

1 Sale etc of lessor companies etc

- (1) In section 343 of ICTA (company reconstructions without a change of ownership), after subsection (2) insert—
 - “(2A) Where the trade which the predecessor ceases to carry on on any day is or forms part of a business of leasing plant or machinery which the predecessor or the successor carries on on that day otherwise than in partnership, subsection (2) above shall apply only if, on that day, each company which is a principal company of the predecessor is also a principal company of the successor.
 - (2B) In any case where subsection (2) above would apply but for subsection (2A) above, the plant or machinery belonging to that trade shall be treated for the purposes of the Corporation Tax Acts as sold by the predecessor to the successor on that day for an amount equal to its market value as at that day.
 - (2C) Any expression which is used in subsection (2A) or (2B) above and in Part 2 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc) has the same meaning in that subsection as in that Part.”
- (2) Schedule 10 to FA 2006 (sale etc of lessor companies etc) is amended as follows.
- (3) In paragraph 1(4) (contents of Schedule), for “an anti-avoidance provision” substitute “anti-avoidance provisions”.
- (4) 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”.
- (5) 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.”
 - (6) The amendment made by subsection (1) has effect in relation to cessations occurring on or after 22nd November 2006.
 - (7) For the purposes of Schedule 10 to FA 2006 the amendments made by subsections (4) and (5) 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.
 - (8) For all other purposes the amendments made by those subsections 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.

Avoidance – Schedule 10 Finance Act 2006 - Sale etc of Lessor Companies etc

Draft Clause and Explanatory Statement

On 22 November 2006 the Paymaster General, Dawn Primarolo, announced that action would be taken with immediate effect to prevent companies from undermining the intended effect of Schedule 10 Finance Act 2006 (Sale etc. of lessor companies etc). On the same day HMRC published a technical note setting out in detail the form that the legislation would take.

The draft legislation is published today, 6 December 2006, along with an explanatory statement.

Enquiries and comments should be addressed to:

Jo Brindley
HM Revenue & Customs
CT & VAT Products & Processes
Mailstation A, 3rd floor
100 Parliament Street
London SW1A 2BQ

Telephone: 020 7147 2571

Email: jo.brindley@hmrc.gsi.gov.uk

Explanatory Notes

DETAIL

Subsection (1) inserts new subsections (2A), (2B) and (2C) into section 343 Income and Corporation Taxes Act 1988 (company reconstructions without change of ownership). The new subsections override the effect of section 343(2) in certain circumstances.

New subsection 2A identifies transfers of trades or part trades that are or form part of a business of leasing plant or machinery. 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.

New subsection 2B 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 condition in subsection 2A. The subsection creates a fiction that the assets are sold for an amount equal to market value on that day. The fiction applies for all 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.

New subsection (2C) provides that terms used in subsections (2A) and (2B) have the same meaning as in Schedule 10 FA 2006. Thus the meaning of carrying on a business of leasing plant or machinery takes its meaning from paragraph 6 of Schedule 10, the principal company or companies are those identified in paragraphs 11 and 12 and market value takes its meaning from paragraph 41(8).

Subsections (2) and (3) introduce the changes to Schedule 10 FA 2006 and make a minor change to the contents of Schedule 10.

Subsection (4) 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.

Subsection (5) introduces new anti-avoidance paragraphs 38A and 38B into Schedule 10.

New paragraph 38A targets companies that seek to influence the outcome of the application of the Schedule through arrangements that increase or reduce the amounts shown in the balance sheet in respect of plant or machinery. The

paragraph requires the company to ignore an increase or reduction in the amount shown in the balance sheet when considering the application of the Schedule.

It applies in situations where:

- there is a question as to the application of the Schedule and the answer to the question relies on amounts shown in any balance sheet of any company in respect of plant or machinery; and
- there is an arrangement that results in an increase or reduction of the amount shown on the balance sheet; and
- that arrangement had securing a relevant tax advantage as its main purpose or one of its main purposes.

‘Questions as to the application of the Schedule’ are:

- determining whether a company carries on a business of leasing plant or machinery; and
- quantifying the amount of any income or expense which any company is treated as receiving or incurring.

‘Arrangements’ are defined 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. This definition reflects the wide definition used in paragraph 38 of Schedule 10.

‘Increase’ and ‘reduction’ are defined as including increases from nil and decreases to nil.

There is a ‘relevant tax advantage’ if, but for the application of this paragraph:

- a company would not be regarded as carrying on a business of leasing plant or machinery; or
- the amount of any income which a company is treated as receiving under Schedule 10 is reduced or the amount of any expense which a company is treated as incurring under Schedule 10 is increased.

New paragraph 38B specifically targets situations where the amounts shown in respect of plant or machinery assets in the balance sheet are affected by the liabilities of the company. It requires the company to determine any question as to the application of the Schedule on the assumption that there are no liabilities of any kind at any time on the day.

The paragraph applies if condition A or B is met. Condition A is met where there would be no amount on the balance sheet in respect of the plant or machinery but for the paragraph; Condition B is met if there would be a lesser amount on

the balance sheet but for the paragraph compared to the amount that would fall to be shown on the assumption that there are no liabilities of any kind.

'Liabilities' is defined to include any share capital issued by the company that would fall to be treated as a liability for accounting purposes.

Subsections (6), (7) and (8) deal with commencement.

Subsection (6) brings the changes to section 343 ICTA 1988 into effect for cessations on or after 22 November 2006.

Subsection (7) brings the changes to Schedule 10 into effect for determining whether there has been a qualifying change in ownership in relation to a company or a company's interest in a business when those changes take place on or after 22 November 2006.

Subsection (8) brings the changes to Schedule 10 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.

BACKGROUND

Schedule 10 Finance Act 2006 introduced targeted anti-avoidance legislation aimed at deterring the sales of lessor companies that carry on the business of leasing plant or machinery in circumstances that have the effect of turning a tax timing advantage into what may amount to a permanent loss of tax. When the lessor company changes ownership the Schedule brings an amount of income into account which recovers the timing advantage secured through the availability of capital allowances and then returns the timing advantage through a matching expense. The income falls in a period when the company is in the ownership of the selling group and the expense falls in a period when the company is in the ownership of the buying group.

The Schedule tests whether a company is carrying on a business of leasing plant or machinery (and so is a lessor company for the purpose of the Schedule) and calculates the level of the income amount by reference to amounts shown in the balance sheet in respect of plant or machinery. Where the values shown on the balance sheet are manipulated this can have the effect of taking the company outside the scope of the Schedule or can reduce or eliminate the charge.

The amount of the income is calculated by reference to the balance sheet values of plant or machinery at the point at which a company is de-grouped. By de-grouping before transferring plant or machinery assets into the lessor company companies can reduce or eliminate the amount of income. This is made possible by exploiting the different ownership requirements for the purposes of section 343 ICTA 1988 and Schedule 10.

Schemes that mitigate the effect of Schedule 10 have been notified to HMRC under the disclosure rules.

The clause addresses both the manipulation of balance sheet values and the mismatch between the ownership requirements for the purposes of section 343 ICTA 1988 and Schedule 10.

1 Sale etc of lessor companies etc

- (1) In section 343 of ICTA (company reconstructions without a change of ownership), after subsection (2) insert—
 - “(2A) Where the trade which the predecessor ceases to carry on on any day is or forms part of a business of leasing plant or machinery which the predecessor or the successor carries on on that day otherwise than in partnership, subsection (2) above shall apply only if, on that day, each company which is a principal company of the predecessor is also a principal company of the successor.
 - (2B) In any case where subsection (2) above would apply but for subsection (2A) above, the plant or machinery belonging to that trade shall be treated for the purposes of the Corporation Tax Acts as sold by the predecessor to the successor on that day for an amount equal to its market value as at that day.
 - (2C) Any expression which is used in subsection (2A) or (2B) above and in Part 2 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc) has the same meaning in that subsection as in that Part.”
- (2) Schedule 10 to FA 2006 (sale etc of lessor companies etc) is amended as follows.
- (3) In paragraph 1(4) (contents of Schedule), for “an anti-avoidance provision” substitute “anti-avoidance provisions”.
- (4) 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”.
- (5) 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.”
- (6) The amendment made by subsection (1) has effect in relation to cessations occurring on or after 22nd November 2006.
 - (7) For the purposes of Schedule 10 to FA 2006 the amendments made by subsections (4) and (5) 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.
 - (8) For all other purposes the amendments made by those subsections 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.