

Bill 6

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Make provision

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

CHAPTER 1

LEASING PLANT OR MACHINERY: TAX AVOIDANCE

Restrictions on use of losses in leasing partnerships

1 When restrictions on leasing partnership losses apply [j66785ZA1]

- (1) Section 2 (restrictions on leasing partnership losses) applies 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 of the company 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)).

Origin: ICTA s.785ZA(1).

- (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 condition in subsection (3) is met.

Origin: ICTA s.785ZA(2).

- (3) The condition is that for the purposes of section [j190303] of [Bill 5] (allocation of firm’s profits between partners)—

- (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.

Origin: ICTA s.785ZA(3).

- (4) For the purposes of subsection (3) "profits" does not include chargeable gains.

Origin: ICTA s.785ZA(4).

- (5) In this section "business of leasing plant or machinery" has the same meaning as in Chapter [4] of Part [10] (sales of lessors: leasing business carried on by a company in partnership) (see sections {j60610s25} to {j60610s8p}).

Origin: ICTA s.785ZB(1), (2).

- (6) In this section and section 2 –
 - "lease" has the same meaning as in section 785A of ICTA (rent factoring of leases of plant or machinery),
 - ["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 as deriving under [section 114(2) of ICTA] for the purposes of the charge to corporation tax, and
 - (b) which is treated for those purposes as carried on alone by the company for those purposes,]
 - "plant or machinery" has the same meaning as in Part 2 of CAA 2001, and
 - "relevant capital allowance" means an allowance under that Part in respect of expenditure incurred on the provision of plant or machinery wholly or partly for the purposes of the leasing business.

Origin: ICTA s.785ZB(1), (3), (4), (5), (6).

2 Restrictions on leasing partnership losses [j66785ZA2]

- (1) 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").

Origin: ICTA s.785ZA(5).

- (2) Relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss, except by way of set off against any relevant leasing income.

Origin: ICTA s.785ZA(6).

- (3) If the leasing business is a trade, relief is not to be given to the company under [section 393A(1) of ICTA] (relief for trade losses against total profits) in respect of the restricted part of the loss.

Origin: ICTA s.785ZA(7).

- (4) The restricted part of the loss is not available for set off by way of group relief in accordance with Chapter [2] of Part [5] (surrender of company's losses etc for an accounting period).

Origin: ICTA s.785ZA(8).

- (5) 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.

Origin: ICTA s.785ZA(9).

- (6) In this section –
- “the leasing business” has the same meaning as in section 1,
 - “relevant leasing income” means any income of the company’s [notional business] deriving from any lease which –
 - (a) is a lease of plant or machinery, and
 - (b) was entered into before the end of the accounting period of the company in which the loss [in the notional business] was incurred, and
 - “relevant loss relief provision” means any of the following provisions –
 - (a) [section 392A of ICTA (Schedule A losses)],
 - (b) [section 392B of ICTA (losses from overseas property business)],
 - (c) [section 393 of ICTA (trade losses)], and
 - (d) [section 396 of ICTA (Case VI losses)].

Origin: ICTA s.785ZB(1), (7), (8); drafting.

Capital payments in respect of leases treated as income

3 Capital payments in respect of leases treated as income [j66785B]

- (1) This section applies if –
- (a) there is an unconditional obligation, under a lease of plant or machinery or a relevant arrangement, to make a relevant capital payment at any time, or
 - (b) a relevant capital payment is made under such a lease or arrangement otherwise than in pursuance of such an obligation.

Origin: ICTA s.785B(1).

- (2) The lessor is treated for corporation tax purposes as receiving income attributable to the lease of an amount equal to the amount of the capital payment.

Origin: ICTA s.785B(2).

- (3) If subsection (1)(a) applies, the income is treated as income for the period of account in which there is first an obligation of the kind mentioned there.

Origin: ICTA s.785B(3).

- (4) If subsection (1)(b) applies, the income is treated as income for the period of account in which the capital payment is made.

Origin: ICTA s.785B(3).

- (5) For the meaning of “capital payment” and “relevant capital payment”, see section 4.

Origin: Drafting.

- (6) For the meaning of other expressions used in this section or section 4, 6 or 7, see section 5.

Origin: Drafting.

4 Meaning of “capital payment”, “relevant capital payment” etc [j66785C1]

- (1) This section gives the meaning of “capital payment”, “relevant capital payment” and references to payment for the purposes of sections 3, 6 and 7 and this section.

Origin: Drafting.

- (2) “Capital payment” means any payment except one which, if made to the lessor –
- (a) would fall to be included in a calculation of the lessor’s income for corporation tax purposes, or
 - (b) would so fall but for [section 502B of ICTA] (rental earnings under long funding finance lease).

Origin: ICTA s.785C(2).

- (3) A capital payment, in relation to a lease or relevant arrangement, is “relevant” if condition A or B is met (but this is subject to subsection (6)).

Origin: ICTA s.785C(6).

- (4) Condition A is that the capital payment is payable (or paid), directly or indirectly, by or on behalf of the lessee to the lessor or another person on the lessor’s behalf in connection with –
- (a) the grant, assignment, novation or termination of the lease, or
 - (b) any provision of the lease or relevant arrangement (including the variation or waiver of any such provision).

Origin: ICTA s.785C(7).

- (5) Condition B is that rentals payable under the lease are less than, or payable later than, they might reasonably be expected to be if there were no obligation to make the capital payment and it were not made.

Origin: ICTA s.785C(8).

- (6) A capital payment is not “relevant” so far as it –
- (a) reduces the amount of expenditure incurred by the lessor for the purposes of CAA 2001 in respect of the plant or machinery in question or would reduce it but for section 536 of CAA 2001 (contributions not made by public bodies and not eligible for tax relief),
 - (b) is compensation for loss resulting from damage to, or damage caused by, the plant or machinery in question, or
 - (c) would fall (or falls) to be brought into account by the lessor as a disposal receipt within the meaning of Part 2 of CAA 2001 (see section 60(1) of that Act).

Origin: ICTA s.785C(9).

- (7) References to payment include the provision of value by any means other than the making of a payment.

Origin: ICTA s.785C(10).

- (8) Accordingly –
- (a) references to the making of a payment include the passing of value by any other means,
 - (b) references to the amount of the payment include the value passed.

Origin: ICTA s.785C(10).

5 Further interpretation of section 3 etc [j66785C2]

- (1) This section applies for the purposes of sections 3, 4, 6 and 7 and this section.

Origin: ICTA s.785C(1); drafting.

- (2) “Lease” includes –
- (a) a licence, and
 - (b) the letting of a ship or aircraft on charter or the letting of any other asset on hire,
- and “lessor” and “lessee” must be read accordingly.

Origin: ICTA s.785C(3).

- (3) “Lease of plant or machinery” includes a lease of plant or machinery and other property, but does not include a lease to which subsection (4) or (5) applies.

Origin: ICTA s.785C(4).

- (4) This subsection applies to a lease if any income attributable to it and received by the lessor would be chargeable to tax under Part [4] of Bill [5] (property income).

Origin: ICTA s.785C(4).

- (5) This subsection applies to a lease of plant or machinery if the lessor has incurred on the plant or machinery what would be qualifying expenditure within the meaning of Part 2 of CAA 2001 but for section 34A of that Act (expenditure on plant or machinery for long funding leasing not qualifying expenditure).

Origin: ICTA s.785C(4).

- (6) “Relevant arrangement” means any agreement or arrangement relating to a lease of plant or machinery, including one made before the lease is entered into or after it has ended.

Origin: ICTA s.785C(5).

- (7) Accordingly, “lessor” and “lessee” include prospective and former lessors and lessees.

Origin: ICTA s.785C(5).

6 Leases of plant or machinery and other property: apportionments for section 3 [j66785D]

- (1) This section applies if section 3 applies in relation to a lease of plant or machinery and other property.

Origin: ICTA s.785D(1).

- (2) The relevant capital payment is to be apportioned, on a just and reasonable basis, between –
- (a) the plant or machinery, and
 - (b) the other property.

Origin: ICTA s.785D(2).

- (3) If any income attributable to any of the plant or machinery and received by the lessor would be chargeable to tax under Part [4] of [Bill 5] (property income), that plant or machinery is treated as falling within subsection (2)(b) (and not subsection (2)(a)).

Origin: ICTA s.785D(3).

- (4) Section 3(2) has effect as if the reference to the amount of the capital payment were to such amount as is apportioned under subsection (2) in respect of the plant or machinery within subsection (2)(a).

Origin: ICTA s.785D(4).

7 Deduction where failure to make relevant capital payment expected [j66785E]

- (1) This section applies for corporation tax purposes if –
- (a) section 3 applies as a result of subsection (1)(a) of that section, and
 - (b) at any time the lessor reasonably expects that the relevant capital payment will not be paid or will not be paid in full.

Origin: ICTA s.785E(1).

- (2) For the purposes of calculating the profits of the lessor, a deduction is allowed for the period of account which includes that time.

Origin: ICTA s.785E(2).

- (3) The amount of the deduction is equal to the amount reasonably expected not to be paid.

Origin: ICTA s.785E(3).

- (4) No other deduction is allowed in respect of the matters mentioned in subsection (1)(b).

Origin: ICTA s.785E(4).