

*Draft Order laid before the House of Commons under section 366 of the Taxation (International and Other Provisions) Act 2010, for approval by resolution of that House.*

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## DRAFT STATUTORY INSTRUMENTS

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**2022 No.**

# **INCOME TAX CAPITAL GAINS TAX CORPORATION TAX**

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

<i>Made</i>	-	-	-	-	***
<i>Coming into force</i>	-	-			***

The Treasury, in exercise of the powers conferred by section 366 of the Taxation (International and Other Provisions) Act 2010<sup>(1)</sup>, 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 30 November 2021.

### **Diminishing shared ownership arrangements: income tax**

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

(2) In subsection (1)—

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(1) 2010 c. 8.

(2) 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).

- (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) 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<sup>(3)</sup> 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)<sup>(4)</sup> (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<sup>(5)</sup> (entering into regulated home purchase plans as home purchase provider), and
      - (b) has permission under Part 4A of FISMA 2000 to do so.”.

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(3) “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).

(4) 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).

(5) 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).

### **Diminishing shared ownership arrangements: capital gains tax**

3.—(1) Section 151K of TCGA 1992(6) (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) 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.”.

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(6) [1992 c. 12](#); section 151K was inserted by paragraph 31 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010.

**Diminishing shared ownership arrangements: corporation tax**

4.—(1) Section 504 of CTA 2009<sup>(7)</sup> (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) 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<sup>(8)</sup> 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—

<sup>(7)</sup> 2009 c. 4.

<sup>(8)</sup> “FISMA 2000” is defined in section 1312 of the Corporation Tax Act 2009 as the Financial Services and Markets Act 2000.