

SCHEDULES

SCHEDULE 18

Section 61

SALE OF LESSORS: ELECTION OUT OF CHARGE

Main changes

- 1 Chapter 3 of Part 9 of CTA 2010 (sale of lessors: leasing business carried on by company alone) is amended as follows.
- 2 (1) Section 382 (introduction to Chapter) is amended as follows.
 - (2) In subsection (1)—
 - (a) for “qualifying change of ownership in relation to” substitute “relevant change in the relationship between”, and
 - (b) insert at the end “and a principal company of the company.”
 - (3) In subsection (3), for ““qualifying change of ownership”, see sections 392 to 398.” substitute ““relevant change in the relationship between a company and a principal company of the company”, see sections 392 to 394.”
- 3 In section 383 (income and matching expense in different accounting periods), after subsection (1) insert—
 - “(1A) For the meaning of “qualifying change of ownership”, see sections 394A to 398A”
- 4 For section 392 (and the italic heading before it) substitute—

“*“Relevant change in relationship”*”

392 “Relevant change in relationship”

For the purposes of the sales of lessors Chapters there is a relevant change in the relationship between a company (“A”) and a principal company of A on any day in any of the circumstances in section 393 or 394 (qualifying 75% subsidiaries and consortium relationships).”

- 5 After section 394 insert—

“*“Qualifying change of ownership”*”

394A “Qualifying change of ownership”

For the purposes of the sales of lessors Chapters there is a qualifying change of ownership in relation to a company (“A”) on any day if there is a relevant change in the relationship on that day between A and a principal company of A unless any of the following apply—

Status: This is the original version (as it was originally enacted).

- (a) section 395(2),
- (b) section 396(2), or
- (c) section 398A(2) or (5).”

6 After section 398 insert—

“Election out of qualifying change of ownership

398A Election out of qualifying change of ownership

- (1) This section applies if—
 - (a) on any day (“the relevant day”) a company (“A”) carries on a business of leasing plant or machinery otherwise than in partnership,
 - (b) there is a relevant change in the relationship between A and a principal company of A (“P”) on the relevant day, and
 - (c) an election that this section is to apply is made by A.
- (2) For the purposes of the sales of lessors Chapters, there is no qualifying change of ownership in relation to A on the relevant day as a result of the change in the relationship but—
 - (a) subsections (2)(b) and (4)(b) of section 383 nevertheless apply,
 - (b) section 398D (and section 398C so far as relating to it) has effect during the relevant period, and
 - (c) sections 398E to 398G (and section 398C so far as relating to section 398E) have effect on the relevant day and during the relevant period.
- (3) “The relevant period” is the period—
 - (a) beginning with the day after the relevant day, and
 - (b) ending with the day on which there is next a relevant change in the relationship between A and a principal company of A falling within subsection (4) (or continuing indefinitely if there is not another such relevant change).
- (4) A relevant change in the relationship between A and a principal company of A falls within this subsection if, as a result of it, the (unadjusted) basic amount (see section 399) is (or, but for a further election, would be) treated as a receipt of the business of leasing plant or machinery carried on by A.
- (5) Where during the relevant period there is a relevant change in the relationship between A and a principal company of A but the relevant period is not brought to an end by it, for the purposes of the sales of lessors Chapters there is no qualifying change of ownership in relation to A as a result of the change in the relationship.

398B The election

- (1) The election under section 398A must state the date of the relevant day.
- (2) The election must be made—
 - (a) by notice to an officer of Revenue and Customs, and
 - (b) during the period of two years beginning with the relevant day.

Status: This is the original version (as it was originally enacted).

- (3) The election is irrevocable.
- (4) All such assessments and adjustments of assessments are to be made as are necessary to give effect to the election.

398C Special treatment of A's trade or business that includes leasing

- (1) Sections 398D and 398E make special provision about the trade or property business consisting of or including A's business of leasing plant or machinery.
- (2) In those sections "the relevant activity" means—
 - (a) if A's business of leasing plant or machinery constitutes or forms part of a trade, that trade, and
 - (b) if it forms part of a property business, that property business.

398D Restrictions on use of losses etc

- (1) No loss may be deducted under—
 - (a) Chapter 2 of Part 4,
 - (b) section 62, or
 - (c) section 189,from so much of the total profits of A as are attributable to the carrying on of the relevant activity except to the extent that the loss or charge is attributable to the carrying on of the relevant activity.
- (2) Group relief is not to be given under Part 5 against so much of the total profits of A as are attributable to the carrying on of the relevant activity.
- (3) No deficit may be set off under section 461 of CTA 2009 (non-trading deficit from loan relationship) against profits attributable to the carrying on of the relevant activity except to the extent that the deficit is attributable to the carrying on of the relevant activity.
- (4) No loss may be set off under section 753 of CTA 2009 (non-trading loss on intangible fixed assets) against so much of the total profits of A as are attributable to the carrying on of the relevant activity except to the extent that the loss or charge is attributable to the carrying on of the relevant activity.
- (5) No deduction is to be allowed under section 1219 of CTA 2009 (expenses of management of investment business) from so much of the total profits of A as are attributable to the carrying on of the relevant activity except to the extent that the expenses concerned are attributable to the carrying on of the relevant activity.
- (6) If A is a controlled foreign company within the meaning of Chapter 4 of Part 17 of ICTA in relation to which an apportionment falls to be made under section 747(3) of that Act in respect of the accounting period ending with the relevant day, no sum may be set off under paragraph 1 of Schedule 26 to ICTA by any person in respect of so much of the chargeable profits of A as are apportioned to the person and are attributable to the carrying on of the relevant activity.

Status: This is the original version (as it was originally enacted).

- (7) If A would otherwise be a tonnage tax company under Schedule 22 to FA 2000 (tonnage tax) it is to be treated as not being such a company.

398E Restriction on artificial losses or reductions in profits

- (1) This section applies if any expenditure incurred by A in carrying on the relevant activity has an unallowable purpose.
- (2) In calculating the profits or losses of A for any accounting period for the purposes of corporation tax so much of the expenditure as, on a just and reasonable apportionment, is attributable to the unallowable purpose is to be left out of account.
- (3) Expenditure has an unallowable purpose if the main purpose, or one of the main purposes, of A in incurring it is to obtain a relevant tax advantage (“the unallowable purpose”).
- (4) A “relevant tax advantage” is—
- (a) a reduction in the profits which, for the purposes of corporation tax, are attributable to the carrying on of the relevant activity by A,
 - (b) the creation of a loss which, for those purposes, is so attributable, or
 - (c) an increase in losses which, for those purposes, are so attributable.

398F Limit on availability of capital allowances to A

- (1) Expenditure incurred by A in providing plant or machinery is not qualifying expenditure for the purposes of Part 2 of CAA 2001 if the expenditure is incurred on the acquisition or creation of an independent asset.
- (2) An asset is an “independent” asset if, in the normal course of business—
- (a) it could be used individually (whether or not it could also be used in conjunction with another asset or other assets as a constituent part of a single asset consisting of more than one asset (a “combined asset”)), or
 - (b) it could be used (at different times) as a constituent part of different combined assets.

398G Transfers into and out of A

- (1) Section 948 does not apply where A is the predecessor or the successor.
- (2) Where section 948 does not apply as a result of subsection (1), the plant or machinery belonging to the trade is to be treated for the purposes of the Corporation Tax Acts as sold by the predecessor to the successor on the day of cessation for an amount equal to its market value on that day.
- (3) Where A is the predecessor, section 265(2)(b) of CAA 2001 (successions) applies—
- (a) even if the relevant property has been sold to the successor, and
 - (b) as if the reference to market value were to market value as determined in accordance with section 437(9).”

Interpretation

- 7 In section 437 of CTA 2010 (interpretation of the sales of lessors Chapters), after subsection (8) insert—
- “(8A) Property business” means a UK property business or an overseas property business.”
- 8 In Schedule 4 to that Act (index of defined expressions), insert at the appropriate places—
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| “property business (in Chapters 3 to 6 of Part 9) | section 437(8A)” |
| “relevant change in relationship (in Chapters 3 to 6 of Part 9) | section 392” |

Commencement etc

- 9 The amendments made by this Schedule have effect where the relevant day is on or after 9 December 2009.
- 10 Amendments corresponding to those made by this Schedule, having effect where the relevant day is on or after that date, are to be treated as having been made in Schedule 10 to FA 2006.
- 11 Neither section 398F of CTA 2010 (inserted by paragraph 6) nor the corresponding provision treated as inserted by paragraph 10 apply in relation to expenditure incurred in pursuance of a written contract which is finalised by A before 9 December 2009; and for this purpose a contract is finalised on the earliest date on which—
- (a) it is unconditional or (if conditional) the conditions are met, and
 - (b) no terms remain to be agreed.
- 12 Section 398A of CTA 2010 (as inserted by paragraph 6) has effect in relation to a relevant change in the relationship between A and a principal company of A in the case of which the relevant day is before 24 March 2010 as if—
- (a) in subsection (3)(b), the words “falling within subsection (4)”, and
 - (b) subsections (4) and (5),
- were omitted.
- 13 Section 398D of CTA 2010 (as inserted by paragraph 6)—
- (a) has effect with the omission of subsection (6) in relation to accounting periods beginning before 24 March 2010, and
 - (b) has effect with the omission of subsection (7) until that date.