

# FINANCE ACT 2009

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## EXPLANATORY NOTES

### INTRODUCTION

#### *Section 30 and Schedule 11: Tax Relief for Business Expenditure on Cars and Motor Cycles*

#### Details of the Schedule

#### **Part 2 - Restrictions on Deductions for Hire Expenses**

40. The following paragraphs make a number of amendments to the Income Tax (Trading and Other Income) Act 2005 (ITTOIA), Corporation Taxes Act 2009 (CTA) and Income and Corporation Taxes Act 1988 (ICTA).
41. Paragraph 35 amends section 31(1)(b) to reflect the fact that motor cycles are no longer to be treated as cars.
42. Paragraph 36 makes amendments to section 48 of ITTOIA which restricts the deductions from profits that may be made in respect of the costs of hiring certain cars.
43. Paragraph 36(2) deletes “or motor cycle” where it first occurs in section 48(1) of ITTOIA, so that motor cycle hire expenses are no longer restricted. It replaces sub-paragraphs (2)(a) and (2)(b) with new sub-paragraphs (2)(a), (b), (c) and (d) which describe the different types of cars to which the restriction does not apply under the new rules.
44. Sub-paragraphs (3) and (4) amend sections 48(2) and (4) of ITTOIA by deleting the existing formula used to calculate the reduction that is applied to the deduction for rental costs of leased cars that cost more than £12,000 when new, and replacing it with a flat rate 15 per cent reduction, that will apply in respect of cars that emit more than 160 grams of CO<sub>2</sub> per kilometre driven.
45. Sub-paragraph (6) deletes section 48(5) of ITTOIA (which gives the Treasury a power to amend by Order the calculation at section 48(3) of ITTOIA); this is no longer required as the old calculation has been replaced with a flat rate reduction.
46. Paragraph 37 makes various amendments to section 49 of ITTOIA, which defines the terms used in section 48, and inserts an additional definition.
47. Sub-paragraph (2)(c) inserts a new sub-paragraph 49(1)(za) before section 49(1)(a) of ITTOIA. This provides that a motor cycle, as defined by section 185(1) of the Road Traffic Act 1988, is not a car for the purposes of section 48 of ITTOIA. The effect of this is that expenses incurred on hiring a motor cycle do not fall within section 48.
48. Sub-paragraph (5) amends section 49(6) of ITTOIA which defines the word “new”, by deleting the words “and section 48”. This is because section 48, as amended, no longer uses the word “new”.

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49. Paragraph 38 deletes section 50 (hiring cars with low carbon dioxide emissions) of ITTOIA. That section provides that cars with low CO<sub>2</sub> emissions are not subject to the lease rental restriction, but it is now incorporated into section 48(1) of ITTOIA.
50. Paragraph 39 inserts new section 50A into ITTOIA and new section 50B ITTOIA.
51. New section 50A provides that there is no restriction of allowable car hire expenses under section 48 of ITTOIA if the taxpayer meets one of two conditions, A or B
52. New section 50A(2) explains that condition A is met when the car is made available to the taxpayer for a period of 45 consecutive days or less. Hire periods of the same car may be aggregated for the purposes of determining the number of consecutive days.
53. New section 50A(3) explains that condition B is met when the taxpayer makes the car available to another person for more than 45 consecutive days. Hire periods of the same car may be aggregated for the purposes of determining the number of consecutive days.
54. New section 50A(4) provides that condition B is not met when the car is being provided to an employee of the taxpayer or of a person connected with the taxpayer.
55. New section 50A(5) is an anti-avoidance provision.
56. New section 50A(6) provides that where condition B is met for only part of a chargeable period, the taxpayer, when bringing the expenses to account, must apportion them between the parts of that period where the conditions are and are not met according to the respective lengths of those parts of the period.
57. New section 50A(7) provides that periods of consecutive days are amalgamated if the intervening period between them is not more than 14 days.
58. New section 50B provides that where two or more connected persons in a chain of leases would otherwise be required to apply the restriction to expenditure incurred on the hiring of the same car for the same period the restriction will apply to the superior lease in the chain provided it is on arm's length terms.
59. New section 50B(1) provides that section 50B applies to connected persons who incur expenses on the hiring of the same car for the same period who but for section 50B (or section 58B of CTA 2009) would have to apply a reduction to the expenses of car hire.
60. New section 50B(2) provides that this section does not apply if none of the persons in subsection (1) hire the car on commercial terms.
61. New section 50B(3) provides that where, but for this section, the reduction would apply to more than one connected person in respect of expenses incurred on the hiring of the same car for the same period, then the reduction will only apply once, and sets out how the reduction is to be applied.
62. New section 50B(4) provides that the reduction applies to all expenses incurred on the hiring of the same car by the same person; and "commercial arrangements" are such as would reasonably have been expected if the parties to the arrangements had been dealing at arm's length.

### **Corporation Tax**

63. Paragraph 47 makes various amendments to section 56 of CTA 2009 (rules restricting deductions from profits: car or motor cycle hire) to mirror the amendments made to section 48 of ITTOIA detailed in paragraphs 42-45 of this note. Under the current rules there is a restriction in the amount of the expenditure incurred, in the hire of cars that cost over £12,000 when new, that a person can claim against their taxable profits. This system is to be replaced with a system based on the carbon dioxide (CO<sub>2</sub>) emissions of cars, which applies a 15 per cent disallowance on expenses incurred on the hire/ lease of cars that emit more than 160 grams of CO<sub>2</sub> per kilometre driven.

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64. Paragraph 48 makes various amendments to section 57 of CTA (car or motor cycle hire: supplementary). It also provides a number of supplementary definitions to section 57 CTA. These amendments mirror the amendments made to section 49 of ITTOIA by paragraph 37 as detailed in paragraphs 46-48 of this note.
65. Sub-paragraph (2)(c) inserts a new subparagraph 57(1)(za) before section 57(1)(a), making clear that a motor cycle, as defined by section 185(1) of the Road Traffic Act 1988, is excluded from the 15 per cent leasing reduction.
66. Paragraph 49 deletes section 58 (hiring cars with low CO2 emissions before 1 April 2013) of CTA. That section provides that cars with low CO2 emissions are not subject to the lease rental restriction, but is now no longer required as it has been incorporated into section 48(1) of CTA.
67. Paragraph 50 adds new sections 58A and 58B into CTA. The effect of sections 58A and 58B is to insert the same rules that are introduced in sections 50A and 50B of ITTOIA by paragraph 39 above into CTA. The purpose of section 58A is to provide that the restriction in section 56 does not apply to persons who enter into short term hire (for not more than 45 consecutive days) agreements, or to businesses that provide cars on longer term (more than 45 consecutive days) hire. Section 58B ensures that the restriction of allowable car hire expenses imposed by section 56 does not apply to more than one lessee in a chain of leases.
68. Paragraph 57 makes various amendments to section 1251 of CTA (car or motor cycle hire: companies with investment business). The effect of these amendments is that the rules for restricting the car hire expenses that may be deducted by companies with investment business mirror those for other companies in sections 56 to 58B of CTA.
69. Paragraphs 60 and 61 amends sections 76ZN and 76ZO of ICTA so that the rules restricting the car hire expenses that may be deducted by insurance companies are the same as those for other companies, as detailed in paragraphs 63 to 67 of this note.
70. Paragraphs 62 and 63 amend the rules restricting deductions for car hire expenses in sections 578A and 578B of ICTA to mirror those in sections 56 to 58B of CTA.

### **Consequential repeals**

71. Paragraph 64 sets out consequential amendments to FA 2008 and CTA 2009

### **Commencement**

72. Paragraphs 65 and 66 set out the dates and events from which the new legislation takes effect by reference to relevant dates.
73. Sub-paragraph(1) of paragraph 66 provides that the new rules apply to deductions for expenditure incurred on the hiring of a car or motor cycle under an agreement under which the hire period begins on or after the first relevant date (but see paragraph 67). The first relevant date is 1 April 2009 (for corporation tax) or 6 April 2009 (for income tax).
74. Sub-paragraph (2) provides that for the purposes of this paragraph and paragraph 67, the hire period, in relation to an agreement, begins on the first day on which the car or motor cycle is required to be made available for use under the agreement.

### **Election for new regime not to apply in certain cases**

75. Paragraph 67 provides for an election for the new regime not to apply in certain cases. Where a person entered into an agreement before 8 December 2008 for the hire of a car or motor cycle, but the hire period did not begin until after 1 or 6 April 2009, then the person may elect that the old rules restricting the deduction for the hire expenses under the contract will apply rather than the new. The hire period must, however, begin

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before 1 or 6 April 2010 for the election to apply. Sub-paragraphs (3) to (6) describe the procedure for the election.