



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 20

#### TAX AVOIDANCE INVOLVING LEASING PLANT OR MACHINERY

### CHAPTER 1

#### RESTRICTIONS ON USE OF LOSSES IN LEASING PARTNERSHIPS

#### **887** When restrictions on leasing partnership losses under this Chapter apply

- (1) The restrictions in section 888 (restrictions on leasing partnership losses) apply if—
  - (a) a company carries on a business in respect of which the company is within the charge to corporation tax,
  - (b) the company carries on the business in partnership with other persons in an accounting period of the partnership,
  - (c) the business (“the leasing business”) is, on any day in that period, a business of leasing plant or machinery,
  - (d) the company incurs a loss in its notional business in any accounting period of the company comprised (wholly or partly) in the accounting period of the partnership, and
  - (e) the interest of the company in the leasing business during the accounting period of the partnership is not determined on an allowable basis (see subsections (2) to (4)).
- (2) The interest of the company in the leasing business during the accounting period of the partnership is determined on an allowable basis if (and only if) the condition in subsection (3) is met.
- (3) The condition is that for the purposes of sections 1262 to 1264 of CTA 2009 (allocation of firm's profits between partners)—
  - (a) the company's share in the profits or loss of the leasing business for that period is determined wholly by reference to a single percentage, and

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- (b) the company's share in any relevant capital allowances for that period is determined wholly by reference to the same percentage.
- (4) For the purposes of subsection (3) “profits” does not include chargeable gains.
- (5) In this section “business of leasing plant or machinery” has the same meaning as in Chapter 4 of Part 9 (sales of lessors: leasing business carried on by a company in partnership) (see sections 410 to 414).
- (6) For the meaning of other expressions used in this section or section 888, see section 889.

### **888 Restrictions on leasing partnership losses**

- (1) The restrictions in subsections (2) to (4) apply in respect of so much of the loss incurred by the company in its notional business as derives from any relevant capital allowances (“the restricted part of the loss”).
- (2) Relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss, except by way of set off against any relevant leasing income.
- (3) If the leasing business is a trade, relief is not to be given to the company under section 37 [<sup>F1</sup>or 45A] (relief for trade losses against total profits) in respect of the restricted part of the loss.
- (4) The restricted part of the loss is not available for set off [<sup>F2</sup>—
  - (a) by way of group relief in accordance with Chapter 2 of Part 5 (surrender of company's losses etc for an accounting period)]<sup>F3</sup>, or
  - (b) by way of group relief for carried-forward losses in accordance with Chapter 2 of Part 5A (surrender of company's carried-forward losses etc.)]
- (5) For the purpose of determining how much of a loss derives from any relevant capital allowances, the loss is to be calculated on the basis that any relevant capital allowances are the final amounts to be deducted.
- (6) In this section—
  - “the leasing business” has the same meaning as in section 887,
  - “relevant leasing income” means any income of the company's notional business deriving from any lease which—
    - (a) is a lease of plant or machinery, and
    - (b) was entered into before the end of the accounting period of the company in which the loss in the notional business was incurred, and
  - “relevant loss relief provision” means—
    - (a) section 45 (carry forward of [<sup>F4</sup>pre-1 April 2017] trade loss against subsequent trade profits),
    - (b) [<sup>F5</sup>section 45B (carry forward of post-1 April 2017 trade loss against subsequent trade profits),]
    - (c) section 62 (relief for losses made in UK property business),
    - (d) section 63 (company with investment business ceasing to carry on UK property business),
    - (e) section 66 (relief for losses made in overseas property business), and
    - (f) section 91 (relief for losses from miscellaneous transactions).

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### Textual Amendments

- F1** Words in s. 888(3) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 173\(2\)](#)
- F2** Word in s. 888(4) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 173\(3\)\(a\)](#)
- F3** S. 888(4)(b) and word inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 173\(3\)\(b\)](#)
- F4** Words in s. 888(6) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 173\(4\)\(a\)](#)
- F5** Words in s. 888(6) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 173\(4\)\(b\)](#)

## 889 Interpretation of Chapter

(1) In this Chapter—

“lease” includes an underlease, sublease, tenancy or licence and an agreement for any of those things,

“notional business”, in relation to a company, means the business the profits or losses of which are determined, in relation to the company, under section 1259 of CTA 2009 (calculation of firm's profits and losses),

“plant or machinery” has the same meaning as in Part 2 of CAA 2001, and

“relevant capital allowance” means an allowance under that Part in respect of expenditure incurred on the provision of plant or machinery wholly or partly for the purposes of the leasing business.

(2) In this section “the leasing business” has the same meaning as in section 887.

## CHAPTER 2

### CAPITAL PAYMENTS IN RESPECT OF LEASES TREATED AS INCOME

## 890 Capital payments in respect of leases treated as income

(1) This section applies if—

- (a) there is an unconditional obligation, under a lease of plant or machinery or a relevant arrangement, to make a relevant capital payment at any time, or
- (b) a relevant capital payment is made under such a lease or arrangement otherwise than in pursuance of such an obligation.

(2) The lessor is treated for corporation tax purposes as receiving income attributable to the lease of an amount equal to the amount of the capital payment.

(3) If subsection (1)(a) applies, the income is treated as income for the period of account in which there is first an obligation of the kind mentioned there.

(4) If subsection (1)(b) applies, the income is treated as income for the period of account in which the capital payment is made.

(5) For the meaning of “capital payment” and “relevant capital payment”, see section 893.

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(6) For the meaning of other expressions used in this Chapter, see section 894.

### **891 Apportionments for leases of plant or machinery and other property**

- (1) This section applies if section 890 applies in relation to a lease of plant or machinery and other property (see section 894(3)).
- (2) The relevant capital payment is to be apportioned, on a just and reasonable basis, between—
  - (a) the plant or machinery, and
  - (b) the other property.
- (3) If any income attributable to any of the plant or machinery and received by the lessor would be chargeable to tax under Chapter 3 of Part 4 of CTA 2009 as profits of a UK property business, that plant or machinery is treated as falling within subsection (2) (b) (and not subsection (2)(a)).
- (4) Section 890(2) has effect as if the reference to the amount of the capital payment were to such amount as is apportioned under subsection (2) in respect of the plant or machinery within subsection (2)(a).

### **892 Deduction where failure to make relevant capital payment expected**

- (1) This section applies for corporation tax purposes if—
  - (a) section 890 applies as a result of subsection (1)(a) of that section, and
  - (b) at any time the lessor reasonably expects that the relevant capital payment will not be paid or will not be paid in full.
- (2) For the purposes of calculating the profits of the lessor, a deduction is allowed for the period of account which includes that time.
- (3) The amount of the deduction is equal to the amount reasonably expected not to be paid.
- (4) No other deduction is allowed in respect of the matters mentioned in subsection (1)(b).

### **893 Meaning of “capital payment”, “relevant capital payment” etc**

- (1) This section gives the meaning of “capital payment”, “relevant capital payment” and references to payment for the purposes of this Chapter.
- (2) “Capital payment” means any payment except one which, if made to the lessor—
  - (a) would fall to be included in a calculation of the lessor's income for corporation tax purposes, or
  - (b) would so fall but for section 360 (lessor under long funding finance lease: rental earnings).
- (3) A capital payment, in relation to a lease or relevant arrangement, is “relevant” if condition A or B is met (but this is subject to subsections (6) and (7)).
- (4) Condition A is that the capital payment is payable (or paid), directly or indirectly, by or on behalf of the lessee to the lessor or another person on the lessor's behalf in connection with—
  - (a) the grant, assignment, novation or termination of the lease, or

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- (b) any provision of the lease or relevant arrangement (including the variation or waiver of any such provision).
- (5) Condition B is that rentals payable under the lease are less than, or payable later than, they might reasonably be expected to be if there were no obligation to make the capital payment and it were not made.
- (6) A capital payment is not “relevant” so far as it—
- (a) reduces the amount of expenditure incurred by the lessor for the purposes of CAA 2001 in respect of the plant or machinery in question or would reduce it but for section 536 of CAA 2001 (contributions not made by public bodies and not eligible for tax relief), or
  - (b) is compensation for loss resulting from damage to, or damage caused by, the plant or machinery in question.
- (7) If—
- (a) a capital payment is an initial payment under a long funding lease for the purposes of Part 2 of CAA 2001 (see section 70YI of that Act), and
  - (b) under section 61 of that Act (disposal events and disposal values) the commencement of the term of the lease (as defined in section 70YI of that Act) is an event that requires the lessor to bring a disposal value into account,
- the capital payment is only “relevant” so far as it exceeds the amount that is the disposal value for the purposes of Part 2 of that Act.
- (8) References to payment include the provision of value by any means other than the making of a payment.
- (9) Accordingly—
- (a) references to the making of a payment include the passing of value by any other means, and
  - (b) references to the amount of the payment include the value passed.

## **894 Other interpretation of Chapter**

- (1) This section applies for the purposes of this Chapter.
- (2) “Lease” includes—
- (a) a licence, and
  - (b) the letting of a ship or aircraft on charter or the letting of any other asset on hire,
- and “lessor” and “lessee” must be read accordingly.
- (3) “Lease of plant or machinery” includes a lease of plant or machinery and other property, but does not include a lease to which subsection (4) or (5) applies.
- (4) This subsection applies to a lease if any income attributable to it and received by the lessor would be chargeable to tax under Chapter 3 of Part 4 of CTA 2009 as profits of a UK property business.
- (5) This subsection applies to a lease of plant or machinery if the lessor has incurred on the plant or machinery what would be qualifying expenditure within the meaning of Part 2 of CAA 2001 but for section 34A of that Act (expenditure on plant or machinery for long funding leasing not qualifying expenditure).

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- (6) “Relevant arrangement” means any agreement or arrangement relating to a lease of plant or machinery, including one made before the lease is entered into or after it has ended.
- (7) Accordingly, “lessor” and “lessee” include prospective and former lessors and lessees.

## [<sup>F6</sup>CHAPTER 3

### CONSIDERATION FOR TAKING OVER PAYMENT OBLIGATIONS AS LESSEE TREATED AS INCOME

#### Textual Amendments

**F6** Pt. 20 Ch. 3 inserted (with application in accordance with s. 68(3) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 68\(1\)](#)

#### **894A Consideration for taking over payment obligations as lessee treated as income**

- (1) This section applies where under any arrangements—
- (a) a company chargeable to corporation tax (C) agrees to take over obligations of another person (D) as lessee under a lease of plant or machinery,
  - (b) as a result of that agreement C, or a person connected with C, becomes entitled to income deductions (whether deductions in calculating income or from total profits), and
  - (c) a payment is payable to C, or a person connected with C, by way of consideration for that agreement.
- (2) The payment is treated for the purposes of corporation tax as income received by C in the period of account in which C takes over the obligations mentioned in subsection (1) (a).
- (3) Subsection (2) does not apply if and to the extent that the payment is (apart from this section)—
- (a) charged to tax on C, or a person connected with C, as an amount of income,
  - (b) brought into account in calculating for tax purposes any income of C or a person connected with C, or
  - (c) brought into account for the purposes of any provision of CAA 2001 as a disposal receipt, or proceeds from a balancing event or disposal event, of C or a person connected with C.
- (4) It does not matter how C takes over the obligations of D (whether by assignment, novation, variation or replacement of the contract, by operation of law or otherwise).
- (5) In this section—
- “arrangements” include any scheme, arrangement, understanding, transaction or series of transactions (whether or not legally enforceable);
- “lease of plant or machinery” means any kind of agreement or arrangement under which sums are paid for the use of, or otherwise in respect of, plant or machinery;
- “payment” includes the provision of any benefit, the assumption of any liability or the transfer of money or money's worth (and “payable” is to be construed accordingly);

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“payment by way of consideration” means any payment made, directly or indirectly, in consequence of or otherwise in connection with, the agreement mentioned in subsection (1)(a), where it is reasonable to assume the agreement would not have been made unless the arrangements included provision for the payment.

- (6) Any priority rule (other than section 212(1) of FA 2013 (general anti-abuse rule to have priority over other rules)) has effect subject to this section, despite the terms of the priority rule.
- (7) For that purpose “priority rule” is a rule (however expressed) to the effect that particular provisions have effect to the exclusion of, or otherwise in priority to, anything else.
- (8) Examples of priority rules are section 464 of CTA 2009 (priority of loan relationships rules) and section 6(1) of TIOPA 2010 (effect to be given to double taxation arrangements despite anything in any enactment).]

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