

SCHEDULES

SCHEDULE 61

Section 123

ALTERNATIVE FINANCE INVESTMENT BONDS

PART 1

INTRODUCTORY

Interpretation

- 1 (1) In this Schedule—
- “alternative finance investment bond” means arrangements within section 48A of FA 2005 (alternative finance investment bond: introduction);
 - “bond assets”, “bond-holder”, “bond-issuer” and “capital” have the meaning given by that section;
 - “HMRC” means Her Majesty’s Revenue and Customs;
 - “prescribed” means prescribed in regulations made by HMRC;
 - “qualifying interest” means a major interest in land (within the meaning given by section 117 of FA 2003) except that it does not include a lease if the lease is for—
 - (a) a term of years of 21 years or less, or
 - (b) in Scotland, a period of 21 years or less.
- (2) Except where the context otherwise requires, any expression which is used in this Schedule and in Part 4 of FA 2003 has the meaning which it has in that Part.

PART 2

ISSUE, TRANSFER AND REDEMPTION OF RIGHTS UNDER ARRANGEMENTS

Issue, transfer and redemption of rights under bond not be treated as chargeable transaction

- 2 Section 48B(2) of FA 2005 (effect of bond for purposes of tax) applies for the purposes of stamp duty land tax as it applies for the purposes of income tax and capital gains tax.

Relief not available where bond-holder acquires control of underlying asset

- 3 (1) Paragraph 2 does not apply if control of the underlying asset is acquired by—
 - (a) a bond-holder, or
 - (b) a group of connected bond-holders.

Status: This is the original version (as it was originally enacted).

- (2) A bond-holder (“BH”), or a group of connected bond-holders, acquires control of the underlying asset if—
- (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
 - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.
- 4 (1) But paragraph 3(1) does not apply (and, accordingly, section 48B(2) of FA 2005 applies by virtue of paragraph 2) in either of the following cases.
- (2) The first case is where—
- (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and
 - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that exercise no longer to be possible.
- (3) The second case is where BH—
- (a) underwrites a public offer of rights under the bond, and
 - (b) does not exercise the right of management and control of the bond assets.
- (4) In this paragraph—
- “connected” is to be read in accordance with section 839 of ICTA, and
- “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

PART 3

TRANSACTIONS RELATING TO UNDERLYING ASSETS CONSISTING OF LAND

INTRODUCTORY

General conditions for operation of reliefs etc

- 5 (1) This paragraph defines conditions A to G for the purposes of paragraphs 6 to 18.
- Paragraphs 20 and 22 set out circumstances in which the reliefs provided by paragraphs 6 to 18 are not available even if conditions A to G are met.
- (2) Condition A is that one person (“P”) and another (“Q”) enter into arrangements under which—
- (a) P transfers to Q a qualifying interest in land (“the first transaction”), and
 - (b) P and Q agree that, when the interest ceases to be held by Q as mentioned in sub-paragraph (3)(b), Q will transfer the interest to P.
- (3) Condition B is that—

Status: This is the original version (as it was originally enacted).

- (a) Q, as bond-issuer, enters into an alternative finance investment bond (whether before or after entering into the arrangements mentioned in sub-paragraph (2)), and
 - (b) the interest in land to which those arrangements relate is held by Q as a bond asset.
- (4) Condition C is that, for the purpose of generating income or gains for the alternative finance investment bond—
 - (a) Q and P enter into a leaseback agreement, or
 - (b) such other condition or conditions as may be specified in regulations made by the Treasury is or are met.
- (5) For the purposes of condition C, Q and P enter into a leaseback agreement if Q grants to P, out of the interest transferred to Q—
 - (a) a lease (if the interest transferred is freehold or, in Scotland, the interest of the owner), or
 - (b) a sub-lease (if the interest transferred is leasehold or, in Scotland, the tenant's right over or interest in a property subject to a lease).
- (6) Condition D is that, before the end of the period of 120 days beginning with the effective date of the first transaction, Q provides HMRC with the prescribed evidence that—
 - (a) in England and Wales, a satisfactory legal charge has been entered in the register of title kept under section 1 of the Land Registration Act 2002,
 - (b) in Scotland, a satisfactory standard security has been registered in the Land Register of Scotland, or
 - (c) in Northern Ireland, a satisfactory charge has been entered in the register of titles kept under section 10 of the Land Registration Act (Northern Ireland) 1970.
- (7) A charge or security is satisfactory for the purposes of condition D if it—
 - (a) is a first charge on, or a security ranking first granted over, the interest transferred to Q,
 - (b) is in favour of the Commissioners for Her Majesty's Revenue and Customs, and
 - (c) is for the amount mentioned in sub-paragraph (8).
- (8) That amount is the total of—
 - (a) the amount of stamp duty land tax which would (apart from paragraph 6(2)) be chargeable on the first transaction if the chargeable consideration for that transaction had been the market value of the interest at that time, and
 - (b) any interest and any penalties which would for the time being be payable on or in respect of that amount of tax, if the tax had been due and payable (but not paid) in respect of the first transaction.
- (9) Condition E is that the total of the payments of capital made to Q before the termination of the bond is not less than 60% of the value of the interest in the land at the time of the first transaction.
- (10) Condition F is that Q holds the interest in the land as a bond asset until the termination of the bond.
- (11) Condition G is that—

Status: This is the original version (as it was originally enacted).

- (a) before the end of the period of 30 days beginning with the date on which the interest in the land ceases to be held as a bond asset, that interest is transferred by Q to P (“the second transaction”), and
 - (b) the second transaction is effected not more than 10 years after the first transaction.
- (12) The Treasury may by regulations amend sub-paragraph (11)(b) by substituting for the period mentioned there such other period as may be specified.

STAMP DUTY LAND TAX

Relief from stamp duty land tax: first transaction

- 6 (1) This paragraph applies if—
- (a) the first transaction relates to an interest in land in the United Kingdom, and
 - (b) each of conditions A to C is met before the end of the period of 30 days beginning with the effective date of that transaction.
- (2) Where this paragraph applies the first transaction is exempt from charge to stamp duty land tax.
- (3) Where the interest in the land is replaced as the bond asset by an interest in other land, this paragraph is subject to paragraph 18.
- (4) This paragraph is also subject to paragraph 20.
- 7 (1) This paragraph applies if—
- (a) the interest in the land is transferred by Q to P without conditions E and F having been met,
 - (b) the period mentioned in paragraph 5(11)(b) expires without each of those conditions having been met, or
 - (c) at any time it becomes apparent for any other reason that any of conditions E to G cannot or will not be met.
- (2) This paragraph also applies if condition D is not met.
- (3) The relief provided by paragraph 6(2) is withdrawn and stamp duty land tax is chargeable on the first transaction in accordance with this paragraph.
- (4) The amount chargeable is the tax that would have been chargeable in respect of the first transaction (but for relief under paragraph 6(2)) if the chargeable consideration for that transaction had been the market value of the interest at the time of that transaction.
- (5) Interest is due and payable on the amount of that tax as from the end of the period of 30 days after the effective date of that transaction until the tax is paid.
- (6) Q must deliver a further land transaction return before the end of the period of 30 days after the date on which this paragraph first applies.
- (7) The return must include a self-assessment of the amount of tax chargeable.
- (8) Tax payable must be paid not later than the filing date for the further return.

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- (9) Schedule 10 to FA 2003 (returns, assessments and other matters) applies to a return under this paragraph as it applies to a return under section 76 of that Act (general requirement to deliver land transaction return), with the following modifications—
- (a) references to the transaction to which the return relates are to the event by virtue of which this paragraph applies, and
 - (b) references to the effective date of the transaction are to the date on which that event occurs.

Relief from stamp duty land tax: second transaction

- 8 (1) The second transaction is exempt from charge to stamp duty land tax if—
- (a) each of conditions A to G is met, and
 - (b) the provisions of Part 4 of FA 2003 relating to the first transaction are complied with.
- (2) Where the interest in the land is replaced as the bond asset by an interest in other land, this paragraph is subject to paragraph 18.
- (3) This paragraph is also subject to paragraph 20.

Discharge of charge when conditions for relief met

- 9 If, after the effective date of the second transaction, Q provides HMRC with the prescribed evidence that each of conditions A to C and E to G has been met, the land ceases to be subject to the charge or security registered in pursuance of condition D.

TAXATION OF CAPITAL GAINS

Relief from taxation of capital gains: first transaction

- 10 (1) This paragraph applies if each of conditions A to C is met before the end of the period of 30 days beginning with the effective date of the first transaction.
- (2) That transaction is not to be regarded for the purposes of TCGA 1992 as an acquisition by Q or a disposal by P.
- (3) If condition C is met by virtue of Q and P having entered into a leaseback agreement, the granting of the lease or sub-lease is not to be regarded for the purposes of TCGA 1992 as an acquisition by P or a disposal by Q.
- (4) Sub-paragraphs (2) and (3) are subject to paragraph 11 (treatment of transactions where any of conditions D to G is not met).
- (5) Where the interest in the land is replaced as the bond asset by an interest in other land, this paragraph is subject to paragraph 18.
- (6) This paragraph is also subject to paragraph 20.
- 11 (1) This paragraph applies if—
- (a) the interest in the land is transferred by Q to P without conditions E and F having been met,
 - (b) the period mentioned in paragraph 5(11)(b) expires without each of those conditions having been met, or

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- (c) at any time it becomes apparent for any other reason that any of conditions E to G cannot or will not be met.
- (2) This paragraph also applies where (in the case of an interest in land in the United Kingdom) condition D is not met.
- (3) Where this paragraph applies, paragraph 10(2) and (3) (disregard of transactions for purposes of TCGA 1992) do not apply.
- (4) Where, by virtue of sub-paragraph (3), any chargeable gain or loss is treated as accruing to a person, that gain or loss is to be treated as accruing—
 - (a) in the case mentioned in sub-paragraph (1)(a), immediately before the transfer from Q to P,
 - (b) in any case mentioned in paragraph (b) or (c) of sub-paragraph (1), at the time mentioned in that paragraph, and
 - (c) in the case mentioned in sub-paragraph (2), at the end of the period mentioned in paragraph 5(6).

Relief from taxation of capital gains: second transaction

- 12 (1) The second transaction is not to be regarded for the purposes of TCGA 1992 as an acquisition by P or a disposal by Q if—
- (a) each of conditions A to C and E to G is met, and
 - (b) in the case of an interest in land in the United Kingdom, condition D is met.
- (2) Where the interest in the land is replaced as the bond asset by an interest in other land, this paragraph is subject to paragraph 18.
- (3) This paragraph is also subject to paragraph 20.

CAPITAL ALLOWANCES

Introductory

- 13 (1) Paragraphs 14 to 17 make provision about the treatment, for the purposes of CAA 2001, of transactions relating to land in connection with an alternative finance investment bond.
- (2) Any expression which is used in any of paragraphs 14 to 17 and in CAA 2001 has the meaning which it has in that Act.

Treatment for purposes of capital allowances

- 14 (1) This paragraph applies to an asset if—
- (a) each of conditions A to C is met before the end of the period of 30 days beginning with the effective date of the first transaction, and
 - (b) the asset falls within sub-paragraph (2).
- (2) An asset falls within this sub-paragraph if it is part of the subject matter of the first transaction and constitutes—
- (a) plant or machinery, or
 - (b) an industrial building (or part of an industrial building).

Status: This is the original version (as it was originally enacted).

- (3) For the purposes of CAA 2001—
 - (a) expenditure incurred by Q in acquiring the asset by virtue of the first transaction is not to be regarded as capital expenditure, and
 - (b) Q is not to be regarded as becoming, and P is not to be regarded as ceasing to be, the owner of the asset by virtue of that transaction.
- (4) Sub-paragraph (3) applies in relation to the transactions mentioned in sub-paragraph (5) as it applies in relation to the first transaction (but reading the references to Q as references to P and the reference to P as a reference to Q).
- (5) The transactions are—
 - (a) any leaseback agreement entered into by Q and P in order that condition C is met, and
 - (b) the second transaction.
- (6) This paragraph is subject to paragraphs 15 to 17.

Loss or destruction of asset

- 15
- (1) This paragraph applies to an asset if the first and second conditions are met.
 - (2) The first condition is that the asset—
 - (a) is part of the subject matter of the first transaction, and
 - (b) constitutes plant or machinery.
 - (3) The second condition is that, at any time when the asset is held as a bond asset, one of the following events occurs—
 - (a) the person with possession of the asset loses possession of it in circumstances where it is reasonable to assume that the loss is permanent, or
 - (b) the asset ceases to exist as such (as a result of destruction, dismantling or otherwise).
 - (4) That event is to be treated as a disposal event (in relation to P) occurring in the chargeable period in which that event occurs.
 - (5) For the purposes of sub-paragraph (4), the disposal value that P is required to bring into account is—
 - (a) where the case falls within item 3 or 4 of the Table in section 61(2) of CAA 2001 and the amount received by P as mentioned in that item is other than zero, that amount, and
 - (b) in any other case, the market value of the asset at the time of the event.

Q retaining asset when no longer held for purposes of bond

- 16
- (1) This paragraph applies to an asset if the first and second conditions are met.
 - (2) The first condition is that the asset is part of the subject matter of the first transaction and constitutes—
 - (a) plant or machinery, or
 - (b) an industrial building (or part of an industrial building).
 - (3) The second condition is that Q—

Status: This is the original version (as it was originally enacted).

- (a) ceases to hold the asset as a bond asset (whether at the end of the bond term or at any other time), but
 - (b) does not transfer the asset to P or any other person.
- (4) At the time that Q ceases to hold the asset as a bond asset, Q is to be treated as becoming, and P is to be treated as ceasing to be, the owner of the asset.
- (5) Accordingly, Q's ceasing to hold the asset as a bond asset is to be treated—
- (a) as regards plant or machinery, as a disposal event (in relation to P) occurring in the chargeable period in which the cessation takes place, and
 - (b) as regards an industrial building or part of an industrial building, as a balancing event (in relation to P) occurring in the chargeable period in which the cessation takes place.
- (6) For the purposes of sub-paragraph (5)—
- (a) in the case falling within paragraph (a), the disposal value that P is required to bring into account is the market value of the asset at the time of the transfer, and
 - (b) in the case falling within paragraph (b), P is to be treated as receiving, as the proceeds of the balancing event, the market value of the asset at the time of the transfer.

Q transferring asset to third person

- 17 (1) This paragraph applies to an asset if the first and second conditions are met.
- (2) The first condition is that the asset is part of the subject matter of the first transaction and constitutes—
- (a) plant or machinery, or
 - (b) an industrial building (or part of an industrial building).
- (3) The second condition is that Q transfers the asset to any person other than P.
- (4) At the time that Q transfers the asset, that other person is to be treated as becoming, and P is to be treated as ceasing to be, the owner of the asset.
- (5) Accordingly, the transfer is to be treated—
- (a) as regards plant or machinery, as a disposal event (in relation to P) occurring in the chargeable period in which the transfer takes place, and
 - (b) as regards an industrial building or part of an industrial building, as a balancing event (in relation to P) occurring in the chargeable period in which the transfer takes place.
- (6) For the purposes of sub-paragraph (5)—
- (a) in the case falling within paragraph (a), the disposal value that P is required to bring into account is the market value of the asset at the time of the transfer, and
 - (b) in the case falling within paragraph (b), P is to be treated as receiving, as the proceeds of the balancing event, the market value of the asset at the time of the transfer.

SUPPLEMENTARY

Substitution of asset

- 18 (1) This paragraph applies if—
- (a) conditions A to C and G are met in relation to an interest in land (“the original land”),
 - (b) Q ceases to hold the original land as a bond asset (and, accordingly, transfers it to P) before the termination of the alternative finance investment bond,
 - (c) P and Q enter into further arrangements falling within paragraph 5(2) relating to an interest in other land (“the replacement land”), and
 - (d) the value of the interest in the replacement land at the time that it is transferred from P to Q is greater than or equal to the value of the interest in the original land at the time of the first transaction.
- (2) Paragraphs 6 to 17 apply—
- (a) in relation to the original land with the modification set out in sub-paragraph (3), and
 - (b) in relation to the replacement land with the modifications set out in sub-paragraph (4).
- (3) Condition F does not need to be met in relation to the original land if conditions A, B, C, F and G (as modified by sub-paragraph (4)) are met in relation to the replacement land.
- (4) In relation to the replacement land—
- (a) condition E applies as if the reference to the interest in the land were a reference to the interest in the original land, and
 - (b) condition G applies as if the reference in paragraph 5(11)(b) to the first transaction were a reference to the first transaction relating to the original land.
- (5) If the replacement land is in the United Kingdom, the original land ceases to be subject to the charge or security registered in pursuance of condition D when—
- (a) Q provides HMRC with the prescribed evidence that condition G is met in relation to the original land, and
 - (b) condition D is met in relation to the replacement land.
- (6) If the replacement land is not in the United Kingdom, the original land ceases to be subject to the charge or security registered in pursuance of condition D when Q provides HMRC with the prescribed evidence that—
- (a) condition G is met in relation to the original land, and
 - (b) each of conditions A to C is met in relation to the replacement land.
- (7) This paragraph also applies where the replacement land is replaced by further replacement land; and in that event—
- (a) the references to the original land (except those in sub-paragraph (4)) are to be read as references to the replacement land, and
 - (b) the references to the replacement land are to be read as references to the further replacement land.

Status: This is the original version (as it was originally enacted).

HMRC to notify Registrar of discharge of charge

- 19 (1) Where a charge or security is discharged in accordance with paragraph 9 or 18(5) or (6), HMRC must—
- (a) in the case of a charge on land in England and Wales, notify the Chief Land Register of the discharge in accordance with land registration rules (within the meaning of the Land Registration Act 2002),
 - (b) in the case of a security granted over land in Scotland, register the discharge in the Land Register of Scotland, and
 - (c) in the case of a charge on land in Northern Ireland, notify the Registrar of Titles of the discharge.
- (2) HMRC must do so within the period of 30 days beginning with the date on which Q provides the evidence in question.

Relief not available where bond-holder acquires control of underlying asset

- 20 (1) The reliefs provided by paragraphs 6 to 12 (and paragraph 18 so far as it relates to those paragraphs) are not available if control of the underlying asset is acquired by—
- (a) a bond-holder, or
 - (b) a group of connected bond-holders.
- (2) A bond-holder (“BH”), or a group of connected bond-holders, acquires control of the underlying asset if—
- (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
 - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.
- (3) In accordance with sub-paragraph (1), in the case of the reliefs provided by paragraphs 6 and 10—
- (a) if BH, or the group, acquires control of the underlying asset before the end of the period of 30 days beginning with the effective date of the first transaction, paragraphs 6 and 10 do not apply, and
 - (b) if BH, or the group, acquires control of the underlying asset after the end of that period and conditions A to C have been met, paragraphs 7 and 11 apply.
- 21 (1) But paragraph 20 does not prevent the reliefs being available in either of the following cases.
- (2) The first case is where—
- (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and
 - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that no longer to be possible.
- (3) The second case is where BH—
- (a) underwrites a public offer of rights under the bond, and

(b) does not exercise the right of management and control of the bond assets.

(4) In this paragraph—

“connected” is to be read in accordance with section 839 of ICTA, and
“underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

Relief not available if purpose of arrangements is improper

22 (1) The reliefs provided by paragraphs 6 to 12 (and paragraph 18 so far as it relates to those paragraphs) are not available if the arrangements mentioned in paragraph 5(2)

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- (a) are not effected for genuine commercial reasons, or
 - (b) form part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.

(2) In sub-paragraph (1) “tax” means income tax, corporation tax, capital gains tax, stamp duty or stamp duty land tax.

Regulations

23 (1) Regulations under any paragraph of this Schedule—

- (a) may make provision generally or only for specified purposes, or different provision for different purposes, and
- (b) may make consequential, supplementary or incidental provision (including amendments of any enactment).

(2) Regulations under any paragraph of this Schedule are to be made by statutory instrument.

(3) A statutory instrument containing regulations under any paragraph of this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

PART 4

SUPPLEMENTARY

Consequential amendments of FA 2003

24 FA 2003 is amended as follows.

25 After section 73B insert—

“73C Alternative finance investment bonds

Schedule 61 to the Finance Act 2009 makes provision for relief from charge in the case of arrangements falling within section 48A of the Finance Act 2005 (alternative finance investment bonds).”

26 In section 86 (payment of tax), after subsection (5) insert—

Status: This is the original version (as it was originally enacted).

“(5A) The above provisions are also subject to paragraph 7 of Schedule 61 to the Finance Act 2009 (payment of tax where land ceases to qualify for relief in respect of alternative finance investment bonds).”

Consequential amendments of FA 2005

- 27 (1) Section 48B of FA 2005 (alternative finance investment bond: effects) is amended as follows.
- (2) In subsections (2) and (3), for “any tax other than the Corporation Tax Acts” substitute “income tax or capital gains tax”.
- (3) After subsection (8) insert—
- “(9) Schedule 61 to the Finance Act 2009 makes—
- (a) further provision about the treatment for the purposes of TCGA 1992 of arrangements falling within section 48A, and
- (b) provision about their treatment for the purposes of stamp duty land tax and capital allowances.”

Consequential amendment of CTA 2009

- 28 In CTA 2009, in Schedule 1, omit paragraph 651(a).

Commencement

- 29 (1) The following provisions of this Schedule come into force on the day on which this Act is passed—
- (a) Part 2,
- (b) Part 1 so far as relating to that Part, and
- (c) paragraphs 24, 25, 27 and 28.
- (2) The following provisions of this Schedule have effect where the effective date of the first transaction (within the meaning given by paragraph 5(2)) is on or after the day on which this Act is passed—
- (a) Part 3,
- (b) Part 1 so far as relating to that Part, and
- (c) paragraph 26.