

SCHEDULES

SCHEDULE 6

Section 32

LEASING BUSINESSES

Businesses carried on by companies alone

- 1 Chapter 3 of Part 9 of CTA 2010 (sale of lessors: leasing business carried on by a company alone) is amended as follows.
- 2 (1) Section 387 (“business of leasing plant or machinery”) is amended as follows.
 - (2) In subsection (3), for “qualifying leased plant or machinery” substitute “plant or machinery falling within subsection (7)”.
 - (3) For subsection (5) substitute—

“(5) Condition B is that at least half of the relevant company’s income in the past 12 months derives from plant or machinery falling within subsection (7).”
 - (4) For subsections (7) and (8) substitute—

“(7) Plant or machinery falls within this subsection if—

 - (a) it is or at any time in the past 12 months has been leased out by the relevant company or a qualifying associate,
 - (b) the lease under which it is or has been leased out is a plant or machinery lease but not an excluded lease of background plant or machinery for a building (see section 437(3)), and
 - (c) if the plant or machinery satisfies paragraph (a) only because it is or has been leased out by a qualifying associate, the lessee under the lease is or was someone other than the relevant company.
 - (8) For the purposes of subsection (7)—
 - (a) plant or machinery is “leased out” by a person if it is subject to a plant or machinery lease under which that person is a lessor,
 - (b) “associate” means a person connected with the relevant company (see also subsection (9)), and
 - (c) a person is a “qualifying associate” if the person is an associate at the start of the relevant day or at any earlier time in the past 12 months (whether or not a time when the plant or machinery was leased out by the person).
 - (9) If the relevant company is owned by a consortium or is a qualifying 75% subsidiary of a company owned by a consortium, the reference in subsection (8)(b) to a person connected with the relevant company also includes—
 - (a) any member of the consortium, and
 - (b) any person connected with such a member.

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- (10) A reference in this section to the past 12 months is to the period of 12 months ending with the relevant day.”
- 3 In section 389 (provision supplementing section 388), in subsection (5)(b), for “market value” substitute “ascribed value”.
- 4 In section 390 (relevant plant or machinery value where relevant company lessee under long funding lease etc), in subsection (2), for “market value” substitute “ascribed value”.
- 5 In section 391 (relevant company’s income for condition B in section 387), in subsection (5), for “qualifying leased plant or machinery” substitute “plant or machinery falling within section 387(7)”.
- 6 (1) Section 398G (transfers into and out of A) is amended as follows.
- (2) Omit subsection (2).
- (3) For subsection (3) substitute—
- “ (3) If any event occurs that requires A to bring the disposal value of plant or machinery into account under Part 2 of CAA 2001, that Part has effect as if the disposal value that A is required to bring into account were the higher of—
- (a) the disposal value determined in accordance with that Part, and
- (b) the ascribed value of the plant or machinery.
- (4) Section 265 of CAA 2001 (successions) is subject to this section.”
- 7 In section 401 (provisions supplementing section 400), in subsection (5)(b), for “market value” substitute “ascribed value”.
- 8 In section 402 (“PM” where relevant company lessee under long funding lease etc), in subsection (2), for “market value” substitute “ascribed value”.
- 9 (1) Section 403 (“TWDV” in section 399) is amended as follows.
- (2) In subsection (2), for paragraph (b) substitute—
- “ (b) in calculating the amounts of unrelieved qualifying expenditure mentioned in subsection (1)(a) to (c), any part of those amounts that is relevant new expenditure is to be left out of account.”
- (3) After that subsection insert—
- “ (3) Relevant new expenditure” means—
- (a) expenditure attributable to plant or machinery acquired by the relevant company on the relevant day except for plant or machinery acquired on that day from an associated company, and
- (b) expenditure incurred on the relevant day but attributable to plant or machinery acquired by the relevant company before that day.
- (4) In subsection (3)—
- (a) “acquired” includes brought into use or made available for use for the first time for the purposes of the business, and
- (b) a reference to anything acquired or incurred includes anything treated as acquired or treated as incurred.”

Businesses carried on by companies in partnership

- 10 Chapter 4 of Part 9 of CTA 2010 (sale of lessors: leasing business carried on by a company in partnership) is amended as follows.
- 11 (1) Section 410 (“business of leasing plant or machinery”) is amended as follows.
- (2) In subsection (2), for “qualifying leased plant or machinery” substitute “plant or machinery falling within subsection (6)”.
- (3) For subsection (4) substitute—
- “(4) Condition B is that at least half of the partnership’s income in the past 12 months derives from plant or machinery falling within subsection (6).”
- (4) For subsections (6) and (7) substitute—
- “(6) Plant or machinery falls within this subsection if—
- (a) it is or at any time in the past 12 months has been leased out by the partnership or a qualifying associate,
- (b) the lease under which it is or has been leased out is a plant or machinery lease but not an excluded lease of background plant or machinery for a building (see section 437(3)), and
- (c) if the plant or machinery satisfies paragraph (a) only because it is or has been leased out by a qualifying associate, the lessee under the lease is or was someone other than the partnership.
- (7) For the purposes of subsection (6)—
- (a) plant or machinery is “leased out” by a person if it is subject to a plant or machinery lease under which that person is a lessor,
- (b) “associate” means a person who is a partner in the partnership or connected with a partner in the partnership (see also subsection (8)), and
- (c) a person is a “qualifying associate” if the person is an associate at the start of the relevant day or at any earlier time in the past 12 months (whether or not a time when the plant or machinery was leased out by the person).
- (8) In relation to a corporate partner who is owned by a consortium or is a qualifying 75% subsidiary of a company owned by a consortium, the reference in subsection (7)(b) to a person connected with a partner also includes—
- (a) any member of the consortium, and
- (b) any person connected with such a member.
- (9) A reference in this section to the past 12 months is to the period of 12 months ending with the relevant day.”
- 12 In section 412 (provision supplementing section 411), in subsection (5)(b), for “market value” substitute “ascribed value”.
- 13 In section 413 (relevant plant or machinery value where partnership lessee under long funding lease etc), in subsection (2), for “market value” substitute “ascribed value”.
- 14 In section 414 (partnership’s income for condition B in section 410), in subsection (5), for “qualifying leased plant or machinery” substitute “plant or machinery falling within section 410(6)”.

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- 15 (1) Section 421 (the amount of the income: the basic amount) is amended as follows.
- (2) In subsection (6), for paragraph (b) substitute—
- “(b) in calculating the amounts of unrelieved qualifying expenditure mentioned in subsection (5)(a) to (c), any part of those amounts that is relevant new expenditure is to be left out of account.”
- (3) After that subsection insert—
- “(6A) Relevant new expenditure” means—
- (a) expenditure attributable to plant or machinery acquired by the partnership on the relevant day except for plant or machinery acquired on that day from a qualifying company, and
- (b) expenditure incurred on the relevant day but attributable to plant or machinery acquired by the partnership before that day.
- (6B) In subsection (6A)—
- (a) “acquired” includes brought into use or made available for use for the first time for the purposes of the business, and
- (b) a reference to anything acquired or incurred includes anything treated as acquired or treated as incurred.”

Anti-avoidance provisions

- 16 Chapter 5 of Part 9 of CTA 2010 (sales of lessors: anti-avoidance provisions) is amended as follows.
- 17 (1) Section 434 (introduction to sections 435 and 436) is amended as follows.
- (2) In subsection (2), for “question A or B” substitute “question A, B or C”.
- (3) After subsection (4) insert—
- “(5) Question C is the question of the amount of any disposal value to be substituted by section 398G(3).”
- 18 (1) Section 435 (disregard of increases or decreases in balance sheet amounts) is amended as follows.
- (2) In subsection (1), for paragraph (a) substitute—
- “(a) an amount mentioned in subsection (1A) is to be ascertained for the purpose of determining a question as to the application of Chapter 3 or 4,”.
- (3) After that subsection insert—
- “(1A) The amounts are—
- (a) the relevant plant or machinery value,
- (b) the value of plant or machinery falling within section 387(7) or 410(6),
- (c) the relevant company’s or partnership’s income in the period of 12 months ending with the relevant day,
- (d) the amount of PM,
- (e) the amount of TWDV,

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- (f) the amount of any disposal value to be substituted by section 398G(3), and
 - (g) any underlying amount required to calculate or verify an amount mentioned in any of the preceding paragraphs.”
- (4) In subsection (2)—
- (a) omit “or” at the end of paragraph (b), and
 - (b) at the end of paragraph (c) insert “, or
 - (d) the amount of any disposal value to be substituted by section 398G(3) would be reduced.”
- (5) In subsection (3), for “which falls (or would fall) to be shown in the balance sheet in respect of plant or machinery” substitute “to be ascertained”.
- (6) Accordingly, in the heading of that section, for “**in balance sheet amounts**” substitute “**in certain amounts**”.
- 19 In section 436 (balance sheet amounts determined on assumption company has no liabilities), after subsection (6) insert—
- “(7) Except for subsection (6), this section applies to a partnership as it applies to a company, and references to “company” are to be read accordingly.”

General interpretation of sales of lessors Chapters

- 20 Chapter 6 of Part 9 of CTA 2010 (sales of lessors: general interpretation) is amended as follows.
- 21 In section 437, omit subsection (9) (definition of “market value”).
- 22 After that section insert—

“437A Determining the ascribed value of plant or machinery

- (1) For the purposes of the sales of lessors Chapters, the ascribed value of plant or machinery at any given time (“the relevant time”) is the value determined in accordance with this section.
- (2) Subsection (3) applies to plant or machinery if—
 - (a) it is subject to a plant or machinery lease at the relevant time,
 - (b) the relevant company or partnership is a lessor under the lease, and
 - (c) subsection (5) does not apply to it.
- (3) The ascribed value of plant or machinery to which this subsection applies is the higher of—
 - (a) the market value of the plant or machinery at the relevant time, and
 - (b) the present value at that time of the lease referred to in subsection (2).
- (4) Subsection (5) applies to plant or machinery if—
 - (a) it is subject to a plant or machinery lease at the relevant time,
 - (b) the lease is an equipment lease within the meaning of Chapter 14 of Part 2 of CAA 2001 (fixtures),
 - (c) the relevant company or partnership is the equipment lessor in respect of the lease (see section 174 of that Act), and

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- (d) the equipment lessor is treated at that time as the owner of the plant or machinery by virtue of an election made in reliance on section 177(1)(a)(i) of that Act (which permits elections if the conditions in section 178 are met in relation to the lease).
- (5) The ascribed value of plant or machinery to which this subsection applies is the present value at the relevant time of the lease referred to in subsection (4).
- (6) The ascribed value of plant or machinery to which neither subsection (3) nor subsection (5) applies is the market value of the plant or machinery at the relevant time.

437B Section 437A: supplementary

- (1) This section supplements section 437A.
- (2) Market value is to be determined on the assumption of a disposal by an absolute owner free from all leases and other encumbrances (including any agreement or arrangement that is or includes a plant or machinery lease).
- (3) If plant or machinery is a fixture, its market value is so much of the market value of the relevant land and the fixture together as is attributable to the fixture on a just and reasonable apportionment.
- (4) “Relevant land” has the meaning given in section 173(2) of CAA 2001.

437C Present value of a lease

- (1) For the purposes of section 437A, the present value of a lease is the present value of the amounts mentioned in subsection (2).
- (2) The amounts are—
 - (a) the amounts payable under the lease after the relevant time, and
 - (b) any residual amount.
- (3) Subsection (2)(a) does not apply to amounts payable by the lessor or to amounts that represent—
 - (a) charges for services, or
 - (b) qualifying UK or foreign tax to be paid by the lessor.
- (4) Present value is to be calculated by using the interest rate implicit in the lease.
- (5) 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).
- (6) But if a rate cannot be determined in accordance with subsection (5), the interest rate implicit in the lease is taken to be 1% above LIBOR.
- (7) For this purpose—
 - (a) LIBOR means the London interbank offered rate on the applicable day for deposits for a term of 12 months in the applicable currency,
 - (b) the applicable day is the day comprising or including the relevant time (or, if that day is not a business day, the first business day after it), and

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- (c) the applicable currency is the currency in which payments under the lease are payable.
- (8) If—
- (a) the lessee has an option to continue the lease for a period after expiry of its initial term, and
 - (b) it is reasonably certain at the relevant time that the lessee will exercise that option,
- references in this section to amounts payable under the lease include amounts payable under the lease as continued for any such period.
- (9) If the lease also relates to land or assets that are not plant or machinery, the present value of the lease is so much of the present value of the amounts mentioned in subsection (2) as is attributable to the plant or machinery on a just and reasonable apportionment.
- (10) In this section, “qualifying UK or foreign tax” and “residual amount” have the meaning given in section 70YE of CAA 2001.”

Consequential amendments

- 23 In section 267A of CAA 2001 (restriction on effect of election), in subsection (2), for “is qualifying leased plant or machinery” substitute “falls within section 387(7) of CTA 2010 (if the business is carried on otherwise than in partnership) or within section 410(6) of that Act (if the business is carried on in partnership)”.
- 24 In section 948 of CTA 2010 (modified application of CAA 2001), in subsection (6), before paragraph (a) insert—
- “(za) section 398G of this Act (sale of lessors: transfers into and out of A after election under section 398A),”.
- 25 (1) Section 950 of CTA 2010 (transfers of trades involving business of leasing plant or machinery) is amended as follows.
- (2) In subsection (5), for the words from “its market value” to the end substitute “the higher of—
- (a) its ascribed value immediately before the transfer of the trade, and
 - (b) the disposal value that the predecessor would be required to bring into account under Part 2 of CAA 2001 in respect of it as a result of the transfer of the trade.”
- (3) In subsection (6)—
- (a) before the definition of “business of leasing plant or machinery” insert—
““ascribed value”, in relation to plant or machinery, is to be read in accordance with section 437A (but reading the reference to the relevant company or partnership as a reference to the predecessor);”, and
 - (b) omit the definition of “market value”.
- 26 (1) In Schedule 4 to CTA 2010 (index of defined expressions), omit the entry for “market value (in relation to plant or machinery) (in Chapters 3 to 6 of Part 9)”.
- (2) In that Schedule, insert the following entry at the appropriate place—

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“ascribed value (in relation to plant or machinery) (in Chapters 3 to 6 of Part 9) | section 437A”.

Application of new provisions

- 27 (1) The amendments made by paragraphs 2 to 5 and 7 to 15, and the general paragraphs so far as relevant to those amendments, have effect where the relevant day (as defined for the purposes of the amended provision) falls on or after 23 March 2011.
- (2) The amendment made by paragraph 6(3), and the general paragraphs so far as relevant to that amendment, have effect in relation to disposal events taking place on or after 23 March 2011 (including in cases where the election was made before that date).
- (3) The amendments made by paragraphs 6(2) and 23 to 25, and the general paragraphs so far as relevant to those amendments, have effect in relation to transfers or successions taking place on or after 23 March 2011 (including, in the case of the amendment made by paragraph 6(2), where the election was made before that date).
- (4) The general paragraphs are—
- (a) paragraph 1,
 - (b) paragraphs 16 to 22, and
 - (c) paragraph 26.