

SALE OF LESSORS

Draft legislation dealing with the sale of lessor companies was published on 5 December 2005. The measure came into effect in relation to changes of ownership that occurred on or after 5 December.

Budget Note 10, published on 22 March 2006, gave details of changes to be made to the draft legislation as published to bring it into line with developments in leasing reform and in response to comments made following the publication of the draft legislation. It indicated that a further draft would be made available before the end of March.

This amended, draft legislation has been published today, 31 March 2006, on the HMRC website.

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Draft clauses and Schedule

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*Sale of lessors***1 Sale etc of lessor companies etc**

Schedule 1 (which makes provision about the sale etc of lessor companies etc) has effect.

2 Restrictions on use of losses etc: leasing partnerships

- (1) In section 403 of ICTA (amounts which may be surrendered by way of group relief), in subsection (4) (section 403 subject to certain exceptions), at the end insert “and
section 785ZA (restrictions on use of losses: leasing partnerships)”.
- (2) After section 785 of ICTA (meaning of expressions for purposes of sections 781 to 784 (assets leased to traders and others)) insert –

“785ZA Restrictions on use of losses: leasing partnerships

- (1) This section applies for corporation tax purposes 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 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 following condition is met.
- (3) The condition is met if, for the purposes of section 114(2), –
 - (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
 - (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 this condition “profits” does not include chargeable gains.

- (5) The following restrictions 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”).
- (6) Apart from by way of set off against any relevant leasing income, relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss.
- (7) If the leasing business is a trade, relief is not to be given to the company under section 393A(1) in respect of the restricted part of the loss.
- (8) The restricted part of the loss is not available for set off by way of group relief in accordance with section 403.
- (9) 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.

785ZB Section 785ZA: definitions

- (1) This section applies for the purposes of section 785ZA.
- (2) “Business of leasing plant or machinery” has the same meaning as in Part 3 of Schedule 1 to the Finance Act 2006 (sale etc of lessor companies etc).
- (3) “Lease” has the same meaning as in section 785A.
- (4) “Notional business”, in relation to a company, means the business—
 - (a) from which the company’s share in the profits or loss of the leasing business is treated under section 114(2) as deriving for the purposes of the charge to corporation tax, and
 - (b) which is treated under that provision as carried on alone by the company for those purposes.
- (5) “Plant or machinery” has the same meaning as in Part 2 of the Capital Allowances Act.
- (6) “Relevant capital allowance” means an allowance under Part 2 of the Capital Allowances Act in respect of expenditure incurred on the provision of plant or machinery wholly or partly for the purposes of the leasing business.
- (7) “Relevant leasing income” means any income of the company’s notional business deriving from any lease—
 - (a) which is a lease of plant or machinery, and
 - (b) which was entered into before the end of the accounting period of the company in which the loss in its notional business was incurred.
- (8) “Relevant loss relief provision” means any of the following provisions—
 - (a) section 392A (Schedule A losses),
 - (b) section 392B (losses from overseas property businesses),
 - (c) section 393 (trade losses),
 - (d) section 396 (Case VI losses).”.

- (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 –
- (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 1 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 section 785ZA of ICTA), and
 - (b) immediately after that time its interest in the business during that period is not so determined.

3 Disposal of plant or machinery subject to lease where income retained

- (1) CAA 2001 is amended as follows.
- (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 –

“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 other person does not, as a result of the disposal, become entitled to 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 other person does not, as a result of the disposal, become entitled,
- 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),

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 –

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.

(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 1 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.

SCHEDULES

SCHEDULE 1

Section 1

SALE ETC OF LESSOR COMPANIES ETC

PART 1

INTRODUCTION

Contents of Schedule

- 1 (1) This Schedule makes provision for corporation tax purposes in relation to any company which is within the charge to corporation tax in respect of a business of leasing plant or machinery (within the meaning of Part 2 or 3).
- (2) Part 2 deals with the case of a qualifying change of ownership in relation to the company where it carries on the business otherwise than in partnership.
- (3) Part 3 deals with—
 - (a) the case of a qualifying change in the company's interest in the business where it carries on the business in partnership with other persons, and
 - (b) the case of a qualifying change of ownership in relation to any such company.
- (4) Part 4 contains an anti-avoidance provision and other supplementary provisions.

Commencement

- 2 This Schedule has effect in relation to—
 - (a) any qualifying change of ownership in relation to a company which occurs on or after 5th December 2005, and
 - (b) any qualifying change in a company's interest in a business which occurs on or after that date.

PART 2

LEASING BUSINESS CARRIED ON BY A COMPANY ALONE

Income and matching expense in different accounting periods

- 3 (1) This paragraph applies for corporation tax purposes if—
 - (a) on any day ("the relevant day") a company carries on a business of leasing plant or machinery otherwise than in partnership (see paragraphs 6 to 8),

- (b) the company is within the charge to corporation tax in respect of the business, and
 - (c) there is a qualifying change of ownership in relation to the company on the relevant day (see paragraphs 10 to 13).
- (2) On the relevant day –
 - (a) the company is treated as receiving an amount of income, and
 - (b) the accounting period of the company ends.
- (3) The income –
 - (a) is treated as a receipt of the business, and
 - (b) is brought into account in calculating for corporation tax purposes the profits of the business for that accounting period.
- (4) On the day following the relevant day –
 - (a) the company is treated as incurring an expense, and
 - (b) a new accounting period of the company begins.
- (5) The expense –
 - (a) is treated as an expense of the business, and
 - (b) is allowed as a deduction in calculating for corporation tax purposes the profits of the business for that new accounting period.
- (6) This paragraph is supplemented by paragraphs 4 and 5.

Amount of income and expense

- 4 (1) The amount of the income is calculated in accordance with paragraphs 16 to 21.
- (2) The amount of the expense is the same as the amount of the income.

No carry back of the expense

- 5 (1) This paragraph applies if the business carried on by the company is a trade the profits of which are chargeable to corporation tax under Case I of Schedule D.
- (2) No relief is to be given by virtue of section 393A(1)(b) of ICTA (set off of trading losses against profits of earlier accounting periods) in respect of so much of any loss as derives from the expense.
- (3) For the purpose of determining how much of a loss derives from the expense, the loss is to be calculated on the basis that the expense is the final amount to be deducted.

Meaning of “business of leasing plant or machinery”

- 6 (1) This paragraph determines for the purposes of this Part of this Schedule whether, on any day (“the relevant day”), a company (“the relevant company”) carries on a business of leasing plant or machinery.
- (2) A business carried on by the relevant company is a business of leasing plant or machinery on the relevant day if condition A or B is met.

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- (3) Condition A is that at least half of the accounting value of the plant or machinery owned by the relevant company on the relevant day relates to qualifying leased plant or machinery.
- (4) Condition B is that at least half of the relevant company's income in the period of 12 months ending with the relevant day derives from qualifying leased plant or machinery.
- (5) For the purposes of this Part of this Schedule, plant or machinery is "qualifying leased plant or machinery", in relation to any company, if—
- (a) expenditure is incurred (or treated as incurred) by the company on the provision of the plant or machinery wholly or partly for the purposes of the business,
 - (b) the company is (or has at any time been) entitled, on the relevant assumptions, to an allowance under Part 2 of CAA 2001 in respect of that expenditure, and
 - (c) at any time in the period of 12 months ending with the relevant day the plant or machinery has been subject to a plant or machinery lease which is not an excluded lease of background plant or machinery for a building (see paragraph 41).
- (6) "The relevant assumptions" are—
- (a) that sections 34A and 70A of CAA 2001 (lessees, and not lessors, under long funding leases to be entitled to capital allowances) are ignored, and
 - (b) that any claim that could be made for an allowance under Part 2 of that Act is made.

Provision for the purposes of condition A in paragraph 6

- 7 (1) This paragraph applies for the purposes of condition A in paragraph 6.
- (2) The accounting value of the plant or machinery owned by the relevant company on the relevant day is taken to be the amount found by adding together the following amounts.
- (3) The amounts are—
- (a) the amounts (if any) shown in the appropriate balance sheet of the relevant company in respect of plant or machinery which it owns at the start of the relevant day, and
 - (b) the amounts (if any) shown in the appropriate balance sheet of each associated company in respect of plant or machinery which it transfers to the relevant company on the relevant day,
- and the reference here to an associated company is to a company which is an associated company of the relevant company on the relevant day (as to which, see paragraph 9).
- (4) For this purpose the amounts shown in the appropriate balance sheet of any company in respect of any plant or machinery are—
- (a) the amounts shown in that balance sheet as the net book value (or carrying amount) in respect of the plant or machinery, and
 - (b) the amounts shown in that balance sheet as the net investment in respect of finance leases of the plant or machinery.
- (5) If—
- (a) any of the plant or machinery is a fixture in any land, and

- (b) the amount which falls (or would fall) to be shown in an appropriate balance sheet as the net book value (or carrying amount) of the land includes (or would include) an amount in respect of the fixture, the amount of the net book value (or carrying amount) in respect of the fixture is determined on a just and reasonable basis.
- (6) If –
 - (a) any of the plant or machinery is subject to a finance lease, and
 - (b) any land or other asset which is not plant or machinery is subject to that lease,the amount of the net investment in respect of the finance lease of that plant or machinery is determined on a just and reasonable basis.
- (7) In this paragraph any reference to any amount shown in the appropriate balance sheet of a company is to the amount which, on the following assumptions, falls (or would fall) to be shown in a balance sheet of the company.
- (8) The assumptions are –
 - (a) that the balance sheet is drawn up as at the start of the relevant day in accordance with generally accepted accounting practice, and
 - (b) that, if the company acquires any plant or machinery directly or indirectly from a person who is connected with the company, the plant or machinery had been acquired for an amount equal to its market value as at the relevant day.
- (9) Sub-paragraph (8)(b) does not apply if the relevant day falls before 22nd March 2006.

Provision for the purposes of condition B in paragraph 6

- 8 (1) This paragraph applies for the purposes of condition B in paragraph 6.
- (2) The reference to the relevant company’s income is to its income as calculated for corporation tax purposes.
- (3) Any apportionment necessary to determine the amount of the relevant company’s income attributable to the period of 12 months ending with the relevant day is to be made on a time basis.
- (4) But –
 - (a) that basis does not apply if it would work in an unjust or unreasonable manner in relation to any person, and
 - (b) in that case the apportionment is to be made instead on a just and reasonable basis.
- (5) The proportion of the income that derives from qualifying leased plant or machinery is to be determined on a just and reasonable basis.

Meaning of “associated company”

- 9 (1) A company is an “associated company” of another company on any day if, at the start of that day, –
 - (a) one of the two has control of the other, or
 - (b) both are under the control of the same person or persons,

and for this purpose “control” is to be read in accordance with section 416 of ICTA.

- (2) If, at the start of any day, a company (“the consortium company”) is owned by a consortium or is a qualifying 90% subsidiary of a company owned by a consortium, references to an associated company of the consortium company on that day include –
 - (a) any relevant member of the consortium on that day, and
 - (b) any company which is an associated company of any relevant member of the consortium on that day.
- (3) For this purpose a member of the consortium is a “relevant” member on any day if –
 - (a) it is a member of the consortium at the start of the day,
 - (b) one or more qualifying changes of ownership occur in relation to the consortium company on that day, and
 - (c) any of those changes occur in a case where the member of the consortium is regarded as “company E” for the purposes of paragraph 12 (consortium relationships).
- (4) This paragraph applies for the purposes of this Part of this Schedule.

Meaning of “a qualifying change of ownership” in relation to a company

- 10 (1) For the purposes of this Schedule, there is a qualifying change of ownership in relation to a company (“company A”) on any day if there is a relevant change in the relationship on that day between –
 - (a) company A, and
 - (b) a principal company of company A,
 but see paragraph 13 for an exception (no qualifying change of ownership in the case of certain intra-group reorganisations).
- (2) For the purposes of this Schedule, there is a relevant change in the relationship between company A and a principal company of company A on any day in any of the circumstances in paragraphs 11 and 12 (qualifying 75% subsidiaries and consortium relationships).

Qualifying 75% subsidiaries

- 11 (1) A company (“company B”) is a principal company of company A if –
 - (a) company A is a qualifying 75% subsidiary of company B, and
 - (b) company B is not a qualifying 75% subsidiary of another company.
- (2) There is a relevant change in the relationship between company A and company B (as a principal company) on any day if company A ceases to be a qualifying 75% subsidiary of company B on that day.
- (3) A company (“company C”) is a principal company of company A if –
 - (a) company A is a qualifying 75% subsidiary of company B,
 - (b) company B is a qualifying 75% subsidiary of company C, and
 - (c) company C is not a qualifying 75% subsidiary of another company.
- (4) There is a relevant change in the relationship between company A and company C (as a principal company) on any day if –

- (a) company A ceases to be a qualifying 75% subsidiary of company B on that day, or
 - (b) company B ceases to be a qualifying 75% subsidiary of company C on that day.
- (5) If company C is a qualifying 75% subsidiary of another company (“company D”), company D is a principal company of company A unless company D is a qualifying 75% subsidiary of another company, and so on.
- (6) Accordingly, there is a relevant change in the relationship between company A and a principal company of company A on any day if—
- (a) in determining which company is a principal company, regard is had to any company which is a qualifying 75% subsidiary of another, and
 - (b) that company ceases to be a qualifying 75% subsidiary of the other on that day.
- (7) This paragraph is supplemented by paragraph 15 (meaning of a qualifying 75% subsidiary).

Consortium relationships

- 12 (1) A company (“company E”) is a principal company of company A if—
- (a) company A is owned by a consortium of which company E is a member, or
 - (b) company A is a qualifying 90% subsidiary of a company owned by a consortium of which company E is a member,
- and company E is not a qualifying 75% subsidiary of another company.
- (2) There is a relevant change in the relationship between company A and company E (as a principal company) on any day if the relevant fraction at the end of the day is less than the relevant fraction at the start of the day.
- (3) In this paragraph “the relevant fraction” is whichever is the lowest of the following percentages—
- (a) the percentage of the ordinary share capital of company A that is beneficially owned by company E,
 - (b) the percentage to which company E is beneficially entitled of any profits available for distribution to equity holders of company A,
 - (c) the percentage to which company E would be beneficially entitled of any assets of company A available for distribution to its equity holders on a winding-up.
- (4) In any case where company A is a qualifying 90% subsidiary of a company, sub-paragraph (3) is to be read as if for references to company A there were substituted references to that company.
- (5) A company (“company F”) is a principal company of company A if—
- (a) company A is owned by a consortium of which company E is a member, or
 - (b) company A is a qualifying 90% subsidiary of a company owned by a consortium of which company E is a member,
- and company E is a qualifying 75% subsidiary of company F, but company F is not a qualifying 75% subsidiary of another company.
- (6) There is a relevant change in the relationship between company A and company F (as a principal company) on any day if—

- (a) the relevant fraction at the end of the day is less than the relevant fraction at the start of the day, or
 - (b) company E ceases to be a qualifying 75% subsidiary of company F on that day.
- (7) If company F is a qualifying 75% subsidiary of another company (“company G”), company G is a principal company of company A unless company G is a qualifying 75% subsidiary of another company, and so on.
- (8) Accordingly, there is a relevant change in the relationship between company A and a principal company of company A on any day if—
- (a) in determining which company is a principal company, regard is had to any company which is a qualifying 75% subsidiary of another, and
 - (b) that company ceases to be a qualifying 75% subsidiary of the other on that day,
- (as well as if the relevant fraction at the end of the day is less than the relevant fraction at the start of the day).
- (9) This paragraph is supplemented by—
- (a) paragraph 14 (meaning of consortium member etc), and
 - (b) paragraph 15 (meaning of a qualifying 75% or 90% subsidiary).

No qualifying change of ownership in the case of certain intra-group reorganisations

- 13 (1) This paragraph applies if—
- (a) a relevant change in the relationship between a company (“company A”) and a principal company of company A occurs on any day,
 - (b) that change occurs by reference to company A or any other company ceasing to be a qualifying 75% subsidiary on that day, and
 - (c) company A, and every company by reference to which that change occurs, are qualifying 75% subsidiaries of the principal company concerned at the start and end of that day.
- (2) For the purposes of this Schedule, there is no qualifying change of ownership in relation to company A on that day as a result of that change in the relationship.

Meaning of “company owned by a consortium” etc

- 14 (1) A company is owned by a consortium if—
- (a) it is not a qualifying 75% subsidiary of any company,
 - (b) 75% or more of its ordinary share capital is beneficially owned between them by other companies, and
 - (c) none of those other companies owns less than 5% of that capital.
- (2) Those other companies are the members of the consortium.
- (3) This paragraph applies for the purposes of this Schedule.

Meaning of qualifying 75% or 90% subsidiary etc

- 15 (1) In this Schedule a company (“the subsidiary company”) is a qualifying 75% subsidiary of another company (“the parent company”) if—

- (a) the subsidiary company is a 75% subsidiary of the parent company within the meaning of section 838 of ICTA (if the subsidiary company has ordinary share capital), or
 - (b) the parent company has control of the subsidiary company within the meaning of section 840 of ICTA (if the subsidiary company does not have ordinary share capital),
- and the parent company is beneficially entitled to the appropriate proportion of profits and assets.
- (2) The parent company is beneficially entitled to the appropriate proportion of profits and assets if (and only if) it –
 - (a) is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the subsidiary company, and
 - (b) would be beneficially entitled to at least 75% of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.
 - (3) In this Schedule references to a qualifying 90% subsidiary are to be read in the same way as references to a qualifying 75% subsidiary, but as if the references to 75% were to 90%.
 - (4) A company (“company A”) cannot be a qualifying 90% subsidiary of another company for the purposes of this Schedule if company A is a qualifying 75% subsidiary of a third company.
 - (5) Schedule 18 to ICTA (equity holders and profits or assets etc) applies for the purposes of any provision of this Part of this Schedule as it applies for the purposes of any corresponding provision of Chapter 4 of Part 10 of that Act (group relief).
 - (6) But, in a case where the subsidiary company does not have ordinary share capital, that Schedule applies for those purposes as if the members of that company were equity holders of that company for the purposes of that Schedule.

The amount of the income: the basic amount

- 16 (1) This paragraph determines the amount of the income under paragraph 3 when a qualifying change of ownership in relation to a company (“the relevant company”) carrying on a business of leasing plant or machinery occurs on any day (“the relevant day”).
- (2) The amount of the income is found by –
 - (a) applying the following formula to give the basic amount, and
 - (b) making any adjustment in accordance with any of paragraphs 19 to 21 to the basic amount.
- (3) The formula is –
$$PM - TWDV$$
- (4) For this purpose –
 - “PM” has the meaning given by paragraph 17, and
 - “TWDV” has the meaning given by paragraph 18.

Meaning of “PM” in paragraph 16

- 17 (1) For the purposes of this paragraph references to plant or machinery, in the case of any company, do not include any plant or machinery –
- (a) on the provision of which the company has incurred expenditure which is not, as a result of section 34A of CAA 2001 (expenditure for long funding leasing), qualifying expenditure for the purposes of Part 2 of that Act, or
 - (b) which is, as a result of section 67 of that Act (hire-purchase and similar contracts), treated for the purposes of that Part as owned by a person other than the company,
- but, apart from that, include all other plant or machinery, whether or not subject to a lease.
- (2) For the purposes of paragraph 16, “PM” means the amount found by adding together –
- (a) the amounts (if any) shown in the appropriate balance sheet of the relevant company in respect of plant or machinery which it owns at the start of the relevant day, and
 - (b) the amounts (if any) shown in the appropriate balance sheet of each associated company in respect of plant or machinery which it transfers to the relevant company on the relevant day,
- and the reference here to an associated company is to a company which is an associated company of the relevant company on the relevant day.
- (3) For this purpose the amounts shown in the appropriate balance sheet of any company in respect of any plant or machinery are –
- (a) the amounts shown in that balance sheet as the net book value (or carrying amount) in respect of the plant or machinery, and
 - (b) the amounts shown in that balance sheet as the net investment in respect of finance leases of the plant or machinery.
- (4) If –
- (a) any of the plant or machinery is a fixture in any land, and
 - (b) the amount which falls (or would fall) to be shown in an appropriate balance sheet as the net book value (or carrying amount) of the land includes (or would include) an amount in respect of the fixture,
- the amount of the net book value (or carrying amount) in respect of the fixture is determined on a just and reasonable basis.
- (5) If –
- (a) any of the plant or machinery is subject to a finance lease, and
 - (b) any land or asset which is not plant or machinery is subject to that lease,
- the amount of the net investment in respect of the finance lease of that plant or machinery is determined on a just and reasonable basis.
- (6) In this paragraph any reference to any amount shown in the appropriate balance sheet of a company is to the amount which, on the following assumptions, falls (or would fall) to be shown in a balance sheet of the company.
- (7) The assumptions are –
- (a) that the balance sheet is drawn up as at the start of the relevant day in accordance with generally accepted accounting practice, and

- (b) that, if the company acquires any plant or machinery directly or indirectly from a person who is connected with the company, the plant or machinery had been acquired for an amount equal to its market value as at the relevant day.

(8) Sub-paragraph (7)(b) does not apply if the relevant day falls before 22nd March 2006.

Meaning of “TWDV” in paragraph 16

- 18 (1) For the purposes of paragraph 16, “TWDV” means the amount found by adding together –
- (a) the total amount of unrelieved qualifying expenditure in single asset pools for the new chargeable period that is carried forward in the pools from the previous chargeable period under section 59 of CAA 2001,
 - (b) the total amount of unrelieved qualifying expenditure in class pools for the new chargeable period that is carried forward in the pools from the previous chargeable period under that section, and
 - (c) the amount of unrelieved qualifying expenditure in the main pool for the new chargeable period that is carried forward in the pool from the previous chargeable period under that section.
- (2) For the purposes of “TWDV” –
- (a) “the new chargeable period” means the accounting period of the relevant company that begins on the day following the relevant day (see paragraph 3(4)), and
 - (b) expenditure incurred by the relevant company in acquiring plant or machinery on the relevant day is to be left out of account unless it is acquired from an associated company,
- and the reference here to an associated company is to a company which is an associated company of the relevant company on the relevant day.

Amount to be nil if basic amount negative

- 19 If the basic amount given by the formula is a negative amount, the amount is taken instead to be nil.

Adjustment to basic amount: qualifying 75% subsidiaries

- 20 (1) This paragraph applies if –
- (a) the qualifying change of ownership occurs on any day as a result of paragraph 11, and
 - (b) the change occurs by reference to a company (“company A”) ceasing to be a qualifying 75% subsidiary of another company (“company B”) on that day.
- (2) There is no adjustment to the basic amount unless, on that day, company A –
- (a) becomes owned by a consortium of which company B is a member, or
 - (b) becomes a qualifying 90% subsidiary of a company owned by a consortium of which company B is a member.

- (3) In that case, the amount of the income is limited to the appropriate percentage of the basic amount.
- (4) The appropriate percentage is found by subtracting the relevant fraction at the end of the day from 100%.
- (5) For this purpose “the relevant fraction” is whichever is the lowest of the following percentages –
 - (a) the percentage of the ordinary share capital of company A that is beneficially owned by company B,
 - (b) the percentage to which company B is beneficially entitled of any profits available for distribution to equity holders of company A,
 - (c) the percentage to which company B would be beneficially entitled of any assets of company A available for distribution to its equity holders on a winding-up.
- (6) In any case where company A becomes a qualifying 90% subsidiary of a company, sub-paragraph (5) is to be read as if for references to company A there were substituted references to that company.

Adjustment to the basic amount: consortium relationships

- 21 (1) This paragraph applies if the qualifying change of ownership occurs on any day as a result of paragraph 12.
- (2) In a case where that change arises only because the relevant fraction at the end of the day is less than the relevant fraction at the start of the day, the amount of the income is limited to the appropriate percentage of the basic amount.
- (3) The appropriate percentage is found by subtracting the relevant fraction at the end of the day from the relevant fraction at the start of the day.
- (4) In any other case, the amount of the income is limited to the relevant fraction at the start of that day of the basic amount.
- (5) In this paragraph “the relevant fraction” has the same meaning as in paragraph 12.

Migration

- 22 (1) This paragraph applies if –
 - (a) on any day (“the relevant day”) a company begins to be within the charge to corporation tax in respect of a business of leasing plant or machinery which it carries on otherwise than in partnership, and
 - (b) there is a qualifying change of ownership in relation to the company which occurs on the relevant day.
- (2) For the purposes of this Part of this Schedule, any plant or machinery owned by the company immediately before the relevant day is to be ignored in calculating the amount of the income treated as received on that day.

PART 3

LEASING BUSINESS CARRIED ON BY A COMPANY IN PARTNERSHIP

Change in company's interest in business: income treated as received etc

- 23 (1) This paragraph applies for corporation tax purposes if –
- (a) on any day (“the relevant day”) a company (“the partner company”) carries on a business of leasing plant or machinery in partnership with other persons (see paragraph 25),
 - (b) the partner company is within the charge to corporation tax in respect of the business, and
 - (c) there is a qualifying change in the partner company’s interest in the business on the relevant day (see paragraphs 27 and 28).
- (2) On the relevant day –
- (a) the partner company is treated as receiving an amount of income, and
 - (b) any other company which carries on the business on that day and which is within the charge to corporation tax in respect of the business is treated as incurring an expense.
- (3) The income –
- (a) is treated as a receipt of the partner company’s notional business, and
 - (b) is brought into account in calculating for corporation tax purposes the profits of that business for the accounting period in which it is treated as received.
- (4) The expense –
- (a) is treated as an expense of the other company’s notional business, and
 - (b) is allowed as a deduction in calculating for corporation tax purposes the profits of that business for the accounting period in which it is treated as incurred.
- (5) In this Part of this Schedule a company’s “notional business” means the business –
- (a) from which the company’s share in the profits or loss of the business carried on by the partnership is treated under section 114(2) of ICTA as deriving for the purposes of the charge to corporation tax, and
 - (b) which is treated under that provision as carried on alone by the company for those purposes.
- (6) This paragraph is supplemented by paragraph 24.

Amount of income and expense

- 24 (1) The amount of the income is calculated in accordance with paragraphs 29 to 31.
- (2) The amount of the expense of the other company is calculated in accordance with paragraph 32.

Meaning of “business of leasing plant or machinery”

- 25 (1) For purposes of this Part of this Schedule whether, on any day (“the relevant day”), a company (“the partner company”) carries on a business of leasing plant or machinery in partnership with other persons is determined in accordance with paragraphs 6 to 8 (but modified as follows).
- (2) Any reference in those paragraphs to the relevant company is to be read as a reference to the partnership.
- (3) Any reference in those paragraphs to an associated company of the relevant company on the relevant day is to be read as a reference to each of the following –
- (a) the partner company,
 - (b) any company which is an associated company (see paragraph 26) of the partner company on the relevant day,
 - (c) any other partner company in relation to whose interest in the business there is a qualifying change on the relevant day,
 - (d) any other partner company in relation to which there is a qualifying change of ownership on the relevant day, and
 - (e) any company which is an associated company of any other partner company mentioned in paragraph (c) or (d) on the relevant day.
- (4) For this purpose “any other partner company” means a company –
- (a) which carries on the business at the start of the relevant day, and
 - (b) which is within the charge to corporation tax in respect of the business.

Meaning of “associated company”

- 26 (1) A company is an “associated company” of another company on any day if, at the start of that day, –
- (a) one of the two has control of the other, or
 - (b) both are under the control of the same person or persons,
- and for this purpose “control” is to be read in accordance with section 416 of ICTA.
- (2) Sub-paragraphs (3) and (4) apply if, at the start of any day, a company (“the consortium company”) –
- (a) is owned by a consortium, or
 - (b) is a qualifying 90% subsidiary of a company owned by a consortium.
- (3) If there is any qualifying change in the consortium company’s interest in a business on that day, references to an associated company of the consortium company on that day include –
- (a) any member of the consortium at the start of that day, and
 - (b) any company which is an associated company of any such member on that day.
- (4) If there is any qualifying change of ownership in relation to the consortium company on that day but there is no qualifying change in its interest in a business on the relevant day, references to an associated company of the consortium company on that day include –
- (a) any relevant member of the consortium on that day, and

- (b) any company which is an associated company of any relevant member of the consortium on that day.
- (5) For this purpose a member of the consortium is a “relevant” member on any day if –
- (a) it is a member of the consortium at the start of the day, and
 - (b) the qualifying change of ownership occurs on that day in a case where the member of the consortium is regarded as “company E” for the purposes of paragraph 12 (consortium relationships).
- (6) This paragraph applies for the purposes of this Part of this Schedule.

Meaning of “qualifying change” in company’s interest in a business

- 27 (1) For the purposes of this Schedule there is a qualifying change in a company’s interest in a business on any day if its relevant percentage share at the end of the day is less than its relevant percentage share at the start of the day.
- (2) In this paragraph “relevant percentage share”, in relation to a company’s interest in a business, means its percentage share in the profits or loss of the business (determined in accordance with paragraph 28).
- (3) For the purposes of this paragraph any reference to a company’s share in the profits or loss of the business includes a nil share (whether as a result of the dissolution of the partnership or otherwise).

Determining the percentage share in the profits or loss of business

- 28 (1) For the purposes of this Part of this Schedule a company’s percentage share in the profits or loss of a business at any time is determined on a just and reasonable basis.
- (2) In making that determination, regard must be had, in particular, to –
- (a) any matter that would be taken into account in determining under section 114(2) of ICTA the company’s share at that time in the profits or loss of the business, and
 - (b) any matter that would be taken into account in determining under that provision the company’s share at that time in any capital allowances and charges under CAA 2001.

The amount of the income: the basic amount

- 29 (1) This paragraph determines the amount of the income under paragraph 23 when a qualifying change in the interest of a company (“the partner company”) in a business of leasing plant or machinery occurs on any day (“the relevant day”).
- (2) The amount of the income is found by –
- (a) applying the following formula to give the basic amount, and
 - (b) making the adjustment in accordance with paragraph 30 or 31 to the basic amount.
- (3) The formula is –

PM – TWDV

- (4) In this paragraph “PM” has the meaning given by paragraph 17, but –
- (a) reading any reference in that paragraph to the relevant company as a reference to the partnership, and
 - (b) reading any reference in that paragraph to an associated company of the relevant company on the relevant day as a reference to a qualifying company (see sub-paragraph (7)).
- (5) In this paragraph “TWDV” means the amount found by adding together –
- (a) the total amount of unrelieved qualifying expenditure in single asset pools for the new chargeable period that would be carried forward in the pools from the old chargeable period under section 59 of CAA 2001,
 - (b) the total amount of unrelieved qualifying expenditure in class pools for the new chargeable period that would be carried forward in the pools from the old chargeable period under that section, and
 - (c) the amount of unrelieved qualifying expenditure in the main pool for the new chargeable period that would be carried forward in the pool from the old chargeable period under that section.
- (6) For the purposes of “TWDV” –
- (a) it is to be assumed that the chargeable period (within the meaning of CAA 2001) of the partnership ends on the relevant day (“the old chargeable period”) and a new one begins on the following day (“the new chargeable period”), and
 - (b) expenditure incurred by the partnership in acquiring plant or machinery on the relevant day is to be left out of account unless it is acquired from a qualifying company.
- (7) In this paragraph “qualifying company” means each of the following –
- (a) the partner company,
 - (b) any company which is an associated company of the partner company on the relevant day,
 - (c) any other partner company in relation to whose interest in the business there is a qualifying change on the relevant day,
 - (d) any other partner company in relation to which there is a qualifying change of ownership on the relevant day, and
 - (e) any company which is an associated company of any other partner company mentioned in paragraph (c) or (d) on the relevant day.
- (8) For this purpose “any other partner company” means a company –
- (a) which carries on the business at the start of the relevant day, and
 - (b) which is within the charge to corporation tax in respect of the business.

Amount to be nil if basic amount negative

- 30 If the basic amount given by the formula is a negative amount, the amount is taken instead to be nil.

Adjustment of basic amount

- 31 (1) The amount of the company’s income under paragraph 23 is limited to the appropriate percentage of the basic amount.

- (2) The appropriate percentage is found by subtracting the company's relevant percentage share at the end of the day from its relevant percentage share at the start of the day.
- (3) In this paragraph "relevant percentage share" has the same meaning as it has for the purposes of paragraph 27.

Amount of expense

- 32 (1) This paragraph applies if, as a result of a qualifying change in a company's interest in a business on any day, –
 - (a) the company ("the partner company") is treated as receiving an amount of income under paragraph 23 on that day,
 - (b) any other company is treated as incurring an expense under that paragraph on that day,
 - (c) the other company's percentage share in the profits or loss of the business increases at any time on that day, and
 - (d) the increase at that time (or any part of the increase at that time) is wholly attributable to the change in the partner company's interest in the business.
- (2) The amount of the expense of the other company is limited to the appropriate percentage of the amount of the income.
- (3) The appropriate percentage is the percentage of the other company's percentage share in the profits or loss of the business immediately after the change that is wholly attributable to the change.
- (4) For the purposes of this paragraph any reference to an increase in the other company's percentage share in any profits or loss of the business includes an increase from a nil share (whether as a result of its becoming a partner or otherwise).

Income and matching expense in different accounting periods

- 33 (1) This paragraph applies for corporation tax purposes if –
 - (a) on any day ("the relevant day") a company carries on a business of leasing plant or machinery in partnership with other persons,
 - (b) the company is within the charge to corporation tax in respect of the business, and
 - (c) there is a qualifying change of ownership in relation to the company on the relevant day.
- (2) On the relevant day –
 - (a) the company is treated as receiving an amount of income, and
 - (b) the accounting period of the company ends.
- (3) The income –
 - (a) is treated as a receipt of the company's notional business, and
 - (b) is brought into account in calculating for corporation tax purposes the profits of that business for that accounting period.
- (4) On the day following the relevant day –
 - (a) the company is treated as incurring an expense, and
 - (b) a new accounting period of the company begins.

- (5) The expense –
- (a) is treated as an expense of the company’s notional business, and
 - (b) is allowed as a deduction in calculating for corporation tax purposes the profits of that business for that new accounting period.
- (6) This paragraph is supplemented by paragraphs 34 and 35.

Amount of income and expense

- 34 (1) The amount of the income is calculated in accordance with paragraph 36.
- (2) The amount of the expense is the same as the amount of the income.

No carry back of the expense

- 35 (1) This paragraph applies if the notional business carried on by the company is a trade the profits of which are chargeable to corporation tax under Case I of Schedule D.
- (2) No relief is to be given by virtue of section 393A(1)(b) of ICTA (set off of trading losses against profits of earlier accounting periods) in respect of so much of any loss as derives from the expense.
- (3) For the purpose of determining how much of a loss derives from the expense, the loss is to be calculated on the basis that the expense is the final amount to be deducted.

Amount of the income

- 36 (1) This paragraph determines the amount of the income under paragraph 33 when a qualifying change of ownership in relation to a company carrying on a business of leasing plant or machinery occurs on any day (“the relevant day”).
- (2) The amount of the income is found by first –
- (a) applying the formula in paragraph 29 to give the basic amount (as if the company were “the partner company” mentioned in that paragraph), and
 - (b) making any adjustment in accordance with any of paragraphs 19 to 21 to the basic amount.
- (3) The amount is then limited to the appropriate percentage of the amount given as a result of sub-paragraph (2).
- (4) If there is no qualifying change in the company’s interest in the business on the relevant day, the appropriate percentage is the percentage share of the company in the profits or loss of the business on the relevant day.
- (5) If there is a qualifying change in the company’s interest in the business on the relevant day, the appropriate percentage is the percentage share of the company in the profits or loss of the business at the end of the relevant day.

Meaning of “profits” etc

- 37 In this Part of this Schedule “profits” does not include chargeable gains, and references to “loss” are to be read accordingly.

PART 4

MISCELLANEOUS

Anti-avoidance

- 38 (1) This paragraph applies if—
- (a) a company is treated as incurring an expense under any provision of this Schedule,
 - (b) the expense arises directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and
 - (c) the main purpose, or one of the main purposes, of the arrangements is to secure that the company is treated as incurring the expense.
- (2) The following restrictions apply in respect of so much of any loss incurred by the company as derives from the expense (“the restricted part of the loss”).
- (3) Apart from by way of set off against any relevant leasing income, relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss.
- (4) If the business carried on by the company is a trade, relief is not to be given to the company under section 393A(1) of ICTA in respect of the restricted part of the loss.
- (5) The restricted part of the loss is not available for set off by way of group relief in accordance with section 403 of ICTA.
- (6) For the purpose of determining how much of a loss derives from the expense, the loss is to be calculated on the basis that the expense is the final amount to be deducted.
- (7) 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 is a party to the arrangements.
- (8) In this paragraph “relevant leasing income” means any income deriving from any plant or machinery lease—
- (a) which is not an excluded lease of background plant or machinery for a building, and
 - (b) which is entered into before the day on which the company is treated as incurring the expense.
- (9) In this paragraph “relevant loss relief provision” means any of the following provisions of ICTA—
- (a) section 392A (Schedule A losses),
 - (b) section 392B (losses from overseas property businesses),
 - (c) section 393 (trade losses),
 - (d) section 396 (Case VI losses).

Relief for expense under paragraph 3 or 33 otherwise giving rise to carried forward loss

- 39 (1) This paragraph applies if—

-
- (a) there is a qualifying change of ownership in relation to a company on any day (“the relevant day”),
 - (b) on the following day the company is, accordingly, treated under paragraph 3 or 33 as incurring an expense of a business and an accounting period of the company begins,
 - (c) the company makes a loss in that accounting period,
 - (d) some or all of that loss would otherwise be carried forward to the next accounting period of the company (“the subsequent accounting period”), and
 - (e) the subsequent accounting period starts within the period of 12 months beginning with the relevant day and does not start as a result of paragraph 3 or 33.
- (2) So much of the loss (or part of the loss) that would otherwise be so carried forward as derives from the expense under paragraph 3 or 33 is instead to be treated for corporation tax purposes as an expense.
- (3) The expense under this paragraph is allowed as a deduction in calculating for corporation tax purposes the profits of the business for the subsequent accounting period.
- (4) For the purpose of determining how much of a loss derives from an expense under paragraph 3 or 33, the loss is to be calculated on the basis that the expense under that paragraph is the final amount to be deducted.

Relationship of Schedule with section 228K of CAA 2001

- 40 (1) This paragraph applies if—
- (a) on any day (“the relevant day”) a company carries on a business of leasing plant or machinery (whether alone or in partnership),
 - (b) on the relevant day there is a qualifying change of ownership in relation to the company or a qualifying change in its interest in the business,
 - (c) on the relevant day the company, or the partnership of which the company is a member, disposes of any relevant plant or machinery subject to a lease, and
 - (d) section 228K of CAA 2001 (disposal of plant or machinery subject to lease where income retained) applies in relation to the disposal.
- (2) In such a case—
- (a) no person is to be treated as receiving an amount of income, or as incurring an expense, as a result of any provision of this Schedule, and
 - (b) no accounting period ends or begins as a result of any provision of this Schedule.
- (3) In this paragraph—
- “business of leasing plant or machinery” has the meaning given by Part 2 or (as the case may be) Part 3,
 - “relevant plant or machinery subject to a lease” has the same meaning as it has for the purposes of section 228K of CAA 2001 (see section 228M).

Definitions for purposes of Schedule

- 41 (1) This paragraph applies for the purposes of this Schedule.
- (2) “Company” means a body corporate.
- (3) “Excluded lease of background plant or machinery for a building” has the meaning given in Chapter 6A of Part 2 of CAA 2001.
- (4) “Finance lease”, in the case of any person, means a lease which, under generally accepted accounting practice, falls or (would fall) to be treated as a finance lease or loan in the accounts of that person.
- (5) “Fixture” –
- (a) means any plant or machinery that is so installed or otherwise fixed in or to a building or other description of land as to become, in law, part of that building or other land, and
 - (b) includes any boiler or water-filled radiator installed in a building as part of a space or water heating system.
- (6) “Plant or machinery” has the same meaning as in Part 2 of CAA 2001.
- (7) “Plant or machinery lease” has the meaning given in Chapter 6A of that Part.
- (8) The market value of any plant or machinery at any time is to be determined on the assumption of a disposal by an absolute owner free from –
- (a) all leases (including any agreement or arrangement which is or includes a plant or machinery lease), and
 - (b) other encumbrances.
- (9) Section 839 of ICTA (connected persons) applies.

Index of definitions

- 42 The following table lists the places where expressions used in this Schedule are defined or otherwise explained in this Schedule for the purposes of this Schedule or a Part of this Schedule –

<i>Expression</i>	<i>Provision</i>
associated company (in Part 2)	paragraph 9
associated company (in Part 3)	paragraph 26
business of leasing plant or machinery (in Part 2)	paragraphs 6 to 8
business of leasing plant or machinery (in Part 3)	paragraphs 6 to 8 and 25
company	paragraph 41
company’s percentage share in any profits or loss of a business (in Part 3)	paragraph 28
connected persons	paragraph 41

<i>Expression</i>	<i>Provision</i>
consortium and related expressions	paragraph 14
excluded lease of background plant or machinery for a building	paragraph 41
profits or assets available for distribution to equity holders (in Part 2)	paragraph 15
finance lease	paragraph 41
fixture	paragraph 41
loss (in Part 3)	paragraph 37
market value (in relation to plant or machinery)	paragraph 41
notional business (in Part 3)	paragraph 23
plant or machinery	paragraph 41
plant or machinery lease	paragraph 41
profits (in Part 3)	paragraph 37
qualifying change in a company's interest in a business (in Part 3)	paragraphs 27 and 28
qualifying change of ownership in relation to a company	paragraphs 10 to 13
qualifying leased plant or machinery (in Part 2)	paragraph 6
qualifying 75% subsidiary	paragraph 15
qualifying 90% subsidiary	paragraph 15
relevant change in the relationship between companies	paragraph 10

Consequential amendments

- 43 (1) ICTA is amended as follows.
- (2) In section 12 (basis of, and periods for, assessment), at the end insert –
“(9) This section is subject to Schedule 1 to the Finance Act 2006.”.
- (3) In section 403 (amounts which may be surrendered by way of group relief), in subsection (4) (section 403 subject to certain exceptions), at the end insert

“and
paragraph 38 of Schedule 1 to the Finance Act 2006 (sale etc of lessor
companies etc: anti-avoidance)”.