

SCHEDULES

SCHEDULE 10

SALE ETC OF LESSOR COMPANIES ETC

PART 4

MISCELLANEOUS

Anti-avoidance

- 38 (1) This paragraph applies if—
- (a) a company is treated as incurring an expense under any provision of this Schedule,
 - (b) the expense arises directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and
 - (c) the main purpose, or one of the main purposes, of the arrangements is to secure that the company is treated as incurring the expense.
- (2) The following restrictions apply in respect of so much of any loss incurred by the company as derives from the expense (“the restricted part of the loss”).
- (3) Apart from by way of set off against any relevant leasing income, relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss.
- (4) If the business carried on by the company is a trade, relief is not to be given to the company under section 393A(1) of ICTA in respect of the restricted part of the loss.
- (5) The restricted part of the loss is not available for set off by way of group relief in accordance with section 403 of ICTA.
- (6) For the purpose of determining how much of a loss derives from the expense, the loss is to be calculated on the basis that the expense is the final amount to be deducted.
- (7) In this paragraph “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions—
- (a) whether or not legally enforceable, and
 - (b) whether or not the company is a party to the arrangements.
- (8) In this paragraph “relevant leasing income” means any income deriving from any plant or machinery lease—
- (a) which is not an excluded lease of background plant or machinery for a building, and
 - (b) which is entered into before the day on which the company is treated as incurring the expense.

Status: This is the original version (as it was originally enacted).

- (9) In this paragraph “relevant loss relief provision” means any of the following provisions of ICTA—
- (a) section 392A (Schedule A losses),
 - (b) section 392B (losses from overseas property businesses),
 - (c) section 393 (trade losses),
 - (d) section 396 (Case VI losses).

Relief for expense under paragraph 3 or 33 otherwise giving rise to carried forward loss

- 39 (1) This paragraph applies if—
- (a) there is a qualifying change of ownership in relation to a company on any day (“the relevant day”),
 - (b) on the following day the company is, accordingly, treated under paragraph 3 or 33 as incurring an expense of a business and an accounting period of the company begins,
 - (c) the company makes a loss in that accounting period,
 - (d) some or all of that loss would otherwise be carried forward to the next accounting period of the company (“the subsequent accounting period”), and
 - (e) the subsequent accounting period starts within the period of 12 months beginning with the relevant day and does not start as a result of paragraph 3 or 33.
- (2) So much of the loss (or part of the loss) that would otherwise be so carried forward as derives from the expense under paragraph 3 or 33 is instead to be treated for corporation tax purposes as an expense.
- (3) The expense under this paragraph is allowed as a deduction in calculating for corporation tax purposes the profits of the business for the subsequent accounting period.
- (4) For the purpose of determining how much of a loss derives from an expense under paragraph 3 or 33, the loss is to be calculated on the basis that the expense under that paragraph is the final amount to be deducted.

Relationship of Schedule with section 228K of CAA 2001

- 40 (1) This paragraph applies if—
- (a) on any day (“the relevant day”) a company carries on a business of leasing plant or machinery (whether alone or in partnership),
 - (b) on the relevant day there is a qualifying change of ownership in relation to the company or a qualifying change in its interest in the business,
 - (c) on the relevant day the company, or the partnership of which the company is a member, disposes of any relevant plant or machinery subject to a lease, and
 - (d) section 228K of CAA 2001 (disposal of plant or machinery subject to lease where income retained) applies in relation to the disposal.
- (2) No person is to be treated as receiving an amount of income, or as incurring an expense, as a result of any provision of this Schedule in so far as the income or expense arises by reference to the relevant plant or machinery subject to a lease which is disposed of.

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

- (3) If, as a result of sub-paragraph (2), no income is treated as received by a company, no accounting period of the company ends or begins as a result of any provision of this Schedule.
- (4) In relation to any disposal made before 2nd June 2006—
- (a) sub-paragraph (2) applies as if the words from “in so far as” to the end were omitted, and
 - (b) sub-paragraph (3) applies as if the words from “If” to “a company,” and the words “of the company” were omitted.
- (5) In this paragraph—
- “business of leasing plant or machinery” has the meaning given by Part 2 or (as the case may be) Part 3,
 - “relevant plant or machinery subject to a lease” has the same meaning as it has for the purposes of section 228K of CAA 2001 (see section 228M).

Definitions for purposes of Schedule

- 41 (1) This paragraph applies for the purposes of this Schedule.
- (2) “Company” means a body corporate.
- (3) “Excluded lease of background plant or machinery for a building” has the meaning given in Chapter 6A of Part 2 of CAA 2001.
- (4) “Finance lease”, in the case of any person, means a lease which, under generally accepted accounting practice, falls or (would fall) to be treated as a finance lease or loan in the accounts of that person.
- (5) “Fixture”—
- (a) means any plant or machinery that is so installed or otherwise fixed in or to a building or other description of land as to become, in law, part of that building or other land, and
 - (b) includes any boiler or water-filled radiator installed in a building as part of a space or water heating system.
- (6) “Plant or machinery” has the same meaning as in Part 2 of CAA 2001.
- (7) “Plant or machinery lease” has the meaning given in Chapter 6A of that Part.
- (8) The market value of any plant or machinery at any time is to be determined on the assumption of a disposal by an absolute owner free from—
- (a) all leases (including any agreement or arrangement which is or includes a plant or machinery lease), and
 - (b) other encumbrances.
- (9) Section 839 of ICTA (connected persons) applies.

Index of definitions

- 42 The following table lists the places where expressions used in this Schedule are defined or otherwise explained in this Schedule for the purposes of this Schedule or a Part of this Schedule—

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

<i>Expression</i>	<i>Provision</i>
associated company (in Part 2)	paragraph 9
associated company (in Part 3)	paragraph 26
business of leasing plant or machinery (in Part 2)	paragraphs 6 to 8
business of leasing plant or machinery (in Part 3)	paragraphs 6 to 8 and 25
company	paragraph 41
company's percentage share in any profits or loss of a business (in Part 3)	paragraph 28
connected persons	paragraph 41
consortium and related expressions	paragraph 14
excluded lease of background plant or machinery for a building	paragraph 41
profits or assets available for distribution to equity holders (in Part 2)	paragraph 15
finance lease	paragraph 41
fixture	paragraph 41
loss (in Part 3)	paragraph 37
market value (in relation to plant or machinery)	paragraph 41
notional business (in Part 3)	paragraph 23
plant or machinery	paragraph 41
plant or machinery lease	paragraph 41
profits (in Part 3)	paragraph 37
qualifying change in a company's interest in a business (in Part 3)	paragraphs 27 and 28
qualifying change of ownership in relation to a company	paragraphs 10 to 13
qualifying leased plant or machinery (in Part 2)	paragraph 6
qualifying 75% subsidiary	paragraph 15
qualifying 90% subsidiary	paragraph 15
relevant change in the relationship between companies	paragraph 10

Consequential amendments

43 (1) ICTA is amended as follows.

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- (2) In section 12 (basis of, and periods for, assessment), at the end insert—
- “(9) This section is subject to Schedule 10 to the Finance Act 2006.”.
- (3) In section 403 (amounts which may be surrendered by way of group relief), in subsection (4) (section 403 subject to certain exceptions), at the end insert “and paragraph 38 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc: anti-avoidance)”.