

Bill 6

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A

B I L L

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Restate, with minor changes, certain enactments relating to corporation tax; and for connected purposes.

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:—

PART 1

LEASING PLANT OR MACHINERY

CHAPTER 1

INTRODUCTION

1 Overview of Part [\[j60610S1\]](#)

- (1) This Part makes provision about the taxation of leasing transactions involving companies.

[Origin: Drafting.](#)

- (2) Chapter 2 makes provision about the treatment for corporation tax purposes of companies which are lessors or lessees under long funding leases of plant or machinery.

[Origin: Drafting.](#)

- (3) The sales of lessors Chapters make provision about the taxation of a company which is within the charge to corporation tax in respect of a business of leasing plant or machinery (within the meaning of Chapter 3 or 4)—

- (a) on the sale of, or certain other changes in interests in, the company, and
(b) in certain circumstances where the company’s interest in the business changes.

[Origin: FA 2006 Sch.10 para.1\(1\); drafting.](#)

- (4) In this Part “the sales of lessors Chapters” means Chapters 3 to 5.

[Origin: Drafting.](#)

- (5) In the sales of lessors Chapters –
- (a) Chapter 3 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,
 - (b) Chapter 4 deals with –
 - (i) 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
 - (ii) the case of a qualifying change of ownership in relation to any such company, and
 - (c) Chapter 5 contains anti-avoidance provisions and other provisions supplementing the sales of lessors Chapters (see, in particular, section 52 (interpretation of those Chapters)).

Origin: FA 2006 Sch.10 para.1(2), (3), (4); drafting.

- (6) For the meaning of “qualifying change of ownership” in the sales of lessors Chapters, see sections 10 to 15.

Origin: Drafting.

- (7) For the meaning of “qualifying change in a company’s interest in a business” in the sales of lessors Chapters, see section 33.

Origin: Drafting.

CHAPTER 2

LONG FUNDING LEASES OF PLANT OR MACHINERY

CHAPTER 3

SALES OF LESSORS: LEASING BUSINESS CARRIED ON BY A COMPANY ALONE

Income and matching expense in different accounting periods

2 Income and matching expense in different accounting periods [j60610s3]

- (1) This section applies if on any day (“the relevant day”) –
- (a) a company carries on a business of leasing plant or machinery otherwise than in partnership (see sections 6 to 9),
 - (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 (see sections 10 to 15).

Origin: FA 2006 Sch.10 para.3(1).

- (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.

Origin: FA 2006 Sch.10 para.3(2).

- (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.

Origin: FA 2006 Sch.10 para.3(3).

- (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.

Origin: FA 2006 Sch.10 para.3(4).

- (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.

Origin: FA 2006 Sch.10 para.3(5).

- (6) This section is supplemented by sections 3 to 5.

Origin: FA 2006 Sch.10 para.3(6).

- (7) This section is subject to section 51 (exception where section 228K of CAA 2001 applies).

Origin: Drafting.

3 Amount of income and expense [j60610s4]

- (1) The amount of the income under section 2 is calculated in accordance with sections 16 to 23.

Origin: FA 2006 Sch.10 para.4(1).

- (2) The amount of the expense under section 2 is the same as the amount of the income.

Origin: FA 2006 Sch.10 para.4(2).

4 No carry back of the expense [j60610s5]

- (1) This section applies if the business carried on by the company is a trade the profits of which are chargeable to corporation tax under Part 3 of CTA 2009 (trading income).

Origin: FA 2006 Sch.10 para.5(1).

- (2) No relief is to be given as a result of [section 393A(1)(b) of ICTA] (relief for trade losses against total profits of earlier accounting periods) in respect of so much of any loss as derives from the expense.

Origin: FA 2006 Sch.10 para.5(2).

- (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.

Origin: FA 2006 Sch.10 para.5(3).

5 Relief for expense under section 2 otherwise giving rise to carried forward loss [j60610s391]

- (1) This section applies if—
- there is a qualifying change of ownership in relation to a company on any day (“the relevant day”),
 - on the following day the company is treated under section 2 as incurring an expense of a business and an accounting period of the company (“period 1”) begins,
 - the company makes a loss in period 1,
 - some or all of that loss would otherwise be carried forward to the next accounting period of the company (“period 2”), and
 - period 2 starts within the period of 12 months beginning with the relevant day and does not start as a result of section 2 or 39.

Origin: FA 2006 Sch.10 para.39(1).

- (2) So much of the loss (or part of the loss) that would otherwise be so carried forward as derives from the expense under section 2 is instead to be treated for corporation tax purposes as an expense.

Origin: FA 2006 Sch.10 para.39(2).

- (3) The expense under this section is allowed as a deduction in calculating for corporation tax purposes the profits of the business for period 2.

Origin: FA 2006 Sch.10 para.39(3).

- (4) For the purpose of determining how much of a loss derives from an expense under section 2, the loss is to be calculated on the basis that the expense under that section is the final amount to be deducted.

Origin: FA 2006 Sch.10 para.39(4).

Meaning of "business of leasing plant or machinery"

6 Meaning of “business of leasing plant or machinery” [j60610s6]

- (1) This section determines for the purposes of this Chapter whether, on any day (“the relevant day”), a company (“the relevant company”) carries on a business of leasing plant or machinery.

Origin: FA 2006 Sch.10 para.6(1).

- (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.

Origin: FA 2006 Sch.10 para.6(2).

- (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.

Origin: FA 2006 Sch.10 para.6(3).

- (4) Subsection (3) is supplemented by section 7.

Origin: Drafting.

- (5) 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.

Origin: FA 2006 Sch.10 para.6(4).

- (6) Subsection (5) is supplemented by section 9.

Origin: Drafting.

- (7) For the purposes of this Chapter, plant or machinery is “qualifying leased plant or machinery”, in relation to a 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 assumptions in subsection (8), 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 section 52(3)).

Origin: FA 2006 Sch.10 para.6(5).

- (8) The 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.

Origin: FA 2006 Sch.10 para.6(6).

7 **Provision for the purposes of condition A in section 6 [j60610s7]**

- (1) This section applies for the purposes of condition A in section 6.

Origin: FA 2006 Sch.10 para.7(1).

- (2) The accounting value of the plant or machinery owned by the relevant company on the relevant day is taken to be the sum of the amounts in subsection (3).

Origin: FA 2006 Sch.10 para.7(2).

- (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 is transferred to the relevant company on the relevant day.

Origin: FA 2006 Sch.10 para.7(3).

- (4) The reference in subsection (3) to an associated company is to a company which is an associated company of the relevant company on the relevant day (see section 24).

Origin: FA 2006 Sch.10 para.7(3).

- (5) This section is supplemented by section 8.

Origin: Drafting.

8 Provision supplementing section 7 [j60610s7a]

- (1) For the purposes of section 7(3) the amounts shown in the appropriate balance sheet of any company in respect of any plant or machinery are –
- the amounts shown in that balance sheet as the net book value (or carrying amount) in respect of the plant or machinery, and
 - the amounts shown in that balance sheet as the net investment in respect of finance leases of the plant or machinery.

Origin: FA 2006 Sch.10 para.7(4).

- (2) If –
- any of the plant or machinery is a fixture in any land (see section 52(5)), and
 - 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.

Origin: FA 2006 Sch.10 para.7(5).

- (3) If –
- any of the plant or machinery is subject to a finance lease (see section 52(4)), and
 - 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.

Origin: FA 2006 Sch.10 para.7(6).

- (4) In section 7 and this section any reference to any amount shown in the appropriate balance sheet of a company is to the amount which, on the assumptions in subsection (5), falls (or would fall) to be shown in a balance sheet of the company.

Origin: FA 2006 Sch.10 para.7(7).

- (5) The assumptions are –
- that the balance sheet is drawn up as at the start of the relevant day in accordance with generally accepted accounting practice, and
 - 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.

Origin: FA 2006 Sch.10 para.7(8).

9 Provision for the purposes of condition B in section 6 [j60610s8]

- (1) This section applies for the purposes of condition B in section 6.

Origin: FA 2006 Sch.10 para.8(1).

- (2) The reference to the relevant company's income is to its income as calculated for corporation tax purposes.

Origin: FA 2006 Sch.10 para.8(2).

- (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.

Origin: FA 2006 Sch.10 para.8(3).

- (4) But –

- (a) that basis does not apply if it would work in an unjust or unreasonable way in relation to any person, and
- (b) in that case the apportionment is to be made instead on a just and reasonable basis.

Origin: FA 2006 Sch.10 para.8(4).

- (5) The proportion of the income that derives from qualifying leased plant or machinery is to be determined on a just and reasonable basis.

Origin: FA 2006 Sch.10 para.8(5).

Meaning of "qualifying change of ownership"

10 Meaning of “qualifying change of ownership” [j60610s10]

- (1) This section defines when there is a qualifying change of ownership in relation to a company (“A”) for the purposes of the sales of lessors Chapters.

Origin: FA 2006 Sch.10 para.10(1).

- (2) There is a qualifying change of ownership in relation to A on any day if there is a relevant change in the relationship on that day between –

- (a) A, and
- (b) a principal company of A.

Origin: FA 2006 Sch.10 para.10(1).

- (3) But see section 13 for an exception to subsection (2) (no qualifying change of ownership in the case of certain intra-group reorganisations).

Origin: FA 2006 Sch.10 para.10(1).

- (4) For the purposes of the sales of lessors Chapters, there is a relevant change in the relationship between A and a principal company of A on any day in any of the circumstances in section 11 or 12 (qualifying 75% subsidiaries and consortium relationships).

Origin: FA 2006 Sch.10 para.10(2).

11 Qualifying 75% subsidiaries [j60610s11]

- (1) A company (“B”) is a principal company of A if—
 - (a) A is a qualifying 75% subsidiary of B, and
 - (b) B is not a qualifying 75% subsidiary of another company.

Origin: FA 2006 Sch.10 para.11(1).

- (2) There is a relevant change in the relationship between A and B (as a principal company) on any day if A ceases to be a qualifying 75% subsidiary of B on that day.

Origin: FA 2006 Sch.10 para.11(2).

- (3) A company (“C”) is a principal company of A if—
 - (a) A is a qualifying 75% subsidiary of B,
 - (b) B is a qualifying 75% subsidiary of C, and
 - (c) C is not a qualifying 75% subsidiary of another company.

Origin: FA 2006 Sch.10 para.11(3).

- (4) There is a relevant change in the relationship between A and C (as a principal company) on any day if—
 - (a) A ceases to be a qualifying 75% subsidiary of B on that day, or
 - (b) B ceases to be a qualifying 75% subsidiary of C on that day.

Origin: FA 2006 Sch.10 para.11(4).

- (5) If C is a qualifying 75% subsidiary of another company (“D”), D is a principal company of A unless D is a qualifying 75% subsidiary of another company, and so on.

Origin: FA 2006 Sch.10 para.11(5).

- (6) Accordingly, there is a relevant change in the relationship between A and a principal company of 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.

Origin: FA 2006 Sch.10 para.11(6).

- (7) This section is supplemented by section 15 (meaning of a qualifying 75% or 90% subsidiary etc).

Origin: FA 2006 Sch.10 para.11(7).

12 Consortium relationships [j60610s12]

- (1) A company (“E”) is a principal company of A if—
 - (a) A is owned by a consortium of which E is a member, or
 - (b) A is a qualifying 90% subsidiary of a company owned by a consortium of which E is a member,and E is not a qualifying 75% subsidiary of another company.

Origin: FA 2006 Sch.10 para.12(1).

- (2) There is a relevant change in the relationship between A and E (as a principal company) on any day if the ownership proportion at the end of the day is less than the ownership proportion at the start of the day.

Origin: FA 2006 Sch.10 para.12(2).

- (3) In this section “the ownership proportion” is whichever is the lowest of the following proportions –
- the proportion of the ordinary share capital of A that is beneficially owned by E,
 - the proportion to which E is beneficially entitled of any profits available for distribution to equity holders of A, and
 - the proportion to which E would be beneficially entitled of any assets of A available for distribution to its equity holders on a winding up.

Origin: FA 2006 Sch.10 para.12(3).

- (4) But if A is a qualifying 90% subsidiary of a company, subsection (3) is to be read as if references to that company were substituted for references to A.

Origin: FA 2006 Sch.10 para.12(4).

- (5) A company (“F”) is a principal company of A if, in a case where E is a qualifying 75% subsidiary of F but F is not a qualifying 75% subsidiary of another company –
- A is owned by a consortium of which E is a member, or
 - A is a qualifying 90% subsidiary of a company owned by a consortium of which E is a member.

Origin: FA 2006 Sch.10 para.12(5).

- (6) There is a relevant change in the relationship between A and F (as a principal company) on any day if –
- the ownership proportion at the end of the day is less than the ownership proportion at the start of the day, or
 - E ceases to be a qualifying 75% subsidiary of F on that day.

Origin: FA 2006 Sch.10 para.12(6).

- (7) If F is a qualifying 75% subsidiary of another company (“G”), G is a principal company of A unless G is a qualifying 75% subsidiary of another company, and so on.

Origin: FA 2006 Sch.10 para.12(7).

- (8) Accordingly, there is a relevant change in the relationship between A and a principal company of A on any day if –
- in determining which company is a principal company, regard is had to any company which is a qualifying 75% subsidiary of another, and
 - that company ceases to be a qualifying 75% subsidiary of the other on that day,
- (as well as if the ownership proportion at the end of the day is less than the ownership proportion at the start of the day).

Origin: FA 2006 Sch.10 para.12(8).

- (9) This section is supplemented by –
- section 14 (meaning of “company owned by consortium” etc), and

(b) section 15 (meaning of “qualifying 75% or 90% subsidiary” etc).

[Origin: FA 2006 Sch.10 para.12\(9\).](#)

13 No qualifying change of ownership in the case of certain intra-group reorganisations [j60610s13]

(1) This section applies if –

- (a) a relevant change in the relationship between a company (“A”) and a principal company of A occurs on any day,
- (b) that change occurs by reference to A or any other company ceasing to be a qualifying 75% subsidiary on that day, and
- (c) 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.

[Origin: FA 2006 Sch.10 para.13\(1\).](#)

(2) For the purposes of the sales of lessors Chapters, there is no qualifying change of ownership in relation to A on that day as a result of that change in the relationship.

[Origin: FA 2006 Sch.10 para.13\(2\).](#)

14 Meaning of “company owned by a consortium” etc [j60610s14]

(1) This section defines what a company being owned by a consortium means for the purposes of the sales of lessors Chapters.

[Origin: FA 2006 Sch.10 para.14\(3\).](#)

(2) 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.

[Origin: FA 2006 Sch.10 para.14\(1\).](#)

(3) Those other companies are the members of the consortium.

[Origin: FA 2006 Sch.10 para.14\(2\).](#)

15 Meaning of “qualifying 75% or 90% subsidiary” etc [j60610s15]

(1) For the purposes of the sales of lessors Chapters, a company (“the subsidiary company”) is a qualifying 75% subsidiary of another company (“the parent company”) if condition A or B is met and condition C is met.

[Origin: FA 2006 Sch.10 para.15\(1\).](#)

(2) Condition A is that –

- (a) the subsidiary company has ordinary share capital, and
- (b) the subsidiary company is a 75% subsidiary of the parent company within the meaning of [section 838 of ICTA].

[Origin: FA 2006 Sch.10 para.15\(1\).](#)

- (3) Condition B is that—
- (a) the subsidiary company does not have ordinary share capital, and
 - (b) the parent company has control of the subsidiary company.

Origin: FA 2006 Sch.10 para.15(1).

- (4) Condition C is that the parent company—
- (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.

Origin: FA 2006 Sch.10 para.15(1), (2).

- (5) In the sales of lessors Chapters, 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 in subsections (1) to (4) to 75% were to 90%.

Origin: FA 2006 Sch.10 para.15(3).

- (6) A company (“S”) cannot be a qualifying 90% subsidiary of another company for the purposes of the sales of lessors Chapters if S is a qualifying 75% subsidiary of a third company.

Origin: FA 2006 Sch.10 para.15(4).

- (7) Chapter [6] of Part [5] (equity holders and profits or assets available for distribution)—
- (a) applies for the purposes of section 12(3)(b) and (c) (including that section as applied for the purposes of section 22(5)) and of section 21(5)(b) and (c) as that Chapter applies for the purposes of section [consortium condition 1: limitation if surrendering company owned by consortium](3)(b) and (c) and of section [consortium condition 1: limitation if claimant company owned by consortium](3)(b) and (c), and
 - (b) applies for the purposes of subsection (4)(a) and (b) as that Chapter applies for the purposes of section [meaning of “75% subsidiary” and “90% subsidiary”](6)(a) and (b).

Origin: FA 2006 Sch.10 para.15(5).

- (8) But in a case where the subsidiary company does not have ordinary share capital, Chapter [6] of Part [5] applies for those purposes as if the members of that company were equity holders of that company for the purposes of that Chapter.

Origin: FA 2006 Sch.10 para.15(6).

The amount of the income

16 The amount of the income: the basic amount [j60610s16]

- (1) This section determines the amount of the income under section 2 when a qualifying change of ownership in relation to a company carrying on a business of leasing plant or machinery occurs on any day.

Origin: FA 2006 Sch.10 para.16(1).

- (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 sections 20 to 22 to the basic amount.

Origin: FA 2006 Sch.10 para.16(2).

- (3) The formula is –

$$PM - TWDV$$

Origin: FA 2006 Sch.10 para.16(3).

- (4) For this purpose –
- “PM” has the meaning given by sections 17 and 18, and
 - “TWDV” has the meaning given by section 19.

Origin: FA 2006 Sch.10 para.16(4).

- (5) In those sections references to the relevant company and the relevant day are to the company and the day mentioned in subsection (1).

Origin: Drafting.

17 Meaning of “PM” in section 16 [j60610s17]

- (1) For the purposes of this section references to plant or machinery, in the case of any company, include all plant or machinery, whether or not subject to a lease, except for plant or machinery within subsection (2).

Origin: FA 2006 Sch.10 para.17(1).

- (2) Plant or machinery is within this subsection if –
- (a) the company has incurred expenditure on its provision 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,
 - (b) as a result of section 67 of that Act (hire-purchase and similar contracts) it is treated for the purposes of that Part as owned by a person other than the company, or
 - (c) it is to be ignored as a result of section 23(2) (migration).

Origin: FA 2006 Sch.10 para.17(1); drafting.

- (3) For the purposes of section 16, “PM” means the sum of –
- (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 is transferred to the relevant company on the relevant day.

Origin: FA 2006 Sch.10 para.17(2).

- (4) The reference in subsection (3) to an associated company is to a company which is an associated company of the relevant company on the relevant day.

Origin: FA 2006 Sch.10 para.17(2).

- (5) This section is supplemented by section 18.

Origin: Drafting.

18 Provisions supplementing section 17 [j60610s17a]

- (1) For the purposes of section 17(3) 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.

Origin: FA 2006 Sch.10 para.17(3).

- (2) If –
- (a) any of the plant or machinery is a fixture in any land (see section 52(5)), 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.

Origin: FA 2006 Sch.10 para.17(4).

- (3) If –
- (a) any of the plant or machinery is subject to a finance lease (see section 52(4)), 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.

Origin: FA 2006 Sch.10 para.17(5).

- (4) In section 17 and this section any reference to any amount shown in the appropriate balance sheet of a company is to the amount which, on the assumptions in subsection (5), falls (or would fall) to be shown in a balance sheet of the company.

Origin: FA 2006 Sch.10 para.17(6).

- (5) 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.

Origin: FA 2006 Sch.10 para.17(7).

19 Meaning of “TWDV” in section 16 [j60610s18]

- (1) For the purposes of section 16, “TWDV” means the sum of –

- (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.

Origin: FA 2006 Sch.10 para.18(1).

- (2) For the purposes of this section –
 - (a) “the new chargeable period” means the accounting period of the relevant company that begins on the day following the relevant day (see section 2(4)(b)), 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.

Origin: FA 2006 Sch.10 para.18(2).

- (3) In subsection (2) the reference to an associated company is to a company which is an associated company of the relevant company on the relevant day.

Origin: FA 2006 Sch.10 para.18(2).

20 Amount to be nil if basic amount negative [j60610s19]

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

Origin: FA 2006 Sch.10 para.19.

21 Adjustment to the basic amount: qualifying 75% subsidiaries [j60610s20]

- (1) This section applies if –
 - (a) the qualifying change of ownership occurs on any day as a result of section 11 (qualifying 75% subsidiaries),
 - (b) the change occurs by reference to a company (“A”) ceasing to be a qualifying 75% subsidiary of another company (“B”) on that day, and
 - (c) on that day A meets one of the conditions in subsection (2).

Origin: FA 2006 Sch.10 para.20(1), (2).

- (2) The conditions are –
 - (a) that A becomes owned by a consortium of which B is a member, or
 - (b) that A becomes a qualifying 90% subsidiary of a company owned by a consortium of which B is a member.

Origin: FA 2006 Sch.10 para.20(2).

- (3) The basic amount is adjusted so that the amount of the income is limited to the appropriate percentage of the basic amount.

Origin: FA 2006 Sch.10 para.20(2), (3).

- (4) The appropriate percentage is found by subtracting the ownership percentage at the end of the day from 100%.

Origin: FA 2006 Sch.10 para.20(4).

- (5) For this purpose “the ownership percentage” is whichever is the lowest of the following percentages –
- (a) the percentage of the ordinary share capital of A that is beneficially owned by B,
 - (b) the percentage to which B is beneficially entitled of any profits available for distribution to equity holders of A, and
 - (c) the percentage to which B would be beneficially entitled of any assets of A available for distribution to its equity holders on a winding up.

Origin: FA 2006 Sch.10 para.20(5).

- (6) But if A becomes a qualifying 90% subsidiary of a company, subsection (5) is to be read as if references to that company were substituted for references to A.

Origin: FA 2006 Sch.10 para.20(6).

22 Adjustment to the basic amount: consortium relationships [j60610s21]

- (1) This section applies if the qualifying change of ownership occurs as a result of section 12 (consortium relationships).

Origin: FA 2006 Sch.10 para.21(1).

- (2) In a case where that change arises only because the ownership proportion at the end of the day on which the change occurs is less than the ownership proportion at the start of the day, the amount of the income is limited to the appropriate proportion of the basic amount.

Origin: FA 2006 Sch.10 para.21(2).

- (3) The appropriate proportion is found by subtracting the ownership proportion at the end of the day from the ownership proportion at the start of the day.

Origin: FA 2006 Sch.10 para.21(3).

- (4) In any other case, the amount of the income is limited to the ownership proportion at the start of the day on which the change occurs of the basic amount.

Origin: FA 2006 Sch.10 para.21(4).

- (5) In this section “the ownership proportion” has the same meaning as in section 12 (see section 12(3) and (4)).

Origin: FA 2006 Sch.10 para.21(5).

23 Migration [j60610s22]

- (1) This section applies if on any day (“the relevant day”) –
- (a) 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) a qualifying change of ownership in relation to the company occurs.

Origin: FA 2006 Sch.10 para.22(1).

- (2) For the purposes of this Chapter, 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.

Origin: FA 2006 Sch.10 para.22(2).

Meaning of "associated company"

24 Meaning of “associated company” [j60610s9]

- (1) This section gives the meaning of “associated company” for the purposes of this Chapter.

Origin: FA 2006 Sch.10 para.9(4).

- (2) 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,

Origin: FA 2006 Sch.10 para.9(1).

- (3) For the purposes of subsection (2) “control” is to be read in accordance with [section 416(2) of ICTA].

Origin: FA 2006 Sch.10 para.9(1).

- (4) Subsection (5) applies 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.

Origin: FA 2006 Sch.10 para.9(2).

- (5) On that day the following companies are also associated companies of the consortium company –
- (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.

Origin: FA 2006 Sch.10 para.9(2).

- (6) For the purposes of subsection (5) 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 “E” for the purposes of section 12 (consortium relationships).

Origin: FA 2006 Sch.10 para.9(3).

CHAPTER 4

SALES OF LESSORS: LEASING BUSINESS CARRIED ON BY A COMPANY IN PARTNERSHIP

Introduction

25 Introduction to Chapter [j60610s23i]

- (1) This Chapter applies if, in the case of a company carrying on a business of leasing plant or machinery in partnership with other persons—
 - (a) there is a qualifying change in the company’s interest in the business, (see sections 33 and 34), or
 - (b) there is a qualifying change of ownership in relation to the company (see sections 10 to 15).

Origin: FA 2006 Sch.10 paras.23(1), 33(1).

- (2) Sections 30 to 32 and 35 to 38 apply in the case mentioned in subsection (1)(a).

Origin: Drafting.

- (3) Sections 39 to 43 apply in the case mentioned in subsection (1)(b).

Origin: Drafting.

- (4) Sections 26 to 29 determine for the purposes of this Chapter whether on any day a business carried on by a company in partnership with other persons is a business of leasing plant or machinery.

Origin: FA 2006 Sch.10 para.25(1); drafting.

- (5) In sections 26 to 29—
 - (a) that day is referred to as “the relevant day”,
 - (b) that company is referred to as “the partner company”, and
 - (c) that partnership is referred to as “the partnership”.

Origin: FA 2006 Sch.10 para.25(1), (2); drafting.

- (6) Elsewhere in this Chapter references to the partner company are to the company referred to in subsection (1)(a) or, as the case may be, subsection (1)(b).

Origin: Drafting.

26 Partnerships: meaning of “business of leasing plant or machinery” [j60610s6p]

- (1) A business carried on by the partnership is a business of leasing plant or machinery on the relevant day if condition A or B is met.

Origin: FA 2006 Sch.10 para.25(1), (2).

- (2) Condition A is that at least half of the accounting value of the plant or machinery which the partnership owns on the relevant day relates to qualifying leased plant or machinery.

Origin: FA 2006 Sch.10 para.25(1), (2).

- (3) Subsection (2) is supplemented by section 27.

Origin: Drafting.

- (4) Condition B is that at least half of the partnership's income in the period of 12 months ending with the relevant day derives from qualifying leased plant or machinery.

Origin: FA 2006 Sch.10 para.25(1), (2).

- (5) Subsection (4) is supplemented by section 29.

Origin: Drafting.

- (6) For the purposes of this Chapter, plant or machinery is “qualifying leased plant or machinery”, in relation to a company or the partnership, if—

- (a) expenditure is incurred (or treated as incurred) by the company or, as the case may be, the partnership on the provision of the plant or machinery wholly or partly for the purposes of the business,
- (b) the company or, as the case may be, the partnership is (or has at any time been) entitled, on the assumptions in subsection (7), 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 section 52(3)).

Origin: FA 2006 Sch.10 para.25(1), (2); drafting.

- (7) The 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.

Origin: FA 2006 Sch.10 para.25(1), (2).

27 Provision for the purposes of condition A in section 26 [j60610s7p]

- (1) This section applies for the purposes of condition A in section 26.

Origin: FA 2006 Sch.10 para.25(1).

- (2) The accounting value of the plant or machinery which the partnership owns on the relevant day is taken to be the sum of the amounts in subsection (3).

Origin: FA 2006 Sch.10 para.25(1), (2).

- (3) The amounts are—

- (a) the amounts (if any) shown in the appropriate balance sheet of the partnership in respect of plant or machinery which the partnership owns at the start of the relevant day, and
- (b) the amounts (if any) shown in respect of plant or machinery which is transferred to the partnership on the relevant day in the appropriate balance sheet of each company mentioned in subsection (4).

Origin: FA 2006 Sch.10 para.25(1), (2), (3).

- (4) Those companies are –
- (a) the partner company,
 - (b) any company which is an associated company of the partner company on the relevant day (see section 44),
 - (c) any other corporate partner in relation to whose interest in the business there is a qualifying change on the relevant day,
 - (d) any other corporate partner 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 corporate partner mentioned in paragraph (c) or (d) on the relevant day.

Origin: FA 2006 Sch.10 para.25(1), (3).

- (5) For the purposes of subsection (4) “any other corporate partner” means a company which –
- (a) carries on the business at the start of the relevant day, and
 - (b) is within the charge to corporation tax in respect of the business.

Origin: FA 2006 Sch.10 para.25(4).

- (6) This section is supplemented by section 28.

Origin: Drafting.

28 Provision supplementing section 27 [j60610s7q]

- (1) For the purposes of section 27(3) the amounts shown in the appropriate balance sheet of the partnership or, as the case may be, 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.

Origin: FA 2006 Sch.10 para.25(1), (2); drafting.

- (2) If –
- (a) any of the plant or machinery is a fixture in any land (see section 52(5)), 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.

Origin: FA 2006 Sch.10 para.25(1), (2).

- (3) If –
- (a) any of the plant or machinery is subject to a finance lease (see section 52(4)), 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.

Origin: FA 2006 Sch.10 para.25(1), (2).

- (4) In section 27 and this section any reference to any amount shown in the appropriate balance sheet of the partnership or a company is to the amount which, on the assumptions in subsection (5), falls (or would fall) to be shown in a balance sheet of the partnership or, as the case may be, the company.

Origin: FA 2006 Sch.10 para.25(1), (2); drafting.

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

Origin: FA 2006 Sch.10 para.25(1), (2); drafting.

29 Provision for the purposes of condition B in section 26 [j60610s8p]

- (1) This section applies for the purposes of condition B in section 26.
- Origin: FA 2006 Sch.10 para.25(1), (2).
- (2) The reference to the partnership's income is to its income as calculated for corporation tax purposes.
- Origin: FA 2006 Sch.10 para.25(1), (2).
- (3) Any apportionment necessary to determine the amount of the partnership's income attributable to the period of 12 months ending with the relevant day is to be made on a time basis.

Origin: FA 2006 Sch.10 para.25(1), (2).

- (4) But –
- (a) that basis does not apply if it would work in an unjust or unreasonable way in relation to any person, and
 - (b) in that case the apportionment is to be made instead on a just and reasonable basis.

Origin: FA 2006 Sch.10 para.25(1), (2).

- (5) The proportion of the income that derives from qualifying leased plant or machinery is to be determined on a just and reasonable basis.

Origin: FA 2006 Sch.10 para.25(1), (2).

Change in company's interest in business

30 Change in company's interest in business: income treated as received etc [j60610s23]

- (1) This section applies if on any day ("the relevant day") –
- (a) the partner company carries on a business of leasing plant or machinery in partnership with other persons,
 - (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 (see sections 33 and 34).

Origin: FA 2006 Sch.10 para.23(1).

- (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.

Origin: FA 2006 Sch.10 para.23(2).

- (3) The income –
 - (a) is treated as a receipt of the partner company's notional business (see subsection (6)), 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.

Origin: FA 2006 Sch.10 para.23(3).

- (4) Except where subsection (5) applies, 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.

Origin: FA 2006 Sch.10 para.23(4).

- (5) 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.

Origin: FA 2006 Sch.10 para.23(4A).

- (6) In this Chapter 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 section as carried on alone by the company for those purposes.

Origin: FA 2006 Sch.10 para.23(5).

- (7) This section is supplemented by sections 31 and 32.

Origin: FA 2006 Sch.10 para.23(6).

- (8) This section is subject to section 51 (exception where section 228K of CAA 2001 applies).

Origin: Drafting.

31 Amount of income and expense [j60610s24]

- (1) The amount of the income under section 30 is calculated in accordance with sections 35 to 37.

Origin: FA 2006 Sch.10 para.24(1).

- (2) The amount of the expense of the other company under section 30 is calculated in accordance with section 38.

Origin: FA 2006 Sch.10 para.24(2).

32 Relief for expense under section 30(5) otherwise giving rise to carried forward loss [j60610s393]

- (1) This section applies if –
- (a) a company is treated under section 30(5) as incurring an expense in an accounting period (“period 1”),
 - (b) the company makes a loss in period 1, and
 - (c) some or all of that loss would otherwise be carried forward to the next accounting period of the company (“period 2”).

Origin: FA 2006 Sch.10 para.39(1A).

- (2) So much of the loss (or part of the loss) that would otherwise be so carried forward as derives from the expense under section 30(5) is instead to be treated for corporation tax purposes as an expense.

Origin: FA 2006 Sch.10 para.39(2).

- (3) The expense under this section is allowed as a deduction in calculating for corporation tax purposes the profits of the business for period 2.

Origin: FA 2006 Sch.10 para.39(3).

- (4) For the purpose of determining how much of a loss derives from an expense under section 30(5), the loss is to be calculated on the basis that the expense under that section is the final amount to be deducted.

Origin: FA 2006 Sch.10 para.39(4).

Meaning of "qualifying change" in company's interest in a business

33 Meaning of “qualifying change” in company’s interest in a business [j60610s27]

- (1) For the purposes of the sales of lessors Chapters 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.

Origin: FA 2006 Sch.10 para.27(1).

- (2) In this section “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 section 34).

Origin: FA 2006 Sch.10 para.27(2).

- (3) For the purposes of this section 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).

Origin: FA 2006 Sch.10 para.27(3).

34 Determining the percentage share in the profits or loss of business [j60610s28]

- (1) For the purposes of this Chapter a company's percentage share in the profits or loss of a business at any time is determined on a just and reasonable basis.

Origin: FA 2006 Sch.10 para.28(1).

- (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 section] the company's share at that time in any capital allowances and charges under CAA 2001.

Origin: FA 2006 Sch.10 para.28(2).

The amount of the income

35 The amount of the income: the basic amount [j60610s29]

- (1) This section determines the amount of the income under section 30 when a qualifying change in the interest of the partner company in a business of leasing plant or machinery occurs on any day ("the relevant day").

Origin: FA 2006 Sch.10 para.29(1).

- (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 section 36 or 37 to the basic amount.

Origin: FA 2006 Sch.10 para.29(2).

- (3) The formula is—

$$\text{PM} - \text{TWDV}$$

Origin: FA 2006 Sch.10 para.29(3).

- (4) In this section "PM" has the meaning given by section 17, but—
- (a) reading any reference in that section to the relevant company as a reference to the partnership, and
 - (b) reading any reference in that section to an associated company of the relevant company on the relevant day as a reference to a qualifying company (see subsection (7)).

Origin: FA 2006 Sch.10 para.29(4).

- (5) In this section "TWDV" means the sum of—

- (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 (unrelieved qualifying expenditure),
- (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.

Origin: FA 2006 Sch.10 para.29(5).

- (6) For the purposes of subsection (5)–
 - (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.

Origin: FA 2006 Sch.10 para.29(6).

- (7) In this section “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 corporate partner in relation to whose interest in the business there is a qualifying change on the relevant day,
 - (d) any other corporate partner 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 corporate partner mentioned in paragraph (c) or (d) on the relevant day.

Origin: FA 2006 Sch.10 para.29(7).

- (8) For the purposes of subsection (7) “any other corporate partner” means a company which–
 - (a) carries on the business at the start of the relevant day, and
 - (b) is within the charge to corporation tax in respect of the business.

Origin: FA 2006 Sch.10 para.29(8).

36 Amount to be nil if basic amount negative [j60610s30]

If the basic amount given by the formula in section 35(3) is a negative amount, the amount is taken instead to be nil.

Origin: FA 2006 Sch.10 para.30.

37 Adjustment to the basic amount [j60610s31]

- (1) The amount of the company’s income under section 30 is limited to the appropriate percentage of the basic amount.

Origin: FA 2006 Sch.10 para.31(1).

- (2) The appropriate percentage is found by subtracting the company's relevant percentage share at the end of the day on which it is treated as receiving the income from its relevant percentage share at the start of the day.

Origin: FA 2006 Sch.10 para.31(2).

- (3) In this section "relevant percentage share" has the same meaning as it has for the purposes of section 33.

Origin: FA 2006 Sch.10 para.31(3).

The amount of the expense

38 The amount of expense [j60610s32]

- (1) This section applies if, as a result of a qualifying change in the partner company's interest in a business on any day –
- (a) the company is treated as receiving an amount of income under section 30 on that day,
 - (b) any other company is treated as incurring an expense under that section 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.

Origin: FA 2006 Sch.10 para.32(1).

- (2) Except where subsection (4) applies, the amount of the expense of the other company is limited to the appropriate percentage of the amount of the income.

Origin: FA 2006 Sch.10 para.32(2).

- (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.

Origin: FA 2006 Sch.10 para.32(3).

- (4) If section 30(5) 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.

Origin: FA 2006 Sch.10 para.32(3A).

- (5) For the purposes of this section 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).

Origin: FA 2006 Sch.10 para.32(4).

*Qualifying changes of ownership***39 Income and matching expense in different accounting periods [j60610s33]**

- (1) This section applies if on any day (“the relevant day”) –
 - (a) a company carries on a business of leasing plant or machinery in partnership with other persons (see sections 26 to 29),
 - (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.

Origin: FA 2006 Sch.10 para.33(1).

- (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.

Origin: FA 2006 Sch.10 para.33(2).

- (3) The income –
 - (a) is treated as a receipt of the company’s notional business (see section 30(6)), and
 - (b) is brought into account in calculating for corporation tax purposes the profits of that business for that accounting period.

Origin: FA 2006 Sch.10 para.33(3).

- (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.

Origin: FA 2006 Sch.10 para.33(4).

- (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.

Origin: FA 2006 Sch.10 para.33(5).

- (6) This section is supplemented by sections 40 to 42.

Origin: FA 2006 Sch.10 para.33(6).

- (7) This section is subject to section 51 (exception where section 228K of CAA 2001 applies).

Origin: Drafting.

40 Amount of income and expense [j60610s34]

- (1) The amount of the income under section 39 is calculated in accordance with section 43.

Origin: FA 2006 Sch.10 para.34(1).

- (2) The amount of the expense under section 39 is the same as the amount of the income.

Origin: FA 2006 Sch.10 para.34(2).

41 No carry back of the expense [j60610s35]

- (1) This section applies if the notional business carried on by the company is a trade the profits of which are chargeable to corporation tax under Part 3 of CTA 2009 (trading income).

Origin: FA 2006 Sch.10 para.35(1).

- (2) No relief is to be given as a result of [section 393A(1)(b) of ICTA] (relief for trade losses against total profits of earlier accounting periods) in respect of so much of any loss as derives from the expense.

Origin: FA 2006 Sch.10 para.35(2).

- (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.

Origin: FA 2006 Sch.10 para.35(3).

42 Relief for expense under section 39 otherwise giving rise to carried forward loss [j60610s392]

- (1) This section 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 treated under section 39 as incurring an expense of a business and an accounting period of the company (“period 1”) begins,
 - (c) the company makes a loss in period 1,
 - (d) some or all of that loss would otherwise be carried forward to the next accounting period of the company (“period 2”), and
 - (e) period 2 starts within the period of 12 months beginning with the relevant day and does not start as a result of section 2 or 39.

Origin: FA 2006 Sch.10 para.39(1).

- (2) So much of the loss (or part of the loss) that would otherwise be so carried forward as derives from the expense under section 39 is instead to be treated for corporation tax purposes as an expense.

Origin: FA 2006 Sch.10 para.39(2).

- (3) The expense under this section is allowed as a deduction in calculating for corporation tax purposes the profits of the business for period 2.

Origin: FA 2006 Sch.10 para.39(3).

- (4) For the purpose of determining how much of a loss derives from an expense under section 39, the loss is to be calculated on the basis that the expense under that section is the final amount to be deducted.

Origin: FA 2006 Sch.10 para.39(4).

43 The amount of the income [j60610s36]

- (1) This section determines the amount of the income under section 39 when a qualifying change of ownership in relation to a company carrying on a business of leasing plant or machinery in partnership with other persons occurs on any day (“the relevant day”).

Origin: FA 2006 Sch.10 para.36(1).

- (2) The amount of the income is found by first –
- (a) applying the formula in section 35(3) to give the basic amount (as if the company were “the partner company” mentioned in section 35), and
 - (b) making any adjustment in accordance with any of sections 20 to 22 to the basic amount.

Origin: FA 2006 Sch.10 para.36(2).

- (3) The amount is then limited to the appropriate percentage of the amount given as a result of subsection (2).

Origin: FA 2006 Sch.10 para.36(3).

- (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.

Origin: FA 2006 Sch.10 para.36(4).

- (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.

Origin: FA 2006 Sch.10 para.36(5).

Interpretation

44 Meaning of “associated company” [j60610s26]

- (1) This section gives the meaning of “associated company” for the purposes of this Chapter.

Origin: FA 2006 Sch.10 para.26(6).

- (2) 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.

Origin: FA 2006 Sch.10 para.26(1).

- (3) For the purposes of subsection (2) “control” is to be read in accordance with [section 416(2) of ICTA].

Origin: FA 2006 Sch.10 para.26(1).

- (4) Subsections (5) and (6) 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.

Origin: FA 2006 Sch.10 para.26(2).

- (5) 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.

Origin: FA 2006 Sch.10 para.26(3).

- (6) 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 that 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.

Origin: FA 2006 Sch.10 para.26(4).

- (7) For the purposes of subsection (6) a member of the consortium is a “relevant” member on the day on which the qualifying change of ownership occurs if –
- (a) it is a member of the consortium at the start of the day, and
 - (b) the change is a relevant change within section 12(2), (6) or (8) (consortium relationships) in relation to which the member is regarded as “E” for the purposes of section 12.

Origin: FA 2006 Sch.10 para.26(5).

45 Meaning of “profits” and “loss” [j60610s37]

- (1) In this Chapter “profits” does not include chargeable gains.

Origin: FA 2006 Sch.10 para.37.

- (2) References in this Chapter to “loss” are to be read accordingly.

Origin: FA 2006 Sch.10 para.37.

CHAPTER 5

SALES OF LESSORS: MISCELLANEOUS

Anti-avoidance provisions

46 Restrictions on relief for expenses treated as incurred under Chapter 3 or 4: introduction [j60610s38i]

- (1) Section 47 applies if –
- (a) a company is treated as incurring an expense under any provision of Chapter 3 or 4,
 - (b) the expense arises directly or indirectly in consequence of, or otherwise in connection with, any arrangements,

- (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, and
- (d) the company makes a loss that wholly or partly derives from the expense.

Origin: FA 2006 Sch.10 para.38(1), (2).

- (2) The restrictions in section 47 apply in respect of so much of the loss as derives from the expense (in that section referred to as “the restricted loss amount”).

Origin: FA 2006 Sch.10 para.38(2).

- (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.

Origin: FA 2006 Sch.10 para.38(6).

- (4) In this section “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.

Origin: FA 2006 Sch.10 para.38(7).

47 Restrictions applying to the restricted loss amount [j60610s38]

- (1) The restrictions in subsections (2), (5) and (6) apply to the restricted loss amount.

Origin: FA 2006 Sch.10 para.38(2).

- (2) Relief is not to be given to the company under any provision specified in subsection (3) in respect of the restricted loss amount, except by way of set off against any relevant leasing income (see subsection (4)).

Origin: FA 2006 Sch.10 para.38(3).

- (3) Those provisions are –
 - (a) [section 392A of ICTA] (Schedule A losses),
 - (b) [section 392B of ICTA] (losses from overseas property businesses),
 - (c) [section 393 of ICTA] (trade losses),
 - (d) [section 396 of ICTA] (losses from miscellaneous transactions).

Origin: FA 2006 Sch.10 para.38(9).

- (4) In subsection (2) “relevant leasing income” means any income deriving from any plant or machinery lease which –
 - (a) is not an excluded lease of background plant or machinery for a building (see section 52(3)), and
 - (b) is entered into before the day on which the company is treated as incurring the expense mentioned in section 46(1)(a).

Origin: FA 2006 Sch.10 para.38(8).

- (5) 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 loss amount.

Origin: FA 2006 Sch.10 para.38(4).

- (6) The restricted loss amount 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: FA 2006 Sch.10 para.38(5).

48 Introduction to sections 49 and 50 [j60610s38Ai]

- (1) Sections 49 and 50 apply if a question arises as to the application of Chapter 3 or 4.

Origin: FA 2006 Sch.10 paras.38A(1), 38B(1).

- (2) For the purposes of this section and sections 49 and 50 “a question as to the application of Chapter 3 or 4” means question A or B.

Origin: FA 2006 Sch.10 para.38A(4).

- (3) Question A is whether any company carries on a business of leasing plant or machinery (whether alone or in partnership) for the purposes of any provision of the sales of lessors Chapters.

Origin: FA 2006 Sch.10 para.38A(4).

- (4) Question B is the question of the amount (if any) of any income or expense which any company is treated as receiving or incurring under any provision of the sales of lessors Chapters.

Origin: FA 2006 Sch.10 para.38A(4).

49 Disregard of increases and decreases in balance sheet amounts [j60610s38A]

- (1) This section applies if –
- (a) for the purpose of determining a question as to the application of Chapter 3 or 4 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,
 - (b) apart from this section, there would be a reduction or increase in any such amount,
 - (c) the reduction or increase arises directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and
 - (d) the main purpose, or one of the main purposes, of the arrangements is to secure that there is a relevant tax advantage.

Origin: FA 2006 Sch.10 para.38A(1).

- (2) There is a relevant tax advantage if (apart from this section) –
- (a) any company would not be regarded for the purposes of any provision of Chapter 3 or 4 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 such provision would be reduced, or
 - (c) the amount of any expense which any company is treated as incurring under any such provision would be increased.

Origin: FA 2006 Sch.10 para.38A(2).

- (3) For the purpose of determining the question as to the application of Chapter 3 or 4, 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 must be ignored.

Origin: FA 2006 Sch.10 para.38A(3).

- (4) In this section –
- “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.

Origin: FA 2006 Sch.10 para.38A(5).

50 Balance sheet amounts to be determined on assumption that company has no liabilities [j60610s38B]

- (1) This section applies if –
- (a) a company owns any plant or machinery at any time on any day (“the relevant day”),
 - (b) for the purpose of determining a question as to the application of Chapter 3 or 4 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
 - (c) condition A or B is met.

Origin: FA 2006 Sch.10 para.38B(1).

- (2) Condition A is met if, apart from this section, there would be no amount which would fall to be shown in the balance sheet of the company in respect of the plant or machinery.

Origin: FA 2006 Sch.10 para.38B(2).

- (3) Condition B is met if the amount which, apart from this section, 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 would fall to be so shown on the assumption in subsection (4).

Origin: FA 2006 Sch.10 para.38B(3).

- (4) The assumption is that the company has no liabilities of any kind at any time on the relevant day.

Origin: FA 2006 Sch.10 para.38B(5).

- (5) For the purpose of determining the question as to the application of Chapter 3 or 4, 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 assumption in subsection (4) (as well as on the other assumptions applicable under other provisions of those Chapters).

Origin: FA 2006 Sch.10 para.38B(4).

- (6) In this section “liabilities” includes any share capital issued by the company which falls to be treated for accounting purposes as a liability.

Origin: FA 2006 Sch.10 para.38B(6).

Exception where section 228K of CAA 2001 applies

51 Exception where section 228K of CAA 2001 applies [j60610s40]

- (1) This section applies if—
- (a) a company carries on a business of leasing plant or machinery (whether alone or in partnership),
 - (b) on any 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 that 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) apart from this section, as a result of any provision of the sales of lessors Chapters, a company would be treated as receiving an amount of income, or as incurring an expense, that arises wholly or partly by reference to that plant or machinery.

Origin: FA 2006 Sch.10 para.40(1), (2).

- (2) No company is to be so treated so far as the income or expense arises by reference to that plant or machinery if section 228K of CAA 2001 (disposal of plant or machinery subject to lease where income retained) applies in relation to the disposal.

Origin: FA 2006 Sch.10 para.40(1), (2).

- (3) If, as a result of subsection (2), no income is treated as received by a company, no accounting period of the company ends or begins as a result of any provision of the sales of lessors Chapters.

Origin: FA 2006 Sch.10 para.40(3).

- (4) In this section—
- “business of leasing plant or machinery” has the meaning given by Chapter 3 or, as the case may be, Chapter 4, and
 - “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 of that Act).

Origin: FA 2006 Sch.10 para.40(5).

Interpretation of the sales of lessors Chapters

52 Interpretation of the sales of lessors Chapters [j60610s41]

- (1) This section applies for the purposes of the sales of lessors Chapters.

Origin: FA 2006 Sch.10 para.41(1).

- (2) “Company” means a body corporate.

Origin: FA 2006 Sch.10 para.41(2).

- (3) “Excluded lease of background plant or machinery for a building” has the meaning given in Chapter 6A of Part 2 of CAA 2001 (see section 70R of that Act).

Origin: FA 2006 Sch.10 para.41(3).

- (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.

Origin: FA 2006 Sch.10 para.41(4).

- (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.

Origin: FA 2006 Sch.10 para.41(5).

- (6) “Plant or machinery” has the same meaning as it has for the purposes of Part 2 of CAA 2001.

Origin: FA 2006 Sch.10 para.41(6).

- (7) “Plant or machinery lease” has the meaning given in Chapter 6A of that Part (see section 70YI of that Act).

Origin: FA 2006 Sch.10 para.41(7).

- (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.

Origin: FA 2006 Sch.10 para.41(8).