

*Status: Point in time view as at 08/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2010, SCHEDULE 5. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 5

#### LEASED ASSETS

##### *Restriction of qualifying expenditure*

- 1 (1) In Chapter 17 of Part 2 of CAA 2001 (plant and machinery: anti-avoidance), after section 228M insert—

##### **“228MA Restriction of qualifying expenditure**

- (1) This section applies where capital expenditure is incurred on the provision of plant or machinery (“the asset”) and at the time the expenditure is incurred—
- (a) the asset is leased or arrangements exist under which it is to be leased, and
  - (b) arrangements have been entered into in relation to payments under the lease that have the effect of reducing the value of the asset to the lessor (“V”).
- (2) For the purposes of capital allowances the lessor's qualifying expenditure on the asset is restricted to V.
- (3) The value of the asset to the lessor is given by—

$$V = VI + VR$$

where—

VI is the present value of the lessor's income from the asset, and

VR is the present value of the residual value of the asset reduced by the amount of any rental rebate.

- (4) For this purpose—
- (a) the lessor's income from the asset is the total of all the amounts that—
    - (i) have been received by the lessor, or it is reasonable to expect the lessor will receive, in connection with the lease, and
    - (ii) have been brought into account by the lessor, or it is reasonable to expect the lessor will bring into account, as income in computing profits chargeable to tax, and

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- (b) the residual value of the asset is what it is reasonable to expect will be the market value of the lessor's interest in the asset immediately after the termination of the lease.
- (5) In determining the lessor's income from the asset, exclude—
  - (a) disposal receipts brought, or to be brought, into account under Part 2, and
  - (b) so much of any amount as represents charges for services or qualifying UK or foreign tax (within the meaning of section 70YE) to be paid by the lessor.
- (6) Where capital expenditure has previously been incurred by the lessor on the provision of the asset, the reference in subsection (2) to the lessor's qualifying expenditure on the asset is to be read as a reference to the total amount of the lessor's qualifying expenditure on the asset.
- (7) The following provisions supplement this section—
  - (a) section 228MB provides for the calculation of “present value”, and
  - (b) section 228MC defines what is meant by a rental rebate.
- (8) In this section and sections 228MB and 228MC “lease” includes any arrangements which provide for plant or machinery to be leased or otherwise made available by a person (“the lessor”) to another person (“the lessee”).

#### **228MB Calculation of present value**

- (1) For the purposes of section 228MA the “present value” of an amount is to be calculated by using the interest rate implicit in the lease.
- (2) The general rule is that the interest rate implicit in the lease is the interest rate that would apply in accordance with normal commercial criteria, including, in particular, generally accepted accounting practice (where applicable).
- (3) If the interest rate implicit in the lease cannot be determined in accordance with subsection (2), it is taken to be 1% above LIBOR.
- (4) For this purpose—
  - (a) LIBOR means the London interbank offered rate on the relevant day for deposits for a term of 12 months in the relevant currency,
  - (b) the relevant day is the day on which the lease was entered into (or if that was not a business day, the first business day after that day), and
  - (c) the relevant currency is the currency in which rentals under the lease are payable.

#### **228MC Rental rebate**

- (1) For the purposes of section 228MA “rental rebate” means any sum payable to the lessee that is calculated by reference to the termination value of the asset.
- (2) The general rule is that the termination value of an asset is the value of the asset at or about the time when the lease terminates.

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- (3) Calculation by reference to the termination value includes calculation by reference to any one or more of—
- (a) the proceeds of sale, if the asset is sold,
  - (b) any insurance proceeds, compensation or similar sums in respect of the asset, and
  - (c) an estimate of the market value of the asset.
- (4) Calculation by reference to the termination value also includes—
- (a) determination in a way which, or by reference to factors or criteria which, might reasonably be expected to produce a broadly similar result to calculation by reference to the termination value, or
  - (b) any other form of calculation indirectly by reference to the termination value.”
- (2) The amendment made by sub-paragraph (1) has effect in relation to capital expenditure incurred on or after 9 December 2009.

*Restriction of deduction for rental rebate*

- 2 (1) In Chapter 4 of Part 2 of ITTOIA 2005 (trading income: rules restricting deductions), after section 55A insert—

*“Rental rebates*

**55B Rental rebates**

- (1) Where plant or machinery (“the asset”) is leased and a rental rebate is payable by the lessor, the amount of the deduction allowable in respect of the rebate is limited to—
- (a) the amount of the lessor's income from the lease, or
  - (b) in the case of a finance lease, that amount excluding the finance charge.
- (2) “Rental rebate” means any sum payable to the lessee that is calculated by reference to the termination value of the asset.
- (3) For this purpose—
- (a) the termination value of an asset is the value of the asset at or about the time when the lease terminates,
  - (b) calculation by reference to the termination value includes calculation by reference to any one or more of—
    - (i) the proceeds of sale, if the asset is sold,
    - (ii) any insurance proceeds, compensation or similar sums in respect of the asset,
    - (iii) an estimate of the market value of the asset, and
  - (c) calculation by reference to the termination value also includes—
    - (i) determination in a way which, or by reference to factors or criteria which, might reasonably be expected to produce a broadly similar result to calculation by reference to the termination value, or

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- (ii) any other form of calculation indirectly by reference to the termination value.
- (4) For the purposes of this section—
- (a) the income of the lessor from the lease is the total of all the amounts receivable in connection with the lease that have been brought into account in calculating the lessor's income for income tax purposes, excluding—
- (i) disposal receipts brought into account under Part 2 of CAA 2001 (see section 60(1) of that Act), and
- (ii) so much of any amount as represents charges for services or qualifying UK or foreign tax (within the meaning of section 70YE of that Act) to be paid by the lessor, and
- (b) the finance charge, in relation to a finance lease, is—
- (i) if the lease is one that, under generally accepted accounting practice, falls (or would fall) to be treated as a loan, so much of the rentals under the lease as fall (or would fall) to be treated as interest, or
- (ii) in any other case, the amount that, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as the gross return on investment.
- (5) Where the asset is acquired by the lessor in a transaction in relation to which an election is made under section 266 of CAA 2001 (election where predecessor and successor are connected persons), this section applies as if the successor had been the lessor at all material times and everything done to or by the predecessor had been done to or by the successor.
- (6) Where the whole or part of a rental rebate is disallowed under this section as a deduction in computing profits—
- (a) the amount disallowed, or
- (b) if less, the amount by which the rental rebate exceeds the amount of capital expenditure incurred by the lessor,
- may be treated for the purposes of capital gains tax as an allowable loss accruing to the lessor on the termination of the lease.
- That allowable loss is deductible only from chargeable gains accruing to the lessor on the disposal of the asset.
- (7) This section does not apply to a long funding finance lease (see section 148C).”
- (2) In Chapter 4 of Part 3 of CTA 2009 (trading income: rules restricting deductions), after section 60 insert—

**“60A Rental rebates**

- (1) Where plant or machinery (“the asset”) is leased and a rental rebate is payable by the lessor, the amount of the deduction allowable in respect of the rebate is limited to—
- (a) the amount of the lessor's income from the lease, or
- (b) in the case of a finance lease, that amount excluding the finance charge.

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- (2) “Rental rebate” means any sum payable to the lessee that is calculated by reference to the termination value of the asset.
- (3) For this purpose—
- (a) the termination value of an asset is the value of the asset at or about the time when the lease terminates,
  - (b) calculation by reference to the termination value includes calculation by reference to any one or more of—
    - (i) the proceeds of sale, if the asset is sold,
    - (ii) any insurance proceeds, compensation or similar sums in respect of the asset, and
    - (iii) an estimate of the market value of the asset, and
  - (c) calculation by reference to the termination value also includes—
    - (i) determination in a way which, or by reference to factors or criteria which, might reasonably be expected to produce a broadly similar result to calculation by reference to the termination value, or
    - (ii) any other form of calculation indirectly by reference to the termination value.
- (4) For the purposes of this section—
- (a) the income of the lessor from the lease is the total of all the amounts receivable in connection with the lease that have been brought into account in calculating the lessor's income for corporation tax purposes, excluding—
    - (i) disposal receipts brought into account under Part 2 of CAA 2001 (see section 60(1) of that Act), and
    - (ii) so much of any amount as represents charges for services or qualifying UK or foreign tax (within the meaning of section 70YE of that Act) to be paid by the lessor, and
  - (b) the finance charge, in relation to a finance lease, is—
    - (i) if the lease is one that, under generally accepted accounting practice, falls (or would fall) to be treated as a loan, so much of the rentals under the lease as fall (or would fall) to be treated as interest, or
    - (ii) in any other case, the amount that, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as the gross return on investment.
- (5) Where the asset is acquired by the lessor in a transaction—
- (a) to which section 948 of CTA 2010 applies (modified application of CAA 2001 in case of transfer of trade without change of ownership), or
  - (b) in relation to which an election is made under section 266 of CAA 2001 (election where predecessor and successor are connected persons),
- this section applies as if the successor had been the lessor at all material times and everything done to or by the predecessor had been done to or by the successor.

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- (6) Where the whole or part of a rental rebate is disallowed under this section as a deduction in computing profits—
- (a) the amount disallowed, or
  - (b) if less, the amount by which the rental rebate exceeds the amount of capital expenditure incurred by the lessor,
- may be treated for the purposes of corporation tax in respect of chargeable gains as an allowable loss accruing to the lessor on the termination of the lease.

That allowable loss is deductible only from chargeable gains accruing to the lessor on the disposal of the asset.

- (7) This section does not apply to a long funding finance lease (see section 362 of CTA 2010).”

- (3) The amendments made by this paragraph have effect in relation to rental rebates payable on or after 9 December 2009.

*Arrangements reducing disposal value of asset*

- 3 (1) In Chapter 5 of Part 2 of CAA 2001 (plant and machinery: general provisions about charges and allowances), after section 64 insert—

**“64A Leased assets: arrangements reducing disposal value of asset**

- (1) Where—
- (a) plant or machinery (“the asset”) is subject to a lease,
  - (b) a disposal event occurs with the result that a disposal value in respect of the asset is to be brought into account under Item 1, 2 or 7 of the Table in section 61(2), and
  - (c) arrangements have been entered into that have the effect of reducing the disposal value of the asset in so far as it is attributable to rentals payable under the lease,

the disposal value is to be determined as if the arrangements had not been entered into.

- (2) Subsection (1) does not apply if—
- (a) the arrangements take the form of a transfer of relevant receipts within section 809AZA of ITA 2007 and the relevant amount has been treated as income under section 809AZB of that Act, or
  - (b) the arrangements take the form of a transfer of relevant receipts within section 752 of CTA 2010 and the relevant amount has been treated as income under section 753 of that Act.”

- (2) The amendment made by sub-paragraph (1) has effect in relation to disposal events taking place on or after 9 December 2009.

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