

SCHEDULES

SCHEDULE 9

Section 81

LEASES OF PLANT OR MACHINERY: MISCELLANEOUS AMENDMENTS

Income and Corporation Taxes Act 1988

Petroleum extraction activities: sale and leaseback

- 1 (1) Section 494AA of ICTA is amended as follows.
 - (2) In subsection (2), at the end of paragraph (a) insert “or”.
 - (3) At the end of subsection (2) insert—
 - “(c) falls, if the case is one where the lease is a long funding operating lease, to be deductible in computing the profits of the lessee for the purposes of corporation tax (after first making against any such expenditure any reductions falling to be made by virtue of section 502K).”.
 - (4) In subsection (6) (definition of “lease”) after “In this section” insert “—
“long funding operating lease” means a long funding operating lease for the purposes of Part 2 of the Capital Allowances Act (see section 70YI(1) of that Act);”.
 - (5) The amendments made by this paragraph have effect in relation to expenditure incurred on or after 1st April 2006.

Supplementary charge in respect of ring fence trades

- 2 (1) Section 501A of ICTA is amended as follows.
 - (2) In subsection (5), for the word “and” at the end of paragraph (d) substitute the following paragraph—
 - “(dd) where the company is the lessee under a long funding operating lease, the amount deductible in respect of payments under the lease in computing the profits of the lessee for the purposes of corporation tax (after first making against any such amount any reductions falling to be made by virtue of section 502K); and”.
 - (3) At the end of the section insert—
 - “(11) In this section “long funding operating lease” means a long funding operating lease for the purposes of Part 2 of the Capital Allowances Act (see section 70YI(1) of that Act).”.
 - (4) The amendments made by this paragraph have effect in relation to payments due on or after 1st April 2006.

Leased assets: special cases

- 3 (1) Section 782 of ICTA is amended as follows.
- (2) After subsection (1) (application of section to payments under certain leases) insert—
- “(1A) This section does not apply to a payment if or to the extent that, in the case of the lessee, it falls to be regarded in accordance with Chapter 6A of Part 2 of the Capital Allowances Act as a payment under a lease which is a long funding finance lease for the purposes of that Part.”.
- (3) The amendment made by this paragraph has effect in relation to payments due on or after 1st April 2006.

Taxation of Chargeable Gains Act 1992

Long funding leases: deemed disposals and re-acquisitions

- 4 (1) After section 25 of TCGA 1992 (non-residents: deemed disposals) insert—
- “25A Long funding leases of plant or machinery: deemed disposals**
- (1) This section applies where plant or machinery is used for the purpose of leasing under a long funding lease.
- (2) The lessor shall be deemed for all purposes of this Act—
- (a) to have disposed of the plant or machinery at the commencement of the term of the lease at the value described in subsection (4)(a) or (b), and
- (b) to have immediately reacquired it at the same value.
- (3) The lessor shall also be deemed for all purposes of this Act—
- (a) to have disposed of the plant or machinery on the termination of the lease for a consideration equal to the termination amount, and
- (b) to have immediately reacquired it for the same consideration.
- (4) The value mentioned in subsection (2)(a) is—
- (a) where the lease is a long funding finance lease, an amount equal to that which would fall to be recognised as the lessor’s net investment in the lease if accounts were prepared in accordance with generally accepted accounting practice on the date on which the lessor’s net investment in the lease is first recognised in the books or other financial records of the lessor, or
- (b) where the lease is a long funding operating lease, an amount equal to the market value of the plant or machinery at the commencement of the term of the lease.
- (5) For the purposes of this section, the following expressions have the meaning given in Chapter 6A of Part 2 of the Capital Allowances Act (interpretation of provisions about long funding leases)—
- “commencement”, in relation to the term of a lease,
- “lessor”,
- “long funding lease”,

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

“long funding finance lease”,
“long funding operating lease”,
“market value”,
“the term”, in relation to a lease,
“termination”,
“termination amount”.”

- (2) The amendment made by this paragraph has effect where the commencement of the term of the lease is on or after 1st April 2006.

Restriction of losses: long funding leases of plant or machinery

- 5 (1) After section 41 of TCGA 1992 (restriction of losses by reference to capital allowances and renewals allowances) insert—

“41A Restriction of losses: long funding leases of plant or machinery

- (1) This section applies where a person disposes of an asset—
- (a) which includes plant or machinery which is a fixture for the purposes of Chapter 6A of Part 2 of the Capital Allowances Act, and
 - (b) which he has used for the purpose of leasing under one or more long funding leases.
- (2) In the computation of the amount of a loss accruing to the person on the disposal there shall be excluded from the sums allowable as a deduction by virtue of section 38(1)(a) and (b) (acquisition and enhancement costs) an amount determined in accordance with subsection (3) or (4).
- (3) Where the person has used the plant or machinery for the purpose of leasing under one long funding lease, the amount is equal to the fall in value of the plant or machinery during the period of the lease.
- (4) Where the person has used the plant or machinery for the purpose of leasing under more than one long funding lease, the amount is equal to the sum of the fall in value of the plant or machinery during the period of each lease.
- (5) In this section, references to the fall in value of plant or machinery during the period of a lease are references to the amount (if any) by which—
- (a) the market value of the plant or machinery at the commencement of the term of the lease,
exceeds
 - (b) its market value at the termination of the lease.
- (6) For the purposes of this section, the following expressions have the meaning given in Chapter 6A of Part 2 of the Capital Allowances Act (interpretation of provisions about long funding leases)—
- “commencement”, in relation to the term of a lease,
“long funding lease”,
“market value”,
“the term”, in relation to a lease,
“termination”.”

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

- (2) The amendment made by this paragraph has effect in relation to disposals on or after 1st April 2006.

Definition of market value

- 6 (1) Section 272 of TCGA 1992 (valuation: general) is amended as follows.
- (2) In subsection (6) (subjection to other provisions) after “subject to” insert “sections 25A and 41A and”.

Finance Act 1997

Leasing arrangements

- 7 (1) Schedule 12 to FA 1997 (leasing arrangements: finance leases and loans) is amended as follows.
- (2) In paragraph 2 (application of Part 1 in relation to leasing arrangements where any of the return on investment is in the form of capital) after sub-paragraph (1) insert—
- “(1A) This Part of this Schedule does not apply if or to the extent that, in the case of the current lessor, the lease falls to be regarded in accordance with Chapter 6A of Part 2 of the Capital Allowances Act 2001 as a long funding lease for the purposes of that Part.”.
- (3) In paragraph 16 (application of Part 2 in relation to other finance leases) after sub-paragraph (1) insert—
- “(1A) This Part of this Schedule does not apply if or to the extent that, in the case of the current lessor, the lease falls to be regarded in accordance with Chapter 6A of Part 2 of the Capital Allowances Act 2001 as a long funding lease for the purposes of that Part.”.
- (4) Paragraph 15 of Schedule 8 (commencement) also has effect in relation to the amendments made by this paragraph.

Finance Act 2000

Tonnage tax: introductory

- 8 Schedule 22 to FA 2000 (tonnage tax) is amended as follows.

Meaning of “finance costs”

- 9 (1) In Part 7 (the ring fence: general provisions) paragraph 63 (meaning of finance costs) is amended as follows.
- (2) In sub-paragraph (2), for the word “and” at the end of paragraph (d) substitute the following paragraph—
- “(dd) where the tonnage tax company is the lessee under a long funding operating lease, the amount deductible (or the total amount that could, if there were no tonnage tax election, be deductible) in respect of payments under the lease in computing the profits of the lessee for

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

the purposes of corporation tax (after first making against any such amount any reductions falling to be made by virtue of section 502K of the Taxes Act 1988); and”.

(3) At the end of the paragraph insert—

“(4) In this paragraph “long funding operating lease” means a long funding operating lease for the purposes of Part 2 of the Capital Allowances Act (see section 70YI(1) of that Act).”.

(4) The amendments made by this paragraph have effect in relation to payments due on or after 1st April 2006.

Capital allowances: ship leasing

10 (1) Part 10 (the ring fence: capital allowances: ship leasing) is amended as follows.

(2) In paragraph 89 (introduction), in sub-paragraph (1), after the paragraph relating to paragraphs 90 and 91 (defeased leasing) insert—

“paragraphs 91A to 91F (long funding leases),”.

(3) After paragraph 91 (defeased leasing: excepted forms of security) insert—

“Long funding leases: conditions for alternative treatment

91A (1) This paragraph applies if the lease would fall to be regarded as a long funding lease for the purposes of Part 2 of the Capital Allowances Act 2001, apart from this paragraph.

(2) The lease is to be treated for tax purposes as not being a long funding lease at any time when the lease—

- (a) meets the conditions in sub-paragraph (3), or
- (b) is expected to meet those conditions when the ship is first brought into use under the lease,

but this is subject to the qualification in sub-paragraph (4) and the exception in sub-paragraph (5).

(3) The conditions are—

- (a) that the lease falls within paragraph 91B (lease to tonnage tax company or group),
- (b) that the lease falls within paragraph 91C (tonnage tax company to operate and manage qualifying ship),
- (c) that the lease falls within paragraph 91D (period and rate of sublease of qualifying ship).

(4) The condition in paragraph (c) of sub-paragraph (3) has to be met, or be expected to be met, only at times when the company within tonnage tax is leasing the ship to a company not within tonnage tax.

(5) The conditions in paragraphs (b) and (c) of sub-paragraph (3) do not have to be met, or be expected to be met, if the lease was finalised (within the meaning of Part 4 of Schedule 8 to the Finance Act 2006) before 1st April 2006.

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

(6) Sub-paragraph (2) is subject to paragraph 91E (anti-avoidance).

Lease to tonnage tax company or group

- 91B (1) A lease falls within this paragraph if—
- (a) it is a lease of a qualifying ship provided directly to a company within tonnage tax, or
 - (b) it is a lease of a qualifying ship provided indirectly to a company within tonnage tax (“T”) and sub-paragraph (2) applies.
- (2) This sub-paragraph applies where—
- (a) the owner of the qualifying ship provides it directly to a company (“C”) under a lease,
 - (b) C provides the qualifying ship directly to T under a lease, and
 - (c) C and T are in the same group.

Tonnage tax company to operate and manage qualifying ship

- 91C (1) A lease of a qualifying ship provided, directly or indirectly, to a company within tonnage tax (“T”) falls within this paragraph if T is responsible—
- (a) for the operation of the ship, including the appointment of the master and those members of the crew engaged in navigation, and
 - (b) for defraying all expenses in connection with the ship, or substantially all such expenses other than those directly incidental to a particular voyage or to the employment of the ship during any period for which the ship is leased by T to another person.
- (2) For the purposes of this paragraph, T is “responsible” if—
- (a) he is responsible as principal, or
 - (b) he appoints another person (“P”) to be responsible in his place and the condition in sub-paragraph (3) is met.
- (3) The condition is that—
- (a) P is not a person to whom the ship is leased by T and is not connected with such a person, or
 - (b) P is a company within tonnage tax.
- (4) Any reference in this paragraph to a lease by T includes a reference to a contract of affreightment entered into by T that provides for the carriage of goods by the qualifying ship.
- (5) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this paragraph.

Period and rate of sublease of qualifying ship

- 91D (1) A lease of a qualifying ship provided, directly or indirectly, to a company within tonnage tax (“T”) falls within this paragraph if each lease of the ship by T (a “sublease”) to a company not within tonnage tax meets the conditions in sub-paragraph (2).

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

- (2) The conditions are—
 - (a) that the amount payable under the sublease is the market rate, and
 - (b) that the period of the sublease does not exceed 7 years.
- (3) For the purposes of this paragraph the market rate is the rate at which the qualifying ship could reasonably be expected to be leased, taking into account all the circumstances of the lease including the period of the lease, the date at which the lease commences and the size and description of the qualifying ship.
- (4) For the purposes of this paragraph the period of a sublease is the period comprising—
 - (a) the term specified in the sublease, and
 - (b) any subsequent periods which meet the conditions in sub-paragraph (5).
- (5) The conditions are that—
 - (a) there is an option to continue the sublease for that period, and
 - (b) the amount payable under the sublease for that period is not the market rate applicable at the start of that period.
- (6) Where—
 - (a) an option to continue a sublease for a period is exercised, and
 - (b) the amount payable under the sublease for that period is the market rate applicable at the start of that period,

the parties to the sublease are to be treated for the purposes of this paragraph as if the sublease had terminated immediately before the commencement of the period and a new sublease had immediately been entered into.
- (7) Where a sublease is for an indefinite period, the period of the sublease is to be taken for the purposes of this paragraph to be a period of more than 7 years, unless the condition in sub-paragraph (8) is met.
- (8) The condition is that—
 - (a) the amount payable under the sublease must be reviewed at least once every 7 years, and
 - (b) if the amount payable under the sublease is found on such a review not to be the market rate applicable at the time of the review, it must be changed to the market rate applicable at that time.
- (9) Where there is an option to continue a sublease for an indefinite period, the period of the sublease is to be taken for the purposes of this paragraph to be a period of more than 7 years, unless the condition in sub-paragraph (10) is met.
- (10) The condition is that the amount payable under the sublease for any period for which the option may be exercised is the market rate applicable at the start of that period, except that—

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

- (a) the amount for the time being payable under the sublease may subsequently be changed at any time to the market rate applicable at that time,
 - (b) the amount payable under the sublease must be reviewed at least once every 7 years, and
 - (c) if the amount payable under the sublease is found on such a review not to be the market rate applicable at the time of the review, it must be changed to the market rate applicable at that time.
- (11) Any reference in this paragraph to a lease by T includes a reference to a contract of affreightment entered into by T that provides for the carriage of goods by the qualifying ship.

Anti-avoidance

- 91E Paragraph 91A(2) does not have effect in the case of the lease if the main purpose, or one of the main purposes—
- (a) of the leasing of the ship,
 - (b) of a series of transactions of which the leasing of the ship is one, or
 - (c) of any of the transactions in such a series,
- was to obtain a writing down allowance determined without regard to any of paragraphs 90, 92 and 94 to 102 in respect of expenditure incurred by any person on the provision of the ship.

Consequences of paragraph 91A(2) ceasing to have effect

- 91F (1) This paragraph applies if sub-paragraph (2) of paragraph 91A ceases to have effect in relation to a lease (the “existing lease”) because one or more of the conditions in sub-paragraph (3) of that paragraph cease to be met.
- (2) In any such case it is to be assumed for tax purposes that—
- (a) the existing lease terminates at the time of the cessation;
 - (b) another lease (the “new lease”) is entered into immediately after the cessation;
 - (c) the term of the new lease is the portion of the term of the existing lease that remains unexpired at the time of the cessation;
 - (d) the date on which the cessation occurs is the date of both—
 - (i) the inception of the new lease, and
 - (ii) the commencement of the term of the new lease.
- (3) Where this paragraph applies, subsection (4) of section 70X of the Capital Allowances Act 2001 (transfers, assignments etc by lessee) does not.
- (4) For the purposes of this paragraph, the following expressions have the meaning given in Chapter 6A of Part 2 of the Capital Allowances Act 2001 (interpretation of provisions about long funding leases)—
- “commencement”, in relation to the term of a lease;
 - “inception”, in relation to a lease;

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

“term”, in relation to a lease;
“terminate”.”.

- (4) In paragraph 93 (certificates required to support claim by lessor), in subparagraph (1)(b) after “in relation to the lease” insert “and, if the lease is one that would (apart from paragraph 91A) fall to be regarded as a long funding lease for the purposes of Part 2 of the Capital Allowances Act 2001, that paragraph 91A(2) has effect in relation to the lease.”
- (5) Paragraph 15 of Schedule 8 (commencement) also has effect in relation to the amendments made by this paragraph.

Capital Allowances Act 2001

Withdrawal of first year allowances for lessors of certain plant or machinery

- 11 (1) Section 46 of CAA 2001 (general exclusions applying to certain sections) is amended as follows.
- (2) For subsection (5) (exception of sections 45A, 45D, 45E and 45H from general exclusion 6 (leasing)) substitute—
- “ (5) General exclusion 6 does not prevent expenditure being first-year qualifying expenditure under any of the following provisions—
- section 45A, if the condition in subsection (6) is met,
- section 45D,
- section 45H, if the condition in subsection (6) is met.
- (6) The condition is that the plant or machinery is provided for leasing under an excluded lease of background plant or machinery for a building, within the meaning given by section 70R.”.
- (3) The amendment made by this paragraph has effect in relation to expenditure incurred on or after 1st April 2006.

Plant or machinery treated as owned by person entitled to benefit of contract etc

- 12 (1) Section 67 of CAA 2001 is amended as follows.
- (2) After “qualifying activity”, in each place where those words occur in the section, insert “or corresponding overseas activity”.
- (3) In subsection (2), insert at the end—
- “This subsection has effect subject to, and in accordance with, subsections (2A) to (2C).”.
- (4) After subsection (2) insert—
- “(2A) If the contract is one which, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as a lease, subsection (2B) applies.
- (2B) Where that is the case, the plant or machinery is to be treated under subsection (2) as owned by the person at any time only if the contract falls

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

(or would fall) to be treated by that person in accordance with generally accepted accounting practice as a finance lease.

(2C) Where at any time the plant or machinery—

- (a) is not treated under subsection (2) as owned by the person, but
- (b) would be treated under that subsection as owned by the person, but for subsection (2B),

the plant or machinery is nevertheless to be treated under subsection (2) as not owned by any other person at that time.”.

(5) Renumber subsection (5) as subsection (7).

(6) Before that subsection, as so renumbered, insert—

“(6) If—

- (a) a person enters into two or more agreements, and
- (b) those agreements are such that, if they together constituted a single contract, the condition in subsection (1)(b) would be met in relation to that person and that contract,

the agreements are to be treated for the purposes of this section as parts of a single contract.

In this subsection, any reference to an agreement includes a reference to an undertaking, whether or not legally enforceable.”.

(7) At the end of the section insert—

“(8) In this section “corresponding overseas activity” means an activity that would be a qualifying activity if the person carrying it on were resident in the United Kingdom.”.

(8) The amendments made by this paragraph have effect in relation to contracts that are finalised (within the meaning of Part 4 of Schedule 8) on or after 1st April 2006.

Phasing out of overseas leasing rules

13 (1) Section 105 of CAA 2001 (basic terms: “leasing”, “overseas leasing” etc) is amended as follows.

(2) After subsection (2) (“overseas leasing”) insert—

“(2A) In determining whether plant or machinery is used for overseas leasing, no account shall be taken of any lease finalised, within the meaning of Part 4 of Schedule 8 to the Finance Act 2006, on or after 1st April 2006.”.

Anti-avoidance: meaning of “finance lease”

14 (1) Section 219 of CAA 2001 (meaning of “finance lease” in Chapter 17 of Part 2) is amended as follows.

(2) In subsection (1)(b), after sub-paragraph (ii) insert—

“and which are not a long funding lease in the case of the lessor.”.

(3) Paragraph 15 of Schedule 8 (commencement) also has effect in relation to the amendment made by this paragraph.

Capital allowances: allocation of expenditure to a chargeable period

- 15 (1) Section 220 of CAA 2001 is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) Subsection (1) applies to a company for a chargeable period if—
- (a) at the end of the ICTA period of account which is the basis period for the chargeable period, the company is a member of a group, and
 - (b) the last day of that ICTA period of account is not also the last day of an ICTA period of account of the principal company of the group.”.

(3) In subsection (1)—

 - (a) for “a person” substitute “the company”,
 - (b) for “a chargeable period” substitute “the chargeable period”,
 - (c) after “under a finance lease” insert “or under a qualifying operating lease (see subsection (4))”, and
 - (d) for “person's”, in both places, substitute “company's”.

(4) After subsection (2) insert—

“(3) The following provisions have effect for the interpretation of this section.

(4) A “qualifying operating lease” is a plant or machinery lease that meets the following conditions—

 - (a) it is not a finance lease,
 - (b) it is a funding lease,
 - (c) its term is longer than 4 years but not longer than 5 years.

(5) An ICTA period of account is the basis period for a chargeable period if the chargeable period coincides with, or falls within, the ICTA period of account.

(6) An “ICTA period of account” is a period of account as defined in section 832(1) of ICTA.

(7) The provisions of section 170(3) to (6) of TCGA 1992 apply to determine for the purposes of this section—

 - (a) whether a company is member of a group, and
 - (b) which company is the principal company of the group.

(8) But, in applying those provisions for the purposes of this section, a company (“the subsidiary company”) that does not have ordinary share capital is to be treated as being a qualifying 75% subsidiary of another company (“the parent company”) if the parent company—

 - (a) has control of the subsidiary company, within the meaning of section 840 of ICTA, and
 - (b) is beneficially entitled to the appropriate proportion of profits and assets.

(9) The parent company is beneficially entitled to the appropriate proportion of profits and assets if (and only if) it—

 - (a) is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the subsidiary company, and

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

- (b) would be beneficially entitled to at least 75% of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.
- (10) The provisions of Schedule 18 to ICTA (equity holders and profits or assets etc) also apply for the purposes of this section.
- (11) In this section, the following expressions have the same meaning as in Chapter 6A of Part 2 (interpretation of provisions about long funding leases)
 - “funding lease”,
 - “plant or machinery lease”,
 - “term”, in relation to a lease.”.
- (5) In consequence of the amendments made by this paragraph, the italic cross-heading preceding section 219 becomes “Finance leases and certain operating leases”.
- (6) The amendments made by this paragraph have effect in relation to expenditure incurred on or after 1st April 2006.