



# Finance Act 2006

## 2006 CHAPTER 25

### PART 3

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 9

#### MISCELLANEOUS PROVISIONS

#### *Sale of lessors*

#### <sup>F1</sup>82 Sale etc of lessor companies etc

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#### Textual Amendments

<sup>F1</sup> S. 82 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), Sch. 1 para. 481, **Sch. 3 Pt. 1** (with Sch. 2)

#### 83 Restrictions on use of losses etc: leasing partnerships

<sup>F2</sup>(1) .....

<sup>F2</sup>(2) .....

(3) After section 261 of CAA 2001 (special leasing: life assurance business) insert—

#### “261A Special leasing: leasing partnerships

(1) This section applies for corporation tax purposes if—

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- (a) a company carries on a business in partnership with other persons in a chargeable period of the partnership,
  - (b) the business (“the leasing business”) is, on any day in that period, a business of leasing plant or machinery,
  - (c) the company is entitled to an allowance under section 19 (special leasing of plant or machinery) for any chargeable period comprised (wholly or partly) in the chargeable period of the partnership, and
  - (d) the interest of the company in the leasing business during the chargeable period of the partnership is not determined on an allowable basis.
- (2) Subsections (3) to (6) of section 260 do not apply in relation to the allowance.
- (3) For the purposes of this section—
- (a) “business of leasing plant or machinery” has the same meaning as in Part 3 of Schedule 10 to FA 2006 (sale etc of lessor companies etc), and
  - (b) section 785ZA of ICTA applies for determining whether the interest of the company in the leasing business during the chargeable period of the partnership is determined on an allowable basis.”.
- (4) The amendments made by this section have effect in relation to any business carried on by a company in partnership in any accounting period of the partnership ending on or after 5th December 2005.
- (5) But, in relation to any accounting period of the partnership beginning before 5th December 2005 and ending on or after that date, those amendments have effect only if—
- (a) the company starts to carry on the business in partnership on or after that date, or
  - (b) a relevant change in the interest of the company in the business occurs on or after that date.
- (6) A relevant change in the interest of the company in the business occurs at any time if—
- (a) immediately before that time its interest in the business during any accounting period of the partnership is determined on an allowable basis (within the meaning given by <sup>F3</sup>section 887 of the Corporation Tax Act 2010), and
  - (b) immediately after that time its interest in the business during that period is not so determined.

#### **Textual Amendments**

- F2** S. 83(1)(2) repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))
- F3** Words in s. 83(6)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 482** (with [Sch. 2](#))

## **84 Disposal of plant or machinery subject to lease where income retained**

- (1) CAA 2001 is amended as follows.

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- (2) In section 66 (list of provisions outside Chapter 5 of Part 2 about disposal values), after the entry relating to section 222 of CAA 2001, insert—

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“sections 228K to 228M	Disposal of plant or machinery subject to lease where income retained”.
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- (3) After section 228J (plant or machinery subject to further operating lease) insert—

*“Disposal of plant or machinery subject to lease where income retained*

**228K Disposal of plant or machinery subject to lease where income retained**

- (1) This section applies for corporation tax purposes if—
- (a) on any day (“the relevant day”) a person (“the lessor”) carries on a business of leasing plant or machinery (the “leasing business”),
  - (b) on the relevant day the lessor sells or otherwise disposes of any relevant plant or machinery subject to a lease to another person,
  - (c) the lessor remains entitled immediately after the disposal to some or all of the rentals under the lease in respect of the plant or machinery which are payable on or after the relevant day, and
  - (d) the lessor is required to bring a disposal value of the plant or machinery into account under this Part.
- (2) The disposal value to be brought into account is determined as follows.
- (3) If the amount or value of the consideration for the disposal exceeds the limit that would otherwise be imposed on the amount of the disposal value by section 62 (general limit) or 239 (limit on disposal value where additional VAT rebate)—
- (a) that limit is not to apply, and
  - (b) the whole of the amount or value of the consideration for the disposal is to be the disposal value to be brought into account.
- (4) In any other case, the disposal value to be brought into account is the sum of—
- (a) the amount or value of the consideration for the disposal, and
  - (b) the value of the rentals under the lease in respect of the plant or machinery (see subsections (7) and (8)) which are payable on or after the relevant day and to which the lessor remains entitled immediately after the disposal,
- but subject to the limit imposed on the amount of the disposal value by section 62 or 239.
- (5) If—
- (a) any of the rentals under the lease are receivable by the lessor on or after the relevant day, and
  - (b) the value of any of those rentals is represented in the amount of the disposal value under subsection (4)(b),

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the amount of those rentals that is equal to their value as so represented is left out of account in calculating the income of the lessor's leasing business for corporation tax purposes.

- (6) If, in determining under subsection (5) the amount of any rental to be so left out of account, it is necessary to apportion the amount of the rental, the apportionment is to be made on a just and reasonable basis.
- (7) For the purposes of this section, the value of any rentals under the lease in respect of the plant or machinery is taken to be the amount of the net present value of the rentals (see section 228L).
- (8) If any land or other asset which is not plant or machinery is subject to the lease, the value of any rentals under the lease in respect of the plant or machinery is taken to be so much of the amount of the net present value of the rentals as, on a just and reasonable basis, relates to the plant or machinery.
- (9) This section is supplemented by—
  - (a) section 228L (which provides rules for determining the net present value of the rentals), and
  - (b) section 228M (which defines other expressions used in this section).

**228L Determining the net present value of the rentals for purposes of s.228K**

- (1) For the purposes of section 228K, the amount of the net present value of the rentals is calculated as follows—

*Step 1*

Find the amount (“RI”) of each rental payment—

- (a) which is payable at any time during the term of the lease, and
- (b) which is payable on or after the relevant day.

*Step 2*

For each rental payment find the day (“the payment day”) on which it becomes payable.

*Step 3*

For each rental payment find the number of days in the period (“P”) which—

- (a) begins with the relevant day, and
- (b) ends with the payment day.

*Step 4*

Calculate the net present value of each payment (“NPVRI”) by applying the following formula—

$$\frac{RI}{(1 + T)^i}$$

where—

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T is the temporal discount rate, and  
i is the number of days in P divided by 365.

*Step 5*

Add together each amount of NPVRI determined under step 4.

- (2) For the purposes of this section the “term” of a lease has the meaning given in Chapter 6A of this Part.
- (3) For the purposes of this section the “temporal discount rate” is 3.5% or such other rate as may be specified by regulations made by the Treasury.
- (4) The regulations may make such provision as is mentioned in subsection (3) (b) to (f) of section 178 of FA 1989 (power of Treasury to set rates of interest).
- (5) Subsection (5) of that section (power of Commissioners to specify rate by order in certain circumstances) applies in relation to regulations under this section as it applies in relation to regulations under that section.

**228M Other definitions for the purposes of s.228K**

- (1) This section applies for the purposes of section 228K.
- (2) “Business of leasing plant or machinery”—
  - (a) has the same meaning as in Part 2 of Schedule 10 to FA 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), or
  - (b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership).
- (3) “Lease” includes—
  - (a) an underlease, sublease, tenancy or licence, and
  - (b) an agreement for any of those things.
- (4) “Relevant plant or machinery”, in relation to a business of leasing plant or machinery, means plant or machinery on whose provision expenditure is incurred wholly or partly for the purposes of the business.”.

<sup>F4</sup>(4) .....

- (5) The amendments made by this section have effect in relation to any disposal made on or after 5th December 2005.
- (6) But any rentals that are receivable by the lessor before 22nd March 2006 are to be left out of account in calculating the income of the lessor's leasing business for corporation tax purposes.

**Textual Amendments**

**F4** S. 84(4) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), s. 126(6)(c)

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## **85 Restrictions on effect of elections under section 266 of CAA 2001**

- (1) CAA 2001 is amended as follows.
- (2) In section 266 (election where predecessor and successor are connected persons), in subsection (7) (sections 104, 108 and 265 not to apply if election is made), at the end insert “ (but see section 267A) ”.
- (3) In section 267 (effect of election), at the end insert—
  - “(6) This section is subject to section 267A.”.
- (4) After that section insert—

### **“267A Restriction on effect of election**

- (1) This section applies for corporation tax purposes if—
  - (a) on any day (“the relevant day”) a person (“the predecessor”) carries on a business of leasing plant or machinery,
  - (b) on the relevant day another person (“the successor”) succeeds to the business, and
  - (c) the predecessor and the successor make an election under section 266.
- (2) Neither—
  - (a) section 266(7), nor
  - (b) the provisions of section 267,
 have effect in relation to any plant or machinery which, in determining whether the business is a business of leasing plant or machinery on the relevant day, is qualifying leased plant or machinery.
- (3) In this section “business of leasing plant or machinery”—
  - (a) has the same meaning as in Part 2 of Schedule 10 to FA 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), or
  - (b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership).”.
- (5) The amendments made by this section have effect in relation to any succession occurring on or after 5th December 2005.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2006, Cross Heading: Sale of lessors.