

CORPORATION TAX ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Part 20: Tax avoidance involving leasing plant or machinery

Overview

2625. This Part rewrites certain provisions of Part 17 of ICTA (tax avoidance) relating to leasing plant or machinery.

Chapter 1: Restrictions on use of losses in leasing partnerships

Overview

2626. This Chapter rewrites sections 785ZA and 785ZB of ICTA, which were introduced by FA 2006 as an adjunct to the provisions of Schedule 10 to FA 2006 (sale etc of lessor companies etc) rewritten in Chapters 3 to 6 of Part 9.

2627. These sections of ICTA address an alternative arrangement designed to achieve a similar effect to a disposal of an interest in a leasing business carried on in partnership, through differing allocations of profits and losses and of capital allowances in the leasing business.

Section 887: When restrictions on leasing partnership losses under this Chapter apply

2628. This section sets out the circumstances in which the restrictions on the use of losses in section 888 apply. It is based on sections 785ZA(1) to (4) and 785ZB(1) and (2) of ICTA.

2629. The restrictions apply where a company carries on a “business of leasing plant or machinery” in partnership and the company’s profit sharing arrangements are unusual. *Subsection (1)(e)* achieves this by providing that the restrictions only apply if the profit sharing arrangements are not determined “on an allowable basis” as defined in *subsections (2) to (4)*.

2630. “Business of leasing plant or machinery” has the same meaning as it has for the purposes of Chapter 4 of Part 9 (see *subsection (5)*).

Section 888: Restrictions on leasing partnership losses

2631. This section restricts the use of losses incurred by a company in the partnership leasing business. It is based on sections 785ZA(5) to (9) and 785ZB(1), (7) and (8) of ICTA.

2632. A loss which derives from capital allowances on the leased plant or machinery may only be set off against the company’s income from leases of plant or machinery entered into by the partnership no later than the end of the accounting period in which the loss is incurred. It can be carried forward, but only against such leasing income (see

*These notes refer to the Corporation Tax Act 2010
(c.4) which received Royal Assent on 3 March 2010*

subsection (2)). It cannot be set sideways (see subsection(3)) or surrendered as group relief (see subsection (4)).

Section 889: Interpretation of Chapter

2633. This defines certain terms used in the Chapter. It is based on section 785ZB(1) and (3) to (6) of ICTA.

Chapter 2: Capital payments in respect of leases treated as income

Overview

2634. This Chapter rewrites sections 785B to 785E of ICTA introduced by FA 2008.

2635. Only minor changes in language have been made but the provisions have been restructured to improve accessibility. In particular, section 785C (section 785B: interpretation) has been rewritten in two sections. The first section deals with the meaning of the primary terms “capital payment” and “relevant capital payment”, while the other defined terms are relegated to the second section.

Section 890: Capital payments in respect of leases treated as income

2636. This section taxes certain capital receipts arising in connection with leases of plant or machinery (such as premiums and similar sums) as income of the lessor. It is based on section 785B of ICTA.

2637. The accounting period in which the charge to tax arises depends upon whether or not an unconditional obligation to make a “relevant capital payment” (see section 893) is entered into before the relevant capital payment is made. See *subsections (3) and (4)*.

Section 891: Apportionments for leases of plant or machinery and other property

2638. This section ensures that section 890 applies in a just and reasonable manner where the lease includes (but is not limited to) plant or machinery that is not a fixture. It is based on section 785D of ICTA.

2639. *Subsection (3)* ensures that where the capital payment refers to plant or machinery, any income from which would be charged as profits of a UK property business, it is treated as referring to “other property” for the purpose of arriving at an apportionment under *subsection (2)*. For example, if a lease of property includes furniture (and the income in respect of the furniture is taxed as property income) any element of the capital payment that refers to the furniture is outside the scope of section 890.

2640. The words “if the income (if any) ... is chargeable” in section 785D(3) of ICTA have been rewritten as “any income ... would be chargeable” in subsection (3), in order to remove any doubt that this treatment applies whether or not any income actually arises. This conforms the wording of subsection (3) with that of section 785C(4)(a) of ICTA rewritten in section 894(4).

Section 892: Deduction where failure to make relevant capital payment expected

2641. This section gives relief for bad debts, or debts which are expected to be bad. It is based on section 785E of ICTA.

2642. As section 890 may tax a relevant capital payment before it is received, relief is to be given at the time the lessor reasonably expects that some or all of the relevant capital payment will not be paid. This rule applies whether the payment was due to be made to the lessor or to someone on their behalf.

Section 893: Meaning in Chapter of “Capital payment”, “relevant capital payment” etc

2643. This section defines “relevant capital payment” and related terms. It is based on section 785C(2) and (6) to (10) of ICTA.
2644. *Subsection (2)* defines the term “capital payment”. It excludes any payment that would fall to be included in calculating the lessor’s income for corporation tax purposes or any payment in respect of a long funding finance lease which would be so included but for the fact that section 360 ensures that only sums treated as the gross return on investment or as interest in respect of the lease are taxed. *Subsection (2)*, therefore, ensures that no part of the rentals under a long funding finance lease triggers section 890.
2645. Section 890 is only triggered if the capital payment is “relevant” as defined in *subsections (3) to (5)*. But a capital payment which falls within those subsections is not relevant to the extent that it falls within *subsection (6)* and is only relevant to a limited extent if it falls within *subsection (7)*.
2646. Payment is given an extended meaning for the purposes of the Chapter (see *subsections (8) and (9)*).

Section 894: Other interpretation of Chapter

2647. This section defines other terms used in the Chapter. It is based on section 785C(1) and (3) to (5).
2648. The effect of *subsections (3) to (5)* is that a “lease of plant or machinery” includes:
- a lease of plant or machinery only;
 - a lease of plant or machinery that is not a fixture where it is leased with land or other assets in circumstances where income attributable to the plant or machinery would not be chargeable to tax as profits of a UK property business (in which case see section 891).
- but does not include:
- a lease of land and buildings, including fixtures and other plant or machinery the income from which would be taxed as property income; or
 - plant or machinery leased out under a long funding lease where the lessor would have been entitled to claim capital allowances but for section 34A of CAA.