

SCHEDULES

SCHEDULE 2

ALTERNATIVE FINANCE ARRANGEMENTS

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

151H Introduction

- (1) 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—
 - (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.

Status: This is the original version (as it was originally enacted).

(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.

(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—

Status: This is the original version (as it was originally enacted).

- (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,
 - (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

Status: This is the original version (as it was originally enacted).

- (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—
 - (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,
 - (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,

Status: This is the original version (as it was originally enacted).

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

Status: This is the original version (as it was originally enacted).

“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.
- (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.

Status: This is the original version (as it was originally enacted).

- (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 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—

“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.

Status: This is the original version (as it was originally enacted).

- (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—

“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).

Status: This is the original version (as it was originally enacted).

- (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.”