

SCHEDULES

SCHEDULE 12

LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

PART IV

SUPPLEMENTARY PROVISIONS

Normal rent

- 20 ? For the purposes of this Schedule, the “normal rent” in respect of a lease for a period of account of the lessor is the amount which he would, apart from this Schedule, bring into account as rent from the lease—
- (a) which arises to him, and
 - (b) if rent arising to him from the lease is chargeable to corporation tax under Schedule A, to which he is entitled,
- in that period of account for the purpose of determining his liability to tax for the related chargeable period or periods.

Accountancy rental earnings

- 21 (1) For the purposes of this Schedule, the “accountancy rental earnings” in respect of the lease for a period of account of the lessor is the greatest of the amounts specified in sub-paragraph (2) below.
- (2) Those amounts are—
- (a) the rental earnings for the relevant period in respect of the lease, in the case of the lessor;
 - (b) the rental earnings for the relevant period in respect of the lease, in the case of a person connected with the lessor;
 - (c) the rental earnings for the relevant period in respect of the lease, for the purposes of consolidated group accounts of a group of companies of which the lessor is a member.
- (3) In sub-paragraph (2) above, “the relevant period” means the period of account of the lessor which is mentioned in sub-paragraph (1) above.

Rental earnings

- 22 In this Schedule “the rental earnings” for any period in respect of the lease of the asset is, in the case of any person or any consolidated group accounts, the amount which falls for accounting purposes to be treated in accordance with normal accountancy practice as the gross return for that period on investment in respect of a finance lease or loan in respect of the leasing arrangements.

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Periods of account which straddle 26th November 1996

- 23 This Schedule shall apply in relation to a period of account which begins before 26th November 1996 and ends on or after that date as if—
- (a) so much of the period as falls before 26th November 1996, and
 - (b) so much of the period as falls on or after that date,
- were separate periods of account.

Time apportionment where periods do not coincide

- 24 (1) This paragraph applies in any case where—
- (a) a period of account of the lessor does not coincide with a period of account of a person connected with the lessor, or
 - (b) a period of account of the lessor does not coincide with a period for which consolidated group accounts of a group of companies of which the lessor is a member fall to be prepared.
- (2) Where this paragraph applies, any amount which falls for the purposes of this Schedule to be found for the lessor's period of account but by reference to the connected person or, as the case may be, the consolidated group accounts shall be found by making such apportionments as may be necessary—
- (a) between two or more periods of account of the connected person, or
 - (b) between two or more periods for which consolidated group accounts of the group fall to be prepared,
- as the case may be.
- (3) Any apportionment under sub-paragraph (2) above shall be made in proportion to the number of days in the respective periods which fall within the lessor's period of account.

Connected persons

- 25 (1) If a person is connected with another at some time during the period which—
- (a) begins at the earliest time at which any of the leasing arrangements were made, and
 - (b) ends when the current lessor finally ceases to have an interest in the asset or any arrangements relating to it,
- he shall be treated for the purposes of this Schedule, in its application in consequence of those leasing arrangements, as being connected with that other throughout that period.
- (2) Section 839 of the Taxes Act 1988 shall apply for the purposes of this Schedule.

Assets which represent the leased asset

- 26 For the purposes of this Schedule, the following assets shall be treated as representing the leased asset—
- (a) any asset derived from, or created out of, the leased asset;
 - (b) any asset from or out of which the leased asset was derived or created;
 - (c) any asset derived from or created out of an asset from or out of which the leased asset was derived or created; or

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- (d) any asset which derives the whole or a substantial part of its value from the leased asset or from an asset which itself represents the leased asset.

Existing schemes and new schemes

- 27 (1) For the purposes of this Schedule, a lease of an asset—
- (a) forms part of an existing scheme if, and only if, the conditions in sub-paragraph (2) or (3) below are satisfied; and
 - (b) in any other case, forms part of a new scheme.
- (2) The conditions in this sub-paragraph are that—
- (a) a contract in writing for the lease of the asset has been made before 26th November 1996;
 - (b) either—
 - (i) the contract is unconditional; or
 - (ii) if the contract is conditional, the conditions have been satisfied before that date; and
 - (c) no terms remain to be agreed on or after that date.
- (3) The conditions in this sub-paragraph are that—
- (a) a contract in writing for the lease of the asset has been made before 26th November 1996;
 - (b) the condition in paragraph (b) or (c) of sub-paragraph (2) above is not satisfied in the case of the contract;
 - (c) either the contract is unconditional or, if it is conditional, the conditions are satisfied before the end of the finalisation period or within such further period as the Commissioners of Inland Revenue may allow in the particular case;
 - (d) no terms remain to be agreed after the end of the finalisation period or such further period as the Commissioners of Inland Revenue may allow in the particular case; and
 - (e) the contract in its final form is not materially different from the contract as it stood when it was made as mentioned in paragraph (a) above.
- (4) In sub-paragraph (3) above, “the finalisation period” means the period which ends with the later of—
- (a) 31st January 1997;
 - (b) the expiration of the period of six months next following the day on which the contract was made as mentioned in sub-paragraph (3)(a) above.

Accounting purposes and normal accountancy practice

- 28 (1) In the application of any provisions of this Schedule which relate to accounting purposes or normal accountancy practice, it shall be assumed, if it is not the case, that the person who is at any time entitled to the lessor’s interest under the lease of the asset, and any person connected with that person, is a company incorporated in a part of the United Kingdom.
- (2) A person who is not in fact a body corporate shall not by virtue of sub-paragraph (1) above be treated as a member of a group of companies for any purpose of this Schedule.

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- (3) This Schedule shall have effect in relation to a person who, for accounting purposes, is not required to prepare accounts in accordance with normal accountancy practice as if he were required to do so.
- (4) Nothing in sub-paragraph (3) above applies in relation to consolidated group accounts.
- (5) This Schedule shall have effect in relation to a body corporate (wherever incorporated) which is a parent undertaking but which, for accounting purposes, is not required to prepare consolidated group accounts in accordance with normal accountancy practice as if the body corporate were required to do so.
- (6) In sub-paragraph (5) above “parent undertaking” shall be construed in accordance with—
 - (a) section 258 of the Companies Act 1985, or
 - (b) in Northern Ireland, Article 266 of the Companies (Northern Ireland) Order 1986.

Assessments and adjustments

- 29 All such assessments and adjustments shall be made as are necessary to give effect to the provisions of this Schedule.

Interpretation

- 30 (1) In this Schedule, unless the context otherwise requires—
- “accountancy rental earnings” has the meaning given by paragraph 21(1) above;
 - “accountancy rental excess” shall be construed—
 - (a) for the purposes of Part I of this Schedule, in accordance with paragraph 6 above; and
 - (b) for the purposes of Part II of this Schedule, in accordance with paragraph 6 above as it has effect by virtue of paragraph 17 above;
 - “accounting purposes” means the purposes of—
 - (a) accounts of companies incorporated in any part of the United Kingdom, or
 - (b) consolidated group accounts for groups all the members of which are companies incorporated in any part of the United Kingdom;
 - “asset” means any form of property or rights;
 - “asset representing the leased asset” shall be construed in accordance with paragraph 26 above;
 - “assignment”, in the application of this Schedule to Scotland, means assignation;
 - “consolidated group accounts” means group accounts which satisfy the requirements—
 - (a) of section 227 of the Companies Act 1985, or
 - (b) in Northern Ireland, of Article 235 of the Companies (Northern Ireland) Order 1986;
 - “cumulative accountancy rental excess” and “cumulative normal rental excess” shall be construed—

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- (a) for the purposes of Part I of this Schedule, in accordance with paragraph 6 above; and
 - (b) for the purposes of Part II of this Schedule, in accordance with paragraph 6 above as it has effect by virtue of paragraph 17 above;
- “the current lessor”, in the case of a lease of an asset, means the person who is for the time being entitled to the lessor’s interest under the lease;
- “existing scheme” shall be construed in accordance with paragraph 27(1)(a) above;
- “finance lessor” means a person who for accounting purposes is treated in accordance with normal accountancy practice as the person with—
- (i) the grantor’s interest in relation to a finance lease; or
 - (ii) the lender’s interest in relation to a loan;
- “group of companies” means a group as defined—
- (a) in section 262(1) of the Companies Act 1985, or
 - (b) in Northern Ireland, in Article 270(1) of the Companies (Northern Ireland) Order 1986,
- and “member”, in relation to a group of companies, means a company comprised in the group;
- “lease”—
- (a) in relation to land, includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined; and
 - (b) in relation to any form of property or right other than land, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset;
- and “rent” shall be construed accordingly;
- “the leasing arrangements”, in the case of a lease of an asset, means—
- (a) the lease of the asset,
 - (b) any arrangements relating to or connected with the lease of the asset, and
 - (c) any other arrangements of which the lease of the asset forms part,
- and includes a reference to any of the leasing arrangements;
- “the lessee”, in the case of a lease of an asset, means (except in the expression “the lessee’s interest under the lease”) the person entitled to the lessee’s interest under the lease;
- “the lessor”, in the case of a lease of an asset, means (except in the expression “the lessor’s interest under the lease”) the person entitled to the lessor’s interest under the lease;
- “major lump sum” shall be construed in accordance with paragraph 3(2) above;
- “new scheme” shall be construed in accordance with paragraph 27(1)(b) above;
- “normal rent” shall be construed in accordance with paragraph 20 above;
- “normal rental excess” shall be construed—
- (a) for the purposes of Part I of this Schedule, in accordance with paragraph 6 above; and

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- (b) for the purposes of Part II of this Schedule, in accordance with paragraph 6 above as it has effect by virtue of paragraph 17 above;
 - “period of account” means a period for which accounts are made up and, except for the purposes of paragraphs 2 to 4 and 23 above, means such a period which begins on or after 26th November 1996;
 - “related chargeable period” shall be construed in accordance with subparagraph (2) below;
 - “sum” includes any money or money’s worth (and “pay” and cognate expressions shall be construed accordingly);
 - “the rental earnings”, in relation to the lease of the asset and any period, has the meaning given by paragraph 22 above.
- (2) For the purposes of this Schedule a chargeable period is related to a period of account (and a period of account is related to a chargeable period) if—
- (a) the chargeable period is an accounting period which consists of or includes the whole or any part of the period of account; or
 - (b) the chargeable period is a year of assessment whose basis period for the purposes of Case I or Case II of Schedule D consists of or includes the whole or any part of the period of account.