

## Technical Note

### Sale of Lessors - Companies in Partnership October 2007

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#### Introduction

1. The Government announced today that legislation will be introduced in the Finance Bill 2008 to ensure that legislation introduced by Finance Act 2006 dealing with the sale of a business of leasing plant or machinery carried on by companies in partnership operates fairly.
2. The measure will be deemed always to have had effect.
3. A draft of the legislation is included at the end of this Note.

#### Background

4. Legislation was introduced in Schedule 10 Finance Act 2006 to counter avoidance involving the sale of companies leasing plant or machinery. The legislation operates by bringing into charge an amount of income that is taxed on the seller and giving an equal amount of relief to the buyer. Where the business is carried on by a company alone Schedule 10 is triggered by the sale of the company. Where the business is carried on by a company in partnership Schedule 10 is triggered by a reduction in a partner company's interest in the business. This includes the outright sale of the partnership business by all of the partner companies.
5. Where the business is transferred by the partnership to another partnership the legislation works appropriately to deliver a charge on the departing partners and a relief to the buying partners. Where instead the business is transferred by the partnership to another company which carries on the business on its own account the legislation delivers a charge on the departing partners but does not deliver a relief to the successor company.
6. This problem arises as a consequence of the way in which part 3 of Schedule 10 delivers the charge and relief. The legislation targets the 'notional business' carried on by the partner company, a term derived from section 114 ICTA 1988 which is only apposite when a business is being carried on by companies in partnership. Where the successor is a single company there is no 'notional business': there is instead a 'real business' and no relief can be delivered. This means that a transfer of a business from a partnership to a single company is unfairly treated.

## **Proposed changes to Schedule 10**

7. New paragraph 23(4A) ensures that where the successor is a company carrying on business on its own account the expense is treated as a deduction in calculating for corporation tax purposes the profits of that business.
8. New paragraph 32(3A) ensures that the amount of the relief matches the amount of the income.

## **Comments invited**

We would welcome comments from parties affected by this aspect of Schedule 10 who consider that the proposed changes to that legislation, as currently drafted, do not address the situation adequately.

Enquiries and comments relating to this technical note should be addressed to:

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## 1 Sale of lessor companies etc

- (1) In paragraph 23 of Schedule 10 to FA 2006 (leasing business carried on in partnership: change in company's interest in the business), after sub-paragraph (4) insert—
  - “(4A) But if at the end of the relevant day the other company is the only person carrying on the business, the expense—
    - (a) is treated as an expense incurred by the other company in its carrying on of the business (at a time when it is the only person carrying it on), and
    - (b) is allowed as a deduction in calculating for corporation tax purposes the profits of the business for the accounting period in which it is treated as incurred.”
- (2) Paragraph 32 of that Schedule (amount of expense) is amended as follows.
- (3) In sub-paragraph (2), for the word “The” at the beginning substitute “Except in a case where sub-paragraph (3A) applies, the”.
- (4) After sub-paragraph (3) insert—
  - “(3A) If paragraph 23(4A) applies (business carried on by the other company alone), the amount of the expense of the other company is equal to the amount of the income.”
- (5) The amendments made by this section are to be treated as always having had effect.