

1 Companies carrying on business of leasing plant or machinery

The Schedule makes provision in relation to companies carrying on a business of leasing plant or machinery.

SCHEDULE

Section 1

COMPANIES CARRYING ON BUSINESS OF LEASING PLANT OR MACHINERY

Company reconstructions without change of ownership

- 1 (1) In section 343 of ICTA (company reconstructions without change of ownership), in subsection (2) (continuity of treatment for capital allowances), at the end insert “and are subject to section 343A (company reconstructions involving business of leasing plant or machinery)”.

- (2) After that section insert –

“343A Company reconstructions involving business of leasing plant or machinery

- (1) This section applies if the trade is or forms part of a business of leasing plant or machinery which the predecessor or the successor carries on on the day of cessation.
- (2) If, on the day of cessation, both the predecessor and the successor carry on the trade otherwise than in partnership, section 343(2) does not apply unless –
- (a) the principal company or companies of the predecessor immediately before the cessation are the same as the principal company or companies of the successor immediately afterwards, and
 - (b) if any such principal company is a consortium principal company, the relevant fraction in relation to the predecessor immediately before the cessation is the same as the relevant fraction in relation to the successor immediately afterwards (irrespective of whether the members of each consortium are the same).
- (3) If, on the day of cessation, the predecessor or the successor carries on the trade in partnership, section 343(2) does not apply unless –
- (a) the predecessor ceases to carry on the whole of its trade, and
 - (b) that trade is a business of leasing plant or machinery which the predecessor carries on in partnership on the day of cessation.
- (4) In any case where section 343(2) does not apply as a result of this section, the plant or machinery belonging to the trade shall be treated for the purposes of the Corporation Tax Acts as sold by the predecessor to the successor on the day of the cessation for an amount equal to its market value as at that day.
- (5) In this section –
- “business of leasing plant or machinery” –
 - (a) has the same meaning as in Part 2 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc)

- (if the business is carried on otherwise than in partnership), and
- (b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership),
- “consortium principal company” means a company which is a principal company as a result of paragraph 12 of that Schedule,
- “market value”, in relation to plant or machinery, is to be construed in accordance with paragraph 41(8) of that Schedule,
- “plant or machinery” has the same meaning as in Part 2 of the Capital Allowances Act,
- “principal company” is to be construed in accordance with paragraph 11 or (as the case may be) 12 of that Schedule, and
- “relevant fraction” has the same meaning as in paragraph 12 of that Schedule.”
- (3) Subsection (2) of section 343A of ICTA (as inserted by sub-paragraph (2) above) has effect in relation to cessations occurring on or after 22nd November 2006.
- (4) But, if the cessation occurs before 21st March 2007, that subsection has effect as if for paragraphs (a) and (b) there were substituted “on that day each company which is a principal company of the predecessor is also a principal company of the successor”.
- (5) Subsection (3) of section 343A of ICTA has effect in relation to cessations occurring on or after that date.

Sale etc of lessor companies etc

- 2 (1) Schedule 10 to FA 2006 (sale etc of lessor companies etc) is amended as follows.
- (2) In paragraph 1(4) (contents of Schedule), for “an anti-avoidance provision” substitute “anti-avoidance provisions”.
- (3) In—
- (a) paragraph 7(3)(b) (provision for the purposes of condition A in paragraph 6), and
- (b) paragraph 17(2)(b) (meaning of “PM” in paragraph 16), for “it transfers” substitute “is transferred”.
- (4) After paragraph 38 insert—
- “38A(1) This paragraph applies if—
- (a) a question arises as to the application of this Schedule,
- (b) for the purpose of determining that question regard must be had to amounts (if any) which fall (or would fall) to be shown in any balance sheet of any company in respect of plant or machinery,
- (c) there would (but for this paragraph) be a reduction or increase in any such amount,

- (d) the reduction or increase arises directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and
 - (e) the main purpose, or one of the main purposes, of the arrangements is to secure that there is a relevant tax advantage.
- (2) There is a relevant tax advantage if (but for this paragraph) –
- (a) any company would not be regarded for the purposes of any provision of this Schedule as carrying on a business of leasing plant or machinery (whether alone or in partnership),
 - (b) the amount of any income which any company is treated as receiving under any provision of this Schedule would be reduced, or
 - (c) the amount of any expense which any company is treated as incurring under any provision of this Schedule would be increased.
- (3) For the purpose of determining any question which arises as to the application of this Schedule, the reduction or increase in the amount which falls (or would fall) to be shown in the balance sheet in respect of plant or machinery is to be ignored.
- (4) For the purposes of this paragraph and paragraph 38B a question arises as to the application of this Schedule if a question arises –
- (a) as to whether any company carries on a business of leasing plant or machinery (whether alone or in partnership) for the purposes of any provision of this Schedule, or
 - (b) as to the amount (if any) of any income or expense which any company is treated as receiving or incurring under any provision of this Schedule.
- (5) In this paragraph –
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions –
 - (a) whether or not legally enforceable, and
 - (b) whether or not the company for which the relevant tax advantage is intended to be secured is a party to the arrangements,
 - “increase” includes an increase from nil, and
 - “reduction” includes a reduction to nil.
- 38B (1) This paragraph applies if –
- (a) a company owns any plant or machinery at any time on any day (“the relevant day”),
 - (b) a question arises as to the application of this Schedule,
 - (c) for the purpose of determining that question regard must be had to the amount (if any) which falls (or would fall) to be shown in any balance sheet of the company in respect of the plant or machinery, and
 - (d) condition A or B is met.

- (2) Condition A is met if there would (but for this paragraph) be no amount which would fall to be shown in the balance sheet of the company in respect of the plant or machinery.
 - (3) Condition B is met if the amount which (but for this paragraph) would fall to be shown in the balance sheet of the company in respect of the plant or machinery is less than the amount which, on the relevant assumption, would fall to be so shown.
 - (4) For the purpose of determining any question which arises as to the application of this Schedule, the amount which falls (or would fall) to be shown in any balance sheet of the company in respect of the plant or machinery is to be determined on the relevant assumption (as well as on the other assumptions applicable under other provisions of this Schedule).
 - (5) The relevant assumption is that the company has no liabilities of any kind at any time on that day.
 - (6) For this purpose “liabilities” includes any share capital issued by the company which falls to be treated for accounting purposes as a liability.”
- (5) For the purposes of Schedule 10 to FA 2006 the amendments made by sub-paragraphs (3) and (4) have effect in relation to—
- (a) any qualifying change of ownership in relation to a company which occurs on or after 22nd November 2006, and
 - (b) any qualifying change in a company’s interest in a business which occurs on or after that date.
- (6) For all other purposes the amendments made by those sub-paragraphs have effect for the purpose of determining whether a company carries on a business of leasing plant or machinery (whether alone or in partnership) on or after that date.

SALE OF LESSOR COMPANIES ANTI-AVOIDANCE

Draft legislation is published today to counteract various arrangements that are designed to reduce or cancel the effect of the Sale of Lessor Companies legislation introduced in Schedule 10 FA 2006.

The measure responds to disclosures made to HM Revenue & Customs and addresses (a) schemes that seek to exploit a mismatch between different concepts of control in order to transfer assets without tax effect and (b) schemes that manipulate the accounting value of leased assets to reduce or eliminate the charge imposed by Schedule 10.

The first type of scheme is addressed by bringing the control conditions for the purposes of section 343 ICTA 1988 into line with the concepts of control used in Schedule 10, so that a company can not transfer assets to another company that is outside the Schedule 10 grouping and enjoy the tax neutrality afforded by section 343.

The second type of scheme is addressed by disregarding adjustments to the balance sheet values in respect of plant or machinery where the adjustments arise from entering into arrangements that affect the application of Schedule 10 and by ignoring all of the liabilities of a company if taking those liabilities into consideration will result in a reduction or elimination of an amount in respect of plant or machinery that will affect the application of Schedule 10.

The measures will prevent groups from artificially reducing the income amount or increasing the expense amount computed under Schedule 10 and from taking a company outside the scope of Schedule 10 by manipulating the outcome of the test to establish whether a company carries on a business of leasing plant or machinery.

This measure was first announced on 22 November 2006 and, in general, has effect from that date. However, the rules have effect from 21 March 2007 in cases concerning the application of section 343(2) to leasing businesses carried on by a company owned by a consortium or carried on in partnership.

Enquiries and comments relating to the draft should be addressed to:

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DRAFT EXPLANATORY NOTE

DETAILS OF THE SCHEDULE

Company reconstructions without change of ownership

1. New section 343A prevents section 343(2) applying in certain circumstances involving the leasing of plant or machinery.
 - a. Subsection (1) restricts the application of the section to situations where the trade or part of a trade being transferred is or forms part of a trade of leasing plant or machinery carried on by either the predecessor or successor company.
 - b. Subsection (2)(a) provides that where the trade is a business of leasing plant or machinery carried on otherwise than in partnership section 343(2) applies only if the principal company or companies of the predecessor company are also the principal company or companies of the successor company.
 - c. Subsection (2)(b) makes further provision if the principal company is a consortium principal company. It requires that the relevant fraction in relation to both the predecessor and the successor is the same, regardless of any change in the membership of the consortium.
 - d. Subsection (3) deals with leasing businesses carried on by the predecessor or successor company in partnership. It prevents section 343(2) from applying unless the predecessor is carrying on the leasing business in partnership and ceases to carry on the whole of that trade.
 - e. Subsection (4) sets out how the transfer of the plant or machinery will be dealt with in the event that the companies involved do not satisfy the conditions in the section. The subsection creates a fiction that the assets are sold for an amount equal to market value on that day. The fiction applies for the purposes of the Corporation Tax Acts so that, for instance, the qualifying expenditure of the successor for the purposes of section 11 CAA 2001 and the disposal value for the predecessor are both the market value.
 - f. Subsection (5) provides that terms used in this section have the same meaning as in Schedule 10 FA 2006. Thus:
 - 'plant or machinery' takes its meaning from Part 2 of CAA 2001;
 - 'principal company' takes its meaning from paragraphs 11 or 12 of Schedule 10, as appropriate; and

- 'relevant fraction' takes its meaning from paragraph 12 of Schedule 10.
2. Sub-paragraph (3) brings subsection (2) of new section 343A into effect in relation to cessations occurring on or after 22 November 2006.
 3. Sub-paragraph (4) makes special provision for cessations occurring on or after 22 November 2006 and before 21 March 2007 so that 'on that day each company that is a principal company of the predecessor is also a principal company of the successor' is substituted for new section 343A(2)(a) and (b).
 4. Sub-paragraph (5) brings subsection (3) of new section 343A into effect in relation to cessations on or after 21 March 2007.

Sale etc. of lessor companies etc

5. Paragraph 2 introduces changes to Schedule 10 Finance Act 2006 ('FA 2006') and sub-paragraph (2) makes a consequential change to the contents of Schedule 10.
6. Sub-paragraph (3) substitutes 'is transferred' for 'it transfers' in paragraphs 7(3)(b) and 17(2)(b) of Schedule 10. The change ensures that it is possible to take into consideration the appropriate opening balance sheet values in respect of all plant or machinery assets transferred to the lessor company on the relevant day from associated companies.
7. Sub-paragraph (4) introduces new anti-avoidance paragraphs 38A and 38B into Schedule 10.

New paragraph 38A

8. New paragraph 38A targets companies that seek to influence the outcome of Schedule 10 through arrangements that increase or reduce the amounts shown in such companies' balance sheets in respect of plant or machinery.
9. Sub-paragraph (1) sets out when the paragraph will apply. It applies in situations where:
 - there is a question as to the application of Schedule 10 and the answer to the question relies on amounts in respect of plant or machinery shown in any balance sheet of any company; and
 - there has been an arrangement that results in an increase or reduction of the amount that would otherwise have been shown on the balance sheet; and

- that arrangement had as its main purpose, or one of its main purposes, securing a relevant tax advantage.
10. Sub-paragraph (2) states that there is a 'relevant tax advantage' if, but for the paragraph:
- a company would not be regarded as carrying on a business of leasing plant or machinery alone or in partnership; or
 - for the purpose of Schedule 10, the amount of any income would be reduced or the amount of any expense would be increased.
11. Sub-paragraph (3) provides that the increase or decrease in the amount in respect of plant or machinery is to be ignored.
12. Sub-paragraph (4) sets out what amounts to 'a question as to the application of the Schedule' for the purposes of paragraph 38A and 38B. The questions concern:
- whether a company carries on a business of leasing plant or machinery alone or in partnership for the purposes of Schedule 10; and
 - the amount (if any) of any income or expense amount treated as received or incurred under the provisions of Schedule 10.
13. Sub-paragraph (5) provides definitions for the purposes of paragraph 38A. It defines 'arrangements' to include any agreement, understanding, scheme, transaction or series of transactions whether or not legally enforceable and whether or not the company that secures the advantage is a party to the arrangements. It defines 'increase' and 'reduction' as including increases from nil and decreases to nil.

New paragraph 38B

14. New paragraph 38B targets situations where the amount shown in a company's balance sheet in respect of plant or machinery is affected by the liabilities of the company.
15. Sub-paragraph (1) applies the paragraph if a company owns any plant or machinery at any time on any day and a question arises as to the application of Schedule 10 and condition A or B is met.
16. Sub-paragraph (2) describes condition A as being met where there would be no amount shown on the balance sheet in respect of the plant or machinery but for the paragraph.

17. Sub-paragraph (3) describes condition B as being met if there would be a lesser amount on the balance sheet but for the paragraph.
18. Sub-paragraph (4) states that for the purposes of any question which arises as to the application of the schedule the amount that would fall to be shown on the balance sheet is to be determined on the relevant assumption.
19. Sub-paragraph (5) sets out the 'relevant assumption' which is that the company has no liabilities of any kind.
20. Sub-paragraph (6) makes clear that 'liabilities' includes any share capital issued by the company that would fall to be treated as a liability for accounting purposes.
21. Sub-paragraphs (5) and (6) of the Schedule deal with commencement.
22. Sub-paragraph (5) of the Schedule brings the amendments made to Schedule 10 by sub-paragraphs (3) and (4) into effect for qualifying changes of ownership and qualifying changes in a company's interest in a business occurring on or after 22 November 2006 for the purposes of Schedule 10 of FA 2006.
23. Sub-paragraph (6) of the Schedule brings the amendments made to Schedule 10 by Sub-paragraphs (3) and (4) into effect for the purposes of determining whether a company carries on a business of leasing plant or machinery, alone or in partnership on or after 22 November 2006.