



Corporation Tax Act 2009

2009 CHAPTER 4

PART 6

RELATIONSHIPS TREATED AS LOAN RELATIONSHIPS ETC

CHAPTER 6

ALTERNATIVE FINANCE ARRANGEMENTS

Introduction

501 Introduction to Chapter

- (1) This Chapter provides for alternative finance arrangements between companies and financial institutions to be treated as loan relationships (see sections 509 and 510).
- (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 Chapter—
 - (a) “purchase and resale arrangements” means arrangements to which section 503 applies,
 - (b) “diminishing shared ownership arrangements” means arrangements to which section 504 applies,
 - (c) “deposit arrangements” means arrangements to which section 505 applies,
 - (d) “profit share agency arrangements” means arrangements to which section 506 applies, and

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- (e) “investment bond arrangements” means arrangements to which section 507 applies.

(4) For the meaning of “financial institution”, see section 502.

502 Meaning of “financial institution”

- (1) In this Chapter “financial institution” means—
- (a) a bank, as defined by section 840A of ICTA,
 - (b) a building society within the meaning of the Building Societies Act 1986 (c. 53),
 - (c) a wholly-owned subsidiary of a bank within paragraph (a) or a building society within paragraph (b),
 - (d) a person authorised by a licence under Part 3 of the Consumer Credit Act 1974 (c. 39) 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 507, but only in relation to any bond assets which are rights under purchase and resale arrangements or diminishing shared ownership arrangements, or
 - (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.
- (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.

Arrangements that are alternative finance arrangements

503 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

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- (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 508 (provision not at arm’s length: exclusion of arrangements from this section and sections 504 to 507).

504 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,
 - (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

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(b) having a share in a loss arising out of any such reduction.

(6) This section is subject to section 508 (provision not at arm's length: exclusion of arrangements from section 503, this section and sections 505 to 507).

505 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.

(2) This section is subject to section 508 (provision not at arm's length: exclusion of arrangements from sections 503 and 504, this section, and sections 506 and 507).

506 Profit share agency arrangements

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

- (a) a person (“the principal”) appoints a financial institution as agent,
- (b) the agent uses money provided by the principal with a view to producing a profit,
- (c) the principal is entitled, to a specified extent, to profits resulting from the use of the money,
- (d) 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
- (e) 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 508 (provision not at arm's length: exclusion of arrangements from sections 503 to 505, this section and section 507).

507 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-issuer or the bond-holder) by the issue or transfer of shares or other securities.
- (3) This section is subject to section 508.

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508 Provision not at arm’s length: exclusion of arrangements from sections 503 to 507

- (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) paragraph 1(2) of Schedule 28AA to ICTA (provision not at arm’s length) 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 referred to in paragraph 1(2)(a) of that Schedule had been made or imposed, rather than in accordance with the arrangements,
 - (c) any person who is an affected person for the purposes of that Schedule (“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.
- (4) For the meaning of “alternative finance return”, see sections 511 to 513.

Treatment as loan relationships

509 Application of Part 5: general

- (1) Part 5 applies in relation to alternative finance arrangements to which a company (“A”) is a party as if the arrangements were a loan relationship to which A is a party.
- (2) Accordingly, references in the Corporation Tax Acts to a loan relationship include references to such alternative finance arrangements.
- (3) Section 510 makes further provision about the way in which Part 5 applies to particular descriptions of alternative finance arrangements.

510 Application of Part 5 to particular alternative finance arrangements

- (1) In the case of purchase and resale arrangements, Part 5 applies in relation to A as if—
 - (a) the first purchase price were the amount of a loan made by the first purchaser to the second purchaser, and

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- (b) alternative finance return payable under the arrangements were interest payable on the loan.
- (2) In the case of diminishing shared ownership arrangements, Part 5 applies in relation to A as if—
- (a) the consideration paid by the first owner for the acquisition of the first owner’s beneficial interest (“the acquisition consideration”) were the amount of a loan made by A to the eventual owner, and
 - (b) alternative finance return payable under the arrangements were interest payable on the loan.
- (3) In the case of deposit arrangements, Part 5 applies in relation to A as if—
- (a) any amount deposited under the arrangements were the amount of a loan made by the depositor to the financial institution, and
 - (b) alternative finance return payable under them were interest on the loan.
- (4) In the case of profit share agency arrangements, Part 5 applies in relation to A as if—
- (a) any amount provided under the arrangements were the amount of a loan made by the principal to the agent, and
 - (b) alternative finance return payable under them were interest on the loan.
- (5) In the case of investment bond arrangements, Part 5 applies in relation to A as if alternative finance return payable to or by A under them were interest payable under the loan relationship.
- (6) In this section—
- “the depositor” has the same meaning as in section 505 (see subsection (1) of that section),
 - “the eventual owner” has the same meaning as in section 504 (see subsection (1) of that section),
 - “the first owner” has the same meaning as in section 504 (see subsection (1) of that section),
 - “the first purchaser” has the same meaning as in section 503 (see subsection (1) of that section),
 - “the first purchase price” has the same meaning as in section 503 (see subsection (3) of that section),
 - “the principal” has the same meaning as in section 506 (see subsection (1) of that section), and
 - “the second purchaser” has the same meaning as in section 503 (see subsection (1) of that section).
- (7) For the meaning of “alternative finance return”, see sections 511 to 513.

Meaning of “alternative finance return”

511 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.

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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 503 have the same meaning as in that section.

512 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 504(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 504.

513 Other arrangements

- (1) In the case of deposit arrangements, amounts paid or credited as mentioned in section 505(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 506(1)(c) (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.

- (4) In subsection (3) “additional payments” has the same meaning as in section 507 (see subsection (1)(d)(iii) of that section).

Treatment for other tax purposes

514 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 Corporation Tax Acts (apart from section 503).
- (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 Corporation Tax Acts (apart from section 504).
- (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 Corporation Tax Acts (apart from section 507).
- (4) Subsections (1) to (3) do not affect the operation of any provision of the Corporation Tax Acts which provides that the consideration for a sale or purchase is taken for any purpose to be an amount other than the actual consideration.

515 Diminishing shared ownership arrangements not partnerships

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

516 Treatment of principal under profit sharing agency arrangements

- (1) The principal under profit sharing agency arrangements is not treated for the purposes of the Corporation Tax Acts as entitled to profits to which the agent is entitled in accordance with section 506(1)(d).
- (2) And the agent under such arrangements is treated for those purposes as entitled to those profits and the profits specified in section 506(1)(c).
- (3) In this section “the principal” and “the agent” are to be read in accordance with section 506.

517 Treatment of bond-holder under investment bond arrangements

- (1) This section applies for the purposes of the Corporation 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.

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- (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 507.

518 Investment bond arrangements: treatment as securities

- (1) Investment bond arrangements are securities for the purposes of the Corporation Tax Acts.
- (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 507 (see subsection (1)(d)(ii) of that section).

519 Investment bond arrangements: other provisions

- (1) A bond-issuer is not a securitisation company for the purposes of section 83 of FA 2005 (application of accounting standards to securitisation companies) unless it is one as a result of arrangements which are not investment bond arrangements.
- (2) For the purposes of section 417 of ICTA (close companies)—
 - (a) a bond-holder is a loan creditor in respect of the bond-issuer, and
 - (b) investment bond arrangements must be ignored in the application of section 417(1)(d) of that Act.
- (3) For the purposes of Schedule 18 to ICTA (group relief)—
 - (a) a bond-holder is a loan creditor in respect of the bond-issuer, and
 - (b) paragraph 1(5)(b) of that Schedule must be ignored in determining whether a person is an equity holder as a result of investment bond arrangements.

520 Provision not at arm’s length: non-deductibility of relevant return

- (1) This section applies if arrangements to which section 508 (provision not at arm’s length: exclusion of arrangements from sections 503 to 507) applies would, but for that section, be alternative finance arrangements.
- (2) A company paying relevant return under the arrangements is not entitled to—
 - (a) any deduction in calculating profits or gains for corporation tax purposes, or
 - (b) any deduction against total profits,
 in respect of the relevant return.

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- (3) In this section “relevant return” has the same meaning as in section 508 (see subsection (3) of that section).

Power to extend this Chapter to other arrangements

521 Power to extend this Chapter to other arrangements

- (1) The Treasury may by order amend the alternative finance provisions.
- (2) The amendments which may be made by such an order include—
- (a) the variation of provision already included in the alternative finance provisions, and
 - (b) the introduction into those provisions of new provision relating to alternative finance arrangements.
- (3) In this section “alternative finance arrangements” means arrangements which in the Treasury’s opinion—
- (a) equate in substance to a loan, deposit or other transaction of a kind that generally involves the payment of interest, but
 - (b) achieve a similar effect without including provision for the payment of interest.
- (4) An order under subsection (1) may, in particular—
- (a) make provision of a kind similar to provision already made by the alternative finance provisions,
 - (b) make other provision about the treatment for the purposes of the Corporation Tax Acts of arrangements to which the order applies,
 - (c) make provision generally or only in relation to specified cases or circumstances,
 - (d) make different provision for different cases or circumstances, and
 - (e) make incidental, supplemental, consequential and transitional provision and savings.
- (5) An order making consequential provision under subsection (4)(e) may, in particular, include provision amending a provision of the Tax Acts.
- (6) In this section “the alternative finance provisions” means—
- (a) this Chapter,
 - (b) section 209(6A) of ICTA (meaning of distribution),
 - (c) section 411ZA of ICTA (no relief where deduction of relevant return under alternative finance arrangements disallowed), and
 - (d) section 151F of TCGA 1992 (treatment of alternative finance arrangements).