

2002 No. 1967

INCOME TAX

The Corporation Tax (Finance Leasing of Intangible Assets) Regulations 2002

<i>Made</i> - - - - -	<i>25th July 2002</i>
<i>Laid before the House of Commons</i>	<i>25th July 2002</i>
<i>Coming into force</i> - - - - -	<i>15th August 2002</i>

The Treasury, in exercise of the powers conferred upon them by paragraph 104 of Schedule 29 to the Finance Act 2002(), hereby make the following Regulations:

Citation, commencement and effect

1. These Regulations may be cited as the Corporation Tax (Finance Leasing of Intangible Assets) Regulations 2002, shall come into force on 15th August 2002, and shall have effect from 1st April 2002.

Interpretation

2. In these Regulations—
- “financial asset” shall be construed in accordance with paragraph 75 of Schedule 29;
 - “finance lease”, “finance lessor” and “finance lessee” shall be construed in accordance with paragraph 104(4) and (5) of Schedule 29;
 - “Schedule 29” means Schedule 29 to the Finance Act 2002 (gains and losses of a company from intangible fixed assets).

Application of Schedule 29

3. Schedule 29 shall apply in relation to a company that is the finance lessor of an intangible asset that is the subject of a finance lease as if, notwithstanding that the asset is accounted for by the finance lessor as a financial asset, it were an intangible fixed asset of the lessor and not a financial asset.

4. References in Schedule 29 to capitalised expenditure on an intangible fixed asset shall accordingly be taken as including references to any amount accounted for by the finance lessor as a financial asset as a consequence of the finance lease of the asset, except that—

- (a) no election may be made under paragraph 10 of Schedule 29 (election for writing down on fixed rate basis) in respect of that amount,
- (b) that amount is not to be treated as capitalised expenditure for the purposes of paragraph 39(1)(b) of Schedule 29 (roll-over relief in case of realisation and reinvestment: conditions to be met in relation to expenditure on other assets), and
- (c) accordingly any amount treated by paragraph 57(2) of Schedule 29 (roll-over relief on reinvestment: acquisition of group company treated as equivalent to acquisition of underlying assets) as expenditure on acquiring the financial asset is not to be treated as capitalised expenditure for the purposes of paragraph 39(1)(b) of that Schedule.

(a) 2002 c. 23.

Intangible fixed asset becoming financial asset—consequential

5. Where an asset formerly recognised by the lessor for accounting purposes as an intangible fixed asset becomes subject to a finance lease (and accordingly comes to be accounted for as a financial asset)—

- (a) a realisation of the intangible fixed asset shall be treated, for the purposes of Part 4 of Schedule 29 (realisation of intangible fixed assets), as having occurred on the commencement of the finance lease,
- (b) the accounting value of the financial asset so created shall be recognised as realisation proceeds of the intangible fixed asset for the purposes of that Part, and
- (c) that amount shall not be taken into account in determining the accounting value of the financial asset immediately after the realisation for the purposes of paragraph 22(2) of that Schedule (apportionment in case of part realisation).

Financial assets excluded from Schedule 29

6.—(1) Assets partially excluded from Schedule 29 by virtue of paragraphs 78 to 81 (assets excluded except as regards royalties) shall be entirely excluded from that Schedule as regards the finance lessor if they are subject to a finance lease and are accounted for by the lessor as financial assets.

Accordingly in relation to such assets—

- (a) Schedule 29 applies only to royalties recognised for accounting purposes prior to the asset becoming subject to the finance lease, or after it ceases to be subject to the finance lease,
- (b) to the extent that such royalties are brought into account for tax purposes under Schedule 29, they shall not be brought into account for tax purposes again, and
- (c) to the extent that such royalties are brought into account for tax purposes otherwise than under Schedule 29, they shall not be brought into account for tax purposes under that Schedule.

(2) Except for the purposes of regulation 5, an asset shall be excluded from Schedule 29 if it is used by the finance lessee for the purposes of a trade or business in respect of which he is within the charge to income tax.

(3) Nothing in these Regulations shall be read as enabling Schedule 29 to apply to existing assets excluded from the application of that Schedule by paragraph 118 of that Schedule.

(4) An asset shall count as an existing asset in the hands of the finance lessor for the purposes of paragraph 118 of Schedule 29 if the finance lessee—

- (a) is a company for whom the asset was the whole or part of an existing asset, or
- (b) is a person who is a related party in relation to such a company.

(5) References in paragraph (1) to royalties being brought into account for tax purposes include references to royalties which would have been so brought into account if the person concerned had been within the charge to corporation tax.

(6) In paragraph (4)(b) “related party” shall be construed in accordance with paragraph 95, read with paragraphs 96 to 101, of Schedule 29.

Ian Pearson
Jim Fitzpatrick

25th July 2002

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply Schedule 29 to the Finance Act 2002 (gains and losses of a company from intangible fixed assets) (“Schedule 29”) to a company that is the finance lessor of an intangible asset which is the subject of a finance lease. Schedule 29 has effect from 1st April 2002 and paragraph 104(6) of the Schedule provides that regulations under that paragraph applying Schedule 29 to finance lessors may have effect from the same date.

Regulation 1 provides for citation and commencement, and that the Regulations have effect from 1st April 2002.

Regulation 2 provides for interpretation.

Regulation 3 applies Schedule 29 to finance lessors.

Regulations 4 and 5 make consequential provision in the light of the application of Schedule 29 to finance lessors, and regulation 6 provides for the exclusion of certain assets from Schedule 29 as regards finance lessors.

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Assets) Regulations 2002**

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