrangements) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), for “financial institution” substitute “person”, and
- (b) after that paragraph insert—
 - “(aa) either—

(a) “FISMA 2000” is defined in section 1017 of the Income Tax Act 2007 as the Financial Services and Markets Act 2000 (c. 8); Part 4A of that Act was substituted for Part 4 of that Act by section 11(2) of the Financial Services Act 2012 (c. 21).

(b) S.I. 2001/544. Article 36H of that Order was inserted by article 4 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881). It has been subsequently amended by article 2 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366), article 2 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392) and article 2(2) of the Financial Services and Markets Act 2000 (Regulated Activities) (Coronavirus) (Amendment) Order 2020 (S.I. 2020/480).

(c) Article 63F of that Order was inserted by article 18 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2006 (S.I. 2006/2383).

(d) 1992 c. 12; section 151K was inserted by paragraph 31 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010.

- (i) the first owner is a financial institution or a regulated home purchase plan provider, or
 - (ii) the arrangements are regulated electronic system facilitated arrangements.”.
- (3) After that subsection insert—
- “(1A) Arrangements are regulated electronic system facilitated arrangements if—
- (a) the arrangements substantially consist of an article 36H agreement in relation to the enjoyment by the eventual owner of the rights referred to in subsection (1)(f) and (g) before the eventual owner’s acquisition of the first owner’s beneficial interest,
 - (b) the eventual owner would be regarded, for the purposes of that agreement, as the borrower under it,
 - (c) the first owner would be regarded, for the purposes of that agreement, as the lender under it,
 - (d) those owners becoming parties to the agreement was facilitated by an electronic system operated by a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on, in relation to that system, the regulated activity specified in article 36H(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (operating an electronic system in relation to lending).”.
- (4) After subsection (6) insert—
- “(7) In this section—
- “article 36H agreement” has the meaning given by article 36H(4) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- “borrower” and “lender” are to be construed in accordance with article 36H(9) of that Order;
- “regulated home purchase plan provider” means a person who—
- (a) is carrying on the regulated activity specified in article 63F(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (entering into regulated home purchase plans as home purchase provider), and
 - (b) has permission under Part 4A of the Financial Services and Markets Act 2000 to do so.”.

Diminishing shared ownership arrangements: corporation tax

4.—(1) Section 504 of CTA 2009(a) (diminishing shared ownership arrangements) is amended as follows.

- (2) In subsection (1)—
- (a) in paragraph (a), for “financial institution” substitute “person”, and
 - (b) after that paragraph insert—
 - “(aa) either—
 - (i) the first owner is a financial institution or a regulated home purchase plan provider, or
 - (ii) the arrangements are regulated electronic system facilitated arrangements.”.
- (3) After that subsection insert—
- “(1A) Arrangements are regulated electronic system facilitated arrangements if—
- (a) the arrangements substantially consist of an article 36H agreement in relation to the enjoyment by the eventual owner of the rights referred to in subsection (1)(f)

(a) 2009 c. 4.

and (g) before the eventual owner's acquisition of the first owner's beneficial interest,

- (b) the eventual owner would be regarded, for the purposes of that agreement, as the borrower under it,
- (c) the first owner would be regarded, for the purposes of that agreement, as the lender under it, and
- (d) those owners becoming parties to the agreement was facilitated by an electronic system operated by a person who has permission under Part 4A of FISMA 2000(a) to carry on, in relation to that system, the regulated activity specified in article 36H(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (operating an electronic system in relation to lending)."

(4) After subsection (6) insert—

“(7) In this section—

“article 36H agreement” has the meaning given by article 36H(4) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“borrower” and “lender” are to be construed in accordance with article 36H(9) of that Order;

“regulated home purchase plan provider” means a person who—

- (a) is carrying on the regulated activity specified in article 63F(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (entering into regulated home purchase plans as home purchase provider), and
- (b) has permission under Part 4A of FISMA 2000 to do so.”.

Peer to peer lending: income tax

5.—(1) Section 564C of ITA 2007 (purchase and resale arrangements) is amended as follows.

(2) In subsection (1)(a) for “one or both of whom are financial institutions, and” substitute—

“and—

- (i) at least one of those persons is a financial institution, or
- (ii) the arrangements are regulated electronic system facilitated arrangements, and

(3) After subsection (2) insert—

“(2A) Arrangements are regulated electronic system facilitated arrangements if—

- (a) the arrangements substantially consist of an article 36H agreement in relation to the deferral of the payment of all or part of the second purchase price,
- (b) the first purchaser would be regarded, for the purposes of that agreement, as the lender under it,
- (c) the second purchaser would be regarded, for the purposes of that agreement, as the borrower under it, and
- (d) those purchasers becoming parties to the agreement was facilitated by an electronic system operated by a person who has permission under Part 4A of FISMA 2000 to carry on, in relation to that system, the regulated activity specified in article 36H(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (operating an electronic system in relation to lending).”

(4) In subsection (3)—

(a) “FISMA 2000” is defined in section 1312 of the Corporation Tax Act 2009 as the Financial Services and Markets Act 2000.

- (a) omit the “and” after the definition of “the first purchase price”, and
- (b) after the definition of “the second purchase price” insert—
 - ““article 36H agreement” has the meaning given by article 36H(4) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and
 - “borrower” and “lender” are to be construed in accordance with article 36H(9) of that Order.”.

Peer to peer lending: capital gains tax

6.—(1) Section 151J of TCGA 1992(a) (purchase and resale arrangements) is amended as follows.

- (2) In subsection (1)(a) for “one or both of whom are financial institutions, and” substitute—
 - “and—
 - (i) at least one of those persons is a financial institution, or
 - (ii) the arrangements are regulated electronic system facilitated arrangements, and
 - ”.

- (3) After subsection (2) insert—
 - “(2A) Arrangements are regulated electronic system facilitated arrangements if—
 - (a) the arrangements substantially consist of an article 36H agreement in relation to the deferral of the payment of all or part of the second purchase price,
 - (b) the first purchaser would be regarded, for the purposes of that agreement, as the lender under it,
 - (c) the second purchaser would be regarded, for the purposes of that agreement, as the borrower under it, and
 - (d) those purchasers becoming parties to the agreement was facilitated by an electronic system operated by a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on, in relation to that system, the regulated activity specified in article 36H(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (operating an electronic system in relation to lending).”.

- (4) In subsection (3)—
 - (a) omit the “and” after the definition of “the first purchase price”, and
 - (b) after the definition of “the second purchase price” insert—
 - ““article 36H agreement” has the meaning given by article 36H(4) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and
 - “borrower” and “lender” are to be construed in accordance with article 36H(9) of that Order.”.

Peer to peer lending: corporation tax

7.—(1) Section 503 of CTA 2009 (purchase and resale arrangements) is amended as follows.

- (2) In subsection (1)(a) for “one or both of whom are financial institutions, and” substitute—
 - “and—
 - (i) at least one of those persons is a financial institution, or
 - (ii) the arrangements are regulated electronic system facilitated arrangements, and
 - ”.

- (3) After subsection (2) insert—

(a) Section 151J was inserted by paragraph 30 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010.

- “(2A) Arrangements are regulated electronic system facilitated arrangements if—
- (a) the arrangements substantially consist of an article 36H agreement in relation to the deferral of the payment of all or part of the second purchase price,
 - (b) the first purchaser would be regarded, for the purposes of that agreement, as the lender under it,
 - (c) the second purchaser would be regarded, for the purposes of that agreement, as the borrower under it, and
 - (d) those purchasers becoming parties to the agreement was facilitated by an electronic system operated by a person who has permission under Part 4A of FISMA 2000 to carry on, in relation to that system, the regulated activity specified in article 36H(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (operating an electronic system in relation to lending).”

(4) In subsection (3)—

- (a) omit the “and” after the definition of “the first purchase price”, and
- (b) after the definition of “the second purchase price” insert—

““article 36H agreement” has the meaning given by article 36H(4) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and
“borrower” and “lender” are to be construed in accordance with article 36H(9) of that Order.”.

Consequential amendments

8.—(1) In section 151H of TCGA 1992 (introduction to Chapter 4 of Part 4 of that Act)(a), in subsection (1), omit “with financial institutions”.

(2) In section 151R of that Act(b) (diminishing shared ownership arrangements), in subsection (2)—

- (a) for “institution” substitute “first owner”, and
- (b) for “institution’s” substitute “first owner’s”.

(3) In section 173A of ITEPA 2003(c) (alternative finance arrangements)—

- (a) in subsection (3)(b), for “financial institution’s” substitute “first owner’s”,
- (b) in subsection (3)(c), for “financial institution” substitute “first owner”, and
- (c) in subsection (4)—

- (i) omit the “and” after the definition of “alternative finance return”, and
- (ii) after the definition of “financial institution” insert—

“, and

“first owner” is to be construed in accordance with section 564D of ITA 2007 or section 504 of CTA 2009.”.

(4) In section 564A of ITA 2007(d) (introduction to Part 10A of that Act), in subsection (1)(a), omit “with financial institutions”.

(5) In section 564K of that Act(e) (diminishing shared ownership arrangements), in subsection (2)—

- (a) for “institution” substitute “first owner”, and

(a) Section 151H was inserted by paragraph 28 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010.
(b) Section 151R was inserted by paragraph 38 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010.
(c) 2003 c. 1; section 173A was inserted by paragraph 49 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010.
(d) Section 564A was inserted by paragraph 2 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010.
(e) Section 564K was inserted by paragraph 12 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010.

(b) for “institution’s” substitute “first owner’s”.

(6) In section 501 of CTA 2009 (introduction to Chapter 6 of Part 6 of that Act), in subsection (1), omit “between companies and financial institutions”.

(7) In section 512 of that Act (diminishing shared ownership arrangements), in subsection (2)—

(a) for “institution” substitute “first owner”, and

(b) for “institution’s” substitute “first owner’s”.

*Alan Mak
Gareth Johnson*

23rd May 2022

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to provisions in the Income Tax Act 2007 (“ITA 2007”), the Taxation of Chargeable Gains Act 1992 (“TCGA 1992”), the Corporation Tax Act 2009 (“CTA 2009”) and the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”) concerning alternative finance arrangements.

Article 1(1) and (2) provides for citation and commencement. Article 1(3) provides that the amendments made by this Order do not have effect in relation to arrangements entered into before 30th November 2021.

Article 2 makes amendments to section 564D of ITA 2007 (diminishing shared ownership arrangements). Paragraph (2) amends subsection (1) to provide that arrangements entered into by a regulated home purchase plan provider, or arrangements which are regulated electronic system facilitated arrangements are diminishing shared ownership arrangements, provided that they also meet the other conditions set out in that section. Paragraph (3) inserts subsection (1A), which provides a definition of “regulated electronic system facilitated arrangements”. Paragraph (4) inserts subsection (7), which provides definitions, including a definition of “regulated home purchase plan provider”.

Article 3 makes corresponding amendments to section 151K of TCGA 1992 (diminishing shared ownership arrangements).

Article 4 makes corresponding amendments to section 504 of CTA 2009 (diminishing shared ownership arrangements).

Article 5 makes amendments to section 564C of ITA 2007 (purchase and resale arrangements). Paragraph (2) amends subsection (1) to provide that arrangements which are regulated electronic system facilitated arrangements are purchase and resale arrangements, provided that they also meet the other conditions set out in that section. Paragraph (3) inserts subsection (2A), which provides a definition of “regulated electronic system facilitated arrangements”. Paragraph (4) amends subsection (3) to provide definitions.

Article 6 makes corresponding amendments to section 151J of TCGA 1992 (purchase and resale arrangements).

Article 7 makes corresponding amendments to section 503 of CTA 2009 (purchase and resale arrangements).

Article 8 makes consequential amendments to TCGA 1992, ITEPA 2003, ITA 2007 and CTA 2009.

A Tax Information and Impact note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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