

BIM47700 - Specific deductions: travel & subsistence: contents

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For detailed guidance on wholly and exclusively rules for travel costs see [BIM37600](#) onwards.

BIM47715 - Specific deductions: travel & subsistence: cars: leases entered into before 1/6 April 2009: restrictions of hiring costs

ICTA88/S578A and ICTA88/S578B

The Capital Allowances legislation restricts the writing down allowances for cars costing more than £12,000, see CA23500 onwards.

ICTA88/S578A imposes a similar restriction on the allowable expenditure for hiring a car whose retail price when new is more than £12,000 - see [BIM47717](#) for the meaning of 'retail price when new'.

ICTA88/S578A restricts the amount deductible:

- in computing the profits chargeable under Case I or II of Schedule D; or
- as an expense of management of an investment company; or
- as a deduction from earnings chargeable as employment income.

In these cases, the amount of the 'rent' for which relief is given is restricted. The amount of the restriction is explained in BIM47717.

What types of vehicle are affected?

The rule applies to the hire of 'mechanically propelled road vehicles'. ICTA88/S578B (1) confirms that this includes motorcycles.

The rule does not apply to:

- A vehicle primarily suited for carrying goods (ICTA88/S578B (1) (a)).
- A vehicle of a type not commonly used as a private vehicle and unsuitable for such use (ICTA88/S578B (1) (b)). Guidance on what is a 'vehicle of a type not commonly used as a private vehicle and unsuitable for such use' is at CA23510.
- A qualifying hire car as defined at CAA01/S82 (ICTA88/S578B (2) (b)). Guidance on what is a qualifying hire car is at [CA23510](#).
- An electrically powered car (ICTA88/S578B (2A) (a)). The definition of an electrically powered vehicle is in CAA01/S45D (9). The rule does, however, apply to electrically powered motorcycles.
- A car with low carbon dioxide emissions (ICTA88/S578B (2A) (b)). The definition of a car with low carbon dioxide emissions is in CAA01/S45D. The rule does, however, apply to low emission motorcycles. For guidance on this point see [CA23153](#).
- Payments under a hire purchase agreement where ownership passes automatically at the end of the contract.
- Payments under a hire purchase agreement (within the meaning of ICTA88/S784 (6)) where there is a purchase option and the price payable under that purchase option is not more than one per cent (1%) of the retail price when new (ICTA88/S578B (2)(a)).

Intangible assets regime

If a company incurs car hire costs after 31 March 2002, it is possible that the expenditure may fall within the intangible assets regime, see [BIM35500](#) onwards. The provisions of ICTA88/S578A are applied to payments falling the intangible assets regime by FA02/SCH29/PARA112 (2) (c).

BIM47717 - Specific deductions: travel & subsistence: cars: leases entered into before 1/6 April 2009: restrictions of hiring costs: calculation

The restriction

The allowable element of the rent for the car is restricted to:

$\text{Expenditure} \times (\text{£}12,000 + P) / 2P$ - where P is the retail price of the car when new.

The expenditure can be wider than just the actual rent. It includes any element of unrelievable VAT.

In *Britax International GmbH v CIR* [2002], Parker LJ said at paragraph 72:

"I also bear in mind that the concept of 'expenditure' is wide enough to include payments which may not strictly be regarded as rentals."

Example

Company E rents a car. The car has a retail price when new of £20,000 and the company pays a rent of £5,000 a year. The company recognises that they have to restrict the amount of relief claimed. The allowable rent is limited to:

$\text{£}5,000 \times (\text{£}12,000 + \text{£}20,000) / (2 \times \text{£}20,000) = \text{£}5,000 \times \text{£}32,000 / \text{£}40,000 = \text{£}4,000.$

The company has to restrict their claim by £1000 to £4,000.

What is the retail price when new?

New cars are 'unused and not second hand' (ICTA88/S578B (3)). A car can be accepted as unused and not second hand even if it has been driven a limited number of miles for the purposes of testing, delivery, test driven by a potential purchaser, or used as a demonstration car.

Following discussions with the British Vehicle and Rental Leasing Association, HMRC takes the view that where the lessee knows the actual price paid by the lessor for the car when new; this can be used as the retail price when new.

If the lessee does not know the price paid by the lessor then they should use the manufacturer's list of suggested retail prices net of any discount available generally, that is not just available to a particular group of customers or chain.

In either case, the price to be used is inclusive of extras, delivery and VAT.

This interpretation only applies to this rule. It does not affect other tax provisions on cars, including the benefit charges for employees, which use different definitions for the price of the car.

Maintenance agreements

If the rental agreement separately identifies charges for costs such as maintenance in the lease agreement, then these costs should be excluded. The restriction is only applied to the rental payment.

If there is an all-inclusive rental payment, which includes costs such as maintenance, then the whole of the payment is included as 'expenditure' when calculating the restriction.

Hire/lease purchase

If the car is held under a hire/lease purchase agreement where:

- ownership does not pass automatically at the end of the contract; and
- there is no purchase option or the price payable under a purchase option is more than one per cent (1%) of the retail price when new,

the restriction is applied to the allowable expense computed in accordance with the guidance at [BIM45350](#) onwards.

The restriction applies to the total amount for which relief is claimed, that is both the finance charge element and the 'depreciation'.

Rebates and reductions in rent

It is possible that after the amount of the rent allowable as a deduction has been restricted, a part of the rent is rebated or the amount of rent due is reduced.

In this situation the amount of the rebate or reduction in rent which is taxable is reduced by the same proportion as the rent was reduced.

Example

At the end of the lease, Company E in the example above received a rebate of £2,000. The allowable fraction of the rent was:

$$(\text{£}12,000 + \text{£}20,000) / (2 \times \text{£}20,000) = 4/5.$$

Only 4/5 of the rebate (that is $4/5 \times \text{£}2,000 = \text{£}1,600$) is taxable.

BIM47720 - Specific deductions: travel & subsistence: cars: leases entered into before 1/6 April 2009: restrictions of hiring costs: intermediate lessors

An 'intermediate lessor' is someone who hires out an asset that they themselves are hiring from third party.

The restriction on the allowable expenditure on hiring a car applies to an 'intermediate lessor'.

Example

- Company A is a small shipping company. Company A rents a car, with a retail price when new of £25,000, from Company B.
- Company B has a trade of hiring cars. Company B does not own the car it lets to Company A, instead Company B leases the car from Company C. Company B is an 'intermediate lessor'.
- Company A is hiring a car with a retail price when new over £12,000. Company A has to restrict the amount of the rent for which it claims relief.
- Although Company B is leasing the car to Company A, Company B is itself hiring the car from Company C. The car has a retail price when new over £12,000, so Company B also has to restrict the amount of the rent for which it claims relief.
- Although Company B cannot claim relief for the whole of the rent that it pays to Company C, the whole of the rent it receives from Company A is taken into account in computing Company B's profits.

This long standing HMRC interpretation has been confirmed in the Court of Appeal in the case of *Britax International GmbH v CIR* [2002]. Parker LJ said at paragraph 72:

"... if Parliament had intended to exclude intermediate hirings from the operation of section 35(2) there is no reason why it could not have done so expressly. Secondly, the fact that section 35(2) applies to hire-purchase agreements (subject only to an express exception for hire-purchase agreements where the option price is less than 1 per cent of the retail price) suggests to me that the word 'hiring' was not intended to be given a restricted meaning but was intended to extend to arrangements entered into for the purposes of obtaining finance. Thirdly, as the vice-chancellor pointed out (as his fourth reason, in paragraph 31 of his judgement) section 36(1)(c) expressly excepts from the operation of section 35(2) certain categories of short-term sub-hire to members of the public. This strongly suggests to me that Parliament intended section 35(2) to apply to long-term, intermediate, hirings. I also bear in mind that the concept of 'expenditure' is wide enough to include payments which may not strictly be regarded as rentals."

The judgement refers to legislation at CAA90/S35 (2) which is now included at ICTA88/S578A.

BIM47725 - Specific deductions: travel & subsistence: cars: restriction of hiring costs: leases entered into on or after 1/6 April 2009

Rules based on carbon dioxide emissions

ITTOIA 2005/ S48 and S49: CTA 2009/ S56, S 57and 1251: ICTA 1988/ S76ZN

The capital allowances legislation restricts the writing down allowances for expenditure on cars with carbon dioxide (CO₂) emissions over 160g/km that were purchased on or after 1 April 2009 (for corporation tax purposes) or on or after 6 April 2009 (for income tax purposes), see [CA23540](#) onwards

ITTOIA 2005/S48, CTA 2009/ S56 and 1251 and ICTA 1988/S76ZN impose a similar restriction on the allowable expenditure for hiring certain cars with CO₂ emissions over 160g/km for leases entered into on or after 1/6 April 2009.

The new rules are intended to provide that the restriction will;

- be a flat rate disallowances of 15 per cent of the amount of deduction that would otherwise be allowed [BIM 47740](#)
- apply to only one lease in a chain of leases (in most cases this will be the last business user) [BIM 47750](#)
- apply to all types of cars including those exempt from the restriction under the old rules [BIM 47730](#)

Commencement of lease

For the purposes of computing the restriction a lease is regarded as entered into at the date of commencement, that is the date on and after which the lessee is entitled to exercise his right to use the complete leased asset (the car) under the lease.

ITTOIA 2009/S48 and CTA 2009 /S56 restrict the amount deductible:

- in computing the profits of trade, profession or vocation; or
- as an expense of management of an investment company

In these cases, the amount of the "rent" for which relief is given is restricted. The amount of the restriction is explained in [BIM 47740](#).

BIM47730 - Specific deductions: travel & subsistence: cars: restriction of hiring costs: leases entered into on or after 1/6 April 2009: scope

What types of cars are affected?

The restriction applies to expenditure on the hire of a car, which is not exempt from the restriction. In effect this generally means it applies to cars with CO2 emissions over 160g/km (the threshold for special rate pool expenditure in the capital allowances regime).

Meaning of Car (ITTOIA 2005/S49 & CTA 2009/S57)

For the purposes of the restriction a car means a mechanically propelled road vehicle

- other than one primarily suited for the carrying of goods or
- of a type not commonly used as a private vehicle and unsuitable for such use.

Guidance on what is a vehicle of a type not commonly used as a private vehicle and unsuitable for such use is found at [CA23510](#)

Cars whose hire expenses are not restricted (ITTOIA 2005 / S48 & CTA 2009/S56)

The restriction rules do not apply to expenditure on the hiring of a car which is -

- a. a car that is first registered before 1 March 2001,
- b. a car that has low CO2 emissions, (the definition of a car with low carbon dioxide emissions is found at CAA 2001 /S104AA)
- c. a car that is electrically propelled (electrically propelled has the meaning given in CAA 2001/ S268B), or
- d. a qualifying hire car (this means a car which is hired under a hire purchase agreement within either ITTOIA/ S49(2) or CTA2009 / S57 (2)). [CA23515](#)

The restriction rules generally do not apply to expenditure on the hire of a car, which is either-

- e. hired in on short term – see [BIM47750](#)
- f. hired out on long term – see [BIM47750](#)

BIM47735 - Specific deductions: travel & subsistence: cars: restriction of hiring costs: leases entered into on or after 1/6 April 2009: replacement cars, long funding leases, motor cycles

Replacement cars

ITTOIA 2005/ S50A (8) and CTA 2009 / S 58A (8)

Where arrangements for hiring a car include arrangements for the provision of a replacement car in the event the first car is not available, the first car and any replacement car are treated as if they were the same car.

Leases under a long funding lease

ITTOIA 2005/ S 49 (1A) (4) (d) and CTA 2009/ S57 (1A) (4) (d)

Long funding leases (LFL) are defined at S70G CAA 2001. The lessee, not the lessor, is entitled to claim capital allowances on plant and machinery, including cars, subject too a LFL. Because the lessee under a LFL is entitled to claim capital allowances, the LFL rules restrict the amount of rentals for which they may receive a deduction. To prevent a potential double disallowance the restriction on the deductions for expenditure incurred on the hire of cars (under ITTOIA 2005 /S 48 and CTA 2009/ S56) does not apply where the lease is a long funding lease as defined in section 70G CAA2001

Motor cycles

For vehicles hired on or after 1/6 April 2009 the restriction does not apply to expenditure on motorcycles regardless of their CO2 emissions. Motorcycle means a vehicle within the meaning of section 185 (1) of the Road Traffic Act 1988.

Intangible assets regime

If a company incurs car hire costs after 31 March 2002, it is possible that the expenditure may fall within the intangible assets regime, see [BIM 355000](#) onwards.

BIM47740 - Specific deductions: travel & subsistence: cars: restriction of hiring costs: leases entered into on or after 1/6 April 2009: calculation

Calculating the restriction

The allowable rent is restricted by 15 per cent. (ITTOIA 2005/S48 & CTA 2009/S56)

The restriction is calculated as follows:

$$\text{Expenditure} \times 15\%$$

The allowable deduction is: expenditure - restriction

The expenditure can be wider than just the actual rent. It includes any element of unrelievable VAT.

In *Britax International GmbH v CIR* [2002], Parker LJ said at paragraph 72:

"I also bear in mind that the concept of "expenditure" is wide enough to include payments which may not strictly be regarded as rentals."

Maintenance Agreements

If the rental agreement separately identifies charges for costs such as maintenance in the lease agreement, then those costs should not be included when calculating the restriction and the restriction is only applied to the rental payment.

Example

Business A rents a car for three years. The car has carbon dioxide emissions of 168g/km and the business pays a rent of £6,000 per year. The business has to restrict the amount of relief claimed for the car rentals. The business has to restrict their claim by 15%.

The restriction is $\text{£}6,000 \times 15\% = \text{£}900$

The allowable rent is restricted to:

$$\text{£}6,000 - \text{£}900 = \text{£}5,100$$

BIM47745 - Specific deductions: travel & subsistence: cars: restriction of hiring costs: leases entered into on or after 1/6 April 2009: carbon dioxide emissions

Carbon dioxide emissions data

The restriction does not apply to a car that has low CO2 emissions.

For the purposes of the restriction a car has low CO2 emissions if

- when the car is first registered it is so registered on the basis of a qualifying emissions certificate, and
- the applicable CO2 emissions figure in relation to the car does not exceed 160 grams per kilometre driven (g/km)

“Applicable CO2 emissions figure” and “qualifying emissions certificate” have meanings given in CAA 2001/S268C.

Cars sold in the United Kingdom and in other European Union countries are required to meet safety and environmental standards under European legislation. Each car must conform to a type (of which a sample has been submitted by the manufacturer or importer) that has been approved by a national certification agency. The level of CO2 emitted by the car on a prescribed test cycle is one of the factors recorded during the type approval testing procedure.

The emissions figure is found on the car's registration document form V5C. The CO2 emissions levels for different makes and models of cars can be found on the Vehicle Certification Agency (VCA) website: www.vca.gov.uk.

BIM47750 - Specific deductions: travel & subsistence: cars: restriction of hiring costs: leases entered into on or after 1/6 April 2009: short term hiring in and long term hiring out

Short term hiring in and long term hiring out

The rules are intended to provide that the restriction will apply to only one lessee in a chain of leases (in most cases the last business user). The rules are also intended to provide for the restriction to apply to a business that hires cars on short term to other persons.

So the restriction will generally not apply to intermediate lessors who incur expenditure on the hire of cars which they sub let to customers; and a business which hires a car for a short term will usually not have to apply the restriction.

ITTOIA 2005/S50A and CTA 2009 /S 58A

The restriction does not apply to car hire expenses incurred by a taxpayer if one of two conditions (A or B) is met.

Condition A: If a taxpayer incurs expenditure on the hire of a car for not more than 45 consecutive days (short term hiring in) then they do not have to restrict the deduction for the hire expenditure of that car,

Condition B: If a taxpayer incurs expenditure on the hire of a car that they then lease to another person ("the customer") for more than 45 consecutive days (long term hiring out) they do not have to restrict the deduction for the rentals they pay to the superior lessor for the car that is sub hired. It follows that if the customer is a business it will have to restrict its deduction for hire expenses if the car has carbon dioxide emissions over 160g/km, unless it sub lets the car for more than 45 days.

Neither condition A nor condition B will be met if a car is hired under any arrangement entered into with the purpose of either circumventing or reducing the restriction or for the purpose of avoiding tax. (ITTOIA/S 50A (5) & CTA 2009/ S 58A (5))

There are other rules to decide if Condition B is met see [BIM47765](#)

There are also rules to determine how the 45 day hire period for both condition A and B is counted. See [BIM 47755](#)

Example - Hire period less than 45 days

Business B (the taxpayer) hires a car from Business H from 1 June to 10 July for £25 per day. The period of hire is 40 days. The total hire cost is £1,000. Business B meets condition A. The hire period of the car is less than 45 days so there is no restriction on the deduction for hire expenses.

Allowable deduction is £1,000.

Example - Period of hire more than 45 days

Business C (the taxpayer) hires a car with emissions over 160g/km from Business L for 4 years. The annual lease rental for the car is £3,000. Business C does not meet either condition A or condition B.

The period of hire is more than 45 consecutive days so there is a restriction on the allowable deduction for the hire of the car.

The annual restriction is $£3,000 \times 15\% = £450$

The allowable annual deduction is $£3,000 - £450 = £2,550$

Example - Period of hire more than 45 days and car sub-let for more than 45 days

Business C (the taxpayer) hires a car with emissions over 160g/km from Business L for four years. The annual lease rental for the car is £3,000. Business C sub lets the car to Business D (the customer) for the same four years for £3,600.

Business C sub lets the car for more than 45 days so meets condition B. There is no restriction on the allowable deduction for the rentals Business C pays to Business L for the car. Business C can deduct the full £3,000 per year.

Business D hires the car for 4 years. The hire period exceeds 45 consecutive days. Business D does not sub let the car. Business D does not meet Condition A or Condition B. Business D's deduction for the rentals is restricted by 15%.

The restriction for Business D is $£3,600 \times 15\% = £540$. The annual allowable deduction for Business D is £3,060.

Example - Period of hire inwards more than 45 days and car sub-let out for less than 45 days

Business C hires a car with carbon dioxide emissions over 160g/km for 4 years from Business L. The annual lease rental for the car is £3,000.

Business C hires the car on short-term hire to various customers throughout the 4-year period. No rental period exceeds 45 days.

Business C does not meet Condition A or Condition B. The rental Business C pays to Business L for the car is restricted by 15%.

The restriction is $£3,000 \times 15\% = £450$. The allowable deduction is $£3,000 - £450 = £2,550$

BIM47755 - Specific deductions: travel & subsistence: cars: restriction of hiring costs: leases entered into on or after 1/6 April 2009: linked periods

Linked periods

ITTOIA 2005/ S 50A (7) and CTA 2009/ S58A (7)

In order to work out the number of consecutive days the same car is hired to the same taxpayer periods of hire are linked (added together) if there is a gap of no more than 14 days between them. This is to prevent people fragmenting leases in order to meet either condition A or condition B and circumvent the restriction.

A period of consecutive days (the main period) is linked to

- a period of consecutive days that ends not more than 14 days before the main period begins
- a period of consecutive days than begins not more than 14 days after the main period ends, and
- a period of consecutive days linked to a period in (a) or (b) that is a period of consecutive days that ends or begins not more than 14 days after a linked period begins or ends.

Example

A taxpayer hires a car for 20 days from 1 June to 20 June (the main period).

The same taxpayer hired also hired the same car from

- 1 May to 14 May - period A
- 1 July to 7 July - period B
- 17 July to 16 August - period C

Period A ends more than 14 days before the main period begins so it is not linked to the main period.

Period B begins less than 14 days after the main period ends so it is linked to the main period.

Period C begins less than 14 days after period B ends so it is linked to period B.

The total hire period is

| | |
|-----------------------------|----------------|
| 1 June to 20 June | 20 days |
| Plus | |
| 1 July to 7 July | 7 days |
| Plus | |
| <u>17 July to 16 August</u> | <u>30 days</u> |
| TOTAL | 57 days |

So the taxpayer must apply the restriction to the hire expenses for periods B, C and the main period but not to the hire expenses paid for period A.

BIM47760 - Specific deductions: travel & subsistence: cars: restriction of hiring costs: leases entered into on or after 1/6 April 2009: apportionment

Apportionment of expenses

ITTOIA 2005 /S 50A (6) and CTA 2009 / S58 A (6)

Where a business (the taxpayer) leases in cars for onward hire then it may be subject to the rental restriction in respect of some of those cars if they are not exempt from the restriction and the term of outward rental is less than 45 days. Where a business (taxpayer) sub-hires the same car for some periods less than 45 days and some periods more than 45 days (either to the same or different customers) then the expenses the business (taxpayer) incurs on the hire of the car are to be apportioned on a just and reasonable basis in order to arrive at the proportion of the expenses to which the restriction is to be applied.

Example

A car hire business (taxpayer) has 30 cars which it has leased from a bank for a year.

20 of those cars have CO2 emissions of less than 160g/km, so the restriction is not applied to the rentals for those cars.

Of the remaining 10 cars, 2 are used exclusively for longer term hire where the hire period is always more than 45 days, so the taxpayer will not have to apply the restriction to the rentals it pays in respect of those cars.

5 cars are kept exclusively for short hire and are never hired out for more than 45 days, so the taxpayer will have to identify its rental expenses in respect of those cars and apply the restriction to them.

The 3 remaining cars are used both for short term (less than 45 days) hire and for hire for periods in excess of 45 days. The taxpayer has to consider each of these cars individually and calculate (on a just and reasonable basis) the proportion of the total period each car was sub hired for less than 45 days and apply the restriction to that proportion of the rental expenses for that car.

BIM47765 - Specific deductions: travel & subsistence: cars: restriction of hiring costs: leases entered into on or after 1/6 April 2009: condition B

Rules for condition B

ITTOIA 2005/ S50A (4) & CTA 2009/ S58A (4)

These rules seek to prevent businesses circumventing the restriction when they provide cars to employees or connected persons. Condition B is not met by a taxpayer if “the customer” is an employee or officer of the taxpayer or of a person connected with the taxpayer, or

During all or part of the sub-hire period or any period linked to it, “the customer” makes any car available to an employee or officer of the taxpayer under arrangements with the taxpayer or with a person connected with the taxpayer.

Example

Business E (The taxpayer) hires Car 1, with carbon dioxide emissions over 160g/km, from Business L for 3 years. The annual lease rental is £3,000 a year.

Business E sub hires Car 1 to Business F (The customer) for 3 years. The annual lease rental is £3,000 a year. Business F is located overseas and not subject to the UK restriction.

Business E arranges for Business F to provide a car for an employee of business E.

Business F provides a car (not necessarily Car 1) to an employee or officer of Business E for an annual lease rental of £3,200 a year.

The employee is not subject to the rental restriction.

Although Business E subleases Car 1 for a period of more than 45 consecutive days it does not meet Condition B of either ITTOIA 2005 / S50 A or CTA 2009/ S 58A because it entered into an arrangement with Business F (the customer) for a car to be made available to an employee of Business E (the taxpayer)

Example

A self employed business person P leases a car with CO2 emissions over 160g/km. P sub leases the car to their spouse, S, who is not in business. S is connected to P so P will have to apply the restriction to the hire expenses it pays for the car.

If S was self employed they might also have had to apply the restriction to the hire expenses payable to P. This could result in two lessees in a chain having to apply the restriction. However, there are rules to prevent this happening see [BIM 47770](#)

BIM47770 - Specific deductions: travel & Subsistence: cars: restriction of hiring costs: leases entered into on or after 1/6 April 2009: connected persons

Connected persons incurring car hire expenses on the same car for the same period

ITTOIA 2005/S50B and CTA 2009/ S58B

These rules apply where connected persons incur expenses on the hiring of the same car, for the same period and if it were not for these rules the restriction would apply to more than one of them. Providing certain conditions are met the result of these rules is that the restriction will only apply in respect of the expenses incurred by one of the connected persons.

Connected persons are defined in ICTA1988/S839

For these rules to apply at least one of the connected persons must have incurred the car hire expenses under "commercial arrangements". That means the terms of the agreement between lessee and lessor are such as would reasonably have been expected if the parties to the arrangements had been dealing at arm's length.

For the purposes of these rules a person hiring cars under a commercial arrangement is referred to as a commercial lessee.

The rules provide that, where only one of the connected persons is a commercial lessee in respect of the car in question, then the restriction is applied to the expenses of that person.

If there is more than one commercial lessee then the restriction is applied to the expenses incurred by the first one in the chain of arrangements for the hiring of the car for the period.

Example

Parent company P has two subsidiaries Sub A and Sub B. Sub A and Sub B wish to provide cars for their employees.

Parent company P is able to get a better deal from the bank/ head lessor because it is more creditworthy than the subsidiaries and is leasing a large number of vehicles.

Parent company hires 100 cars with CO2 emissions over 160g/km, from a lessor business for a lease term of three years. This is an arm's length transaction.

Parent company then sub-leases 50 cars to Sub A and 50 cars to Sub B.

Both Sub A and Sub B make the cars available to their employees as part of their remuneration packages.

Without the rules in ITTOIA 2005/S 50B and CTA 2009/S 58B, both the parent company and the subsidiaries would have to apply the restriction to the rental payments for the cars.

Parent company has incurred expenditure under commercial arrangements and so is a commercial lessee. The restriction will only be applied to the expenses Parent company incurred under those arrangements either because it is the only commercial lessee in the chain or, if the cars were provided to the subsidiaries under commercial arrangements, because it is the first commercial lessee in the chain.

BIM47775 - Specific deductions: travel & subsistence: cars: restriction of hiring costs: leases entered into on or after 1/6 April 2009: election

Election for emissions based rules not to apply

Usually expenses under a lease that commences after 1/6 April 2009 will be treated under the new rules for the restriction.

However the details of the new rules were first published in a technical note on 8 December 2008. It is possible taxpayers may have incurred expenses on car (or motor cycle) hire under an agreement entered into (see below) on or before 8 December 2008 with the expectation the old rules would apply. In order to protect their legitimate expectations they will be able to elect to use the old rules to calculate the restriction to be applied to the payments under the lease but only where the contract provides for the car to be made available to the lessee before 1 April 2010 (for corporation tax purposes) or 6 April 2010 (for income tax purposes).

An agreement is entered into on the first day the following conditions are met;

- There is a contract in writing for the use of the car (or motor cycle) by the taxpayer
- The contract is unconditional, or if it is conditional the conditions have been met, and
- No terms remain to be agreed.

The election must be made by notice given to an officer of Revenue and Customs;

- For income tax purposes the notice must be made on or before the normal time limit for amending a tax return for the tax year in which the relevant chargeable period ends.
- For corporation tax purposes the notice must be given no later than 2 years after the end of the relevant chargeable period.

There is no proscribed form of words for the election. For example, a letter setting out all the relevant details would suffice.

The relevant chargeable period means the first chargeable period (as defined in section 6 of CAA 2001) in which the taxpayer incurred any expenses on the hire of the vehicle.

The election is irrevocable. That means once it has been made it cannot be withdrawn or amended.

