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SCHEDULES

SCHEDULE 33

TAXATION PROVISIONS

PART II

PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

Interpretation

- 6 (1) In this Part of this Schedule—
- “PPP scheme” means a transfer scheme made in preparation for, or in pursuance of, a PPP agreement;
 - “predecessor”, in relation to any relevant transfer, means the body from which the property, rights or liabilities in question are transferred by virtue of the PPP scheme in question;
 - “private sector company” means a company which is not a public sector operator;
 - “relevant transfer” means a transfer of any property, rights or liabilities by virtue of a PPP scheme;
 - “transfer date”, in the case of a relevant transfer, means the date on which the transfer takes effect;
 - “transfer scheme” means a scheme made under or by virtue of section 9(6) of the ^{M1}London Regional Transport Act 1984;
 - “transferee”, in relation to a relevant transfer, means the body to which the property, rights or liabilities in question are transferred by virtue of the PPP scheme in question.
- (2) Any reference in this Part of this Schedule to a PPP agreement includes a reference to a contract—
- (a) which is not a PPP agreement, by reason of the condition in subsection (6) of section 210 of this Act remaining to be satisfied (whether or not the condition in subsection (5) of that section also remains to be satisfied); but
 - (b) as respects which London Regional Transport certifies to the Commissioners of Inland Revenue—
 - (i) that the contract is intended by the parties to become a PPP agreement; and
 - (ii) that such one or more of the parties as may be specified in the certificate are intended to become PPP companies.
- (3) In the case of a contract falling within sub-paragraph (2) above, any reference in this Schedule to a PPP company includes a reference to any company in respect of which the certificate under paragraph (b)(ii) of that sub-paragraph is given.

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- (4) Except where the context otherwise requires, expressions used in this Part of this Schedule and in Chapter VII of Part IV of this Act have the same meaning in this Part of this Schedule as they have in that Chapter.

Marginal Citations

M1 1984 c. 32.

Revenue nature of payments under PPP agreements

- 7 Any payment made by a relevant body to a company in pursuance of a PPP agreement shall be deemed for the purposes of the Corporation Tax Acts—
- (a) in the case of the relevant body, to be an expense of a revenue, rather than a capital, nature (and deductible accordingly in computing profits under Case I of Schedule D); and
 - (b) in the case of the company, to be a receipt of a trade carried on by the company (and taxable accordingly under Case I of Schedule D).

Chargeable gains: the share transfer to the private sector company

- 8 For the purposes of the ^{M2}Taxation of Chargeable Gains Act 1992, where pursuant to a PPP agreement there is a transfer of shares of a PPP company—
- (a) from London Regional Transport or any of its subsidiaries,
 - (b) to a private sector company,
- the transfer shall be deemed, in relation to the private sector company as well as the transferor, to be for a consideration such that neither a gain nor a loss accrues to the transferor.

Marginal Citations

M2 1992 c. 12.

Chargeable gains: company leaving the LRT group

- 9 (1) For the purposes of section 179 of the ^{M3}Taxation of Chargeable Gains Act 1992 (company ceasing to be a member of a group) where, by virtue of a transfer of shares or an agreement to transfer shares from London Regional Transport or a subsidiary of London Regional Transport to a private sector company, a company (“the transferred company”) which is or is to be a party to a PPP agreement—
- (a) ceases to be a member of the same group of companies as London Regional Transport, but
 - (b) becomes a member of a group of companies (“the A group”) of which the private sector company is a member (or becomes a member by virtue of the transfer or agreement to transfer the shares),
- the transferred company shall not under that section be treated, in consequence of having so ceased, as at any time having sold, and immediately reacquired, any asset acquired from a company which is or has been a member of the former group.

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- (2) Subject to sub-paragraph (3) below, where sub-paragraph (1) above applies, or but for subsection (2) of section 179 of the ^{M4}Taxation of Chargeable Gains Act 1992 would apply, as respects any acquisition of any asset and the company that acquired the asset ceases to be a member of the A group, that section shall have effect as if—
- (a) the asset had been acquired from the principal company of the A group; and
 - (b) the company had been a member of the A group when it was so acquired;
- and where, for the purposes of that subsection, this sub-paragraph applies as respects more than one of a number of successive acquisitions of any asset, the fact that each is to be treated as an acquisition from the same person shall be disregarded.
- (3) Where—
- (a) any asset has been acquired by any company (“the leaving company”) from another company,
 - (b) both of those companies cease at the same time to be members of the A group, and
 - (c) those companies are associated companies immediately before and immediately after that time and at the time of acquisition of the asset by the leaving company,
- sub-paragraph (2) above shall not apply as respects the acquisition of the asset by the leaving company.
- (4) Expressions used in this paragraph and in section 179 of the ^{M5}Taxation of Chargeable Gains Act 1992 have the same meaning in this paragraph as in that section.

Marginal Citations

- M3** 1992 c. 12.
M4 1992 c. 12.
M5 1992 c. 12.

Capital allowances: general

- 10 (1) This paragraph applies in relation to any relevant transfer—
- (a) from London Regional Transport to a subsidiary of London Regional Transport,
 - (b) from a subsidiary of London Regional Transport to London Regional Transport, or
 - (c) from a subsidiary of London Regional Transport to another such subsidiary, which is certified to the Commissioners of Inland Revenue by London Regional Transport as made in preparation for, or in pursuance of, a PPP agreement.
- (2) A PPP scheme which provides for a relevant transfer in relation to which this paragraph applies may include provision for amounts of expenditure by reference to which capital allowances may be made to the predecessor in relation to anything—
- (a) to which the transfer relates, and
 - (b) which is specified, or of a description specified, for the purpose in the PPP scheme,

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to be allocated to the transferee and treated for the purposes of the Corporation Tax Acts, as respects periods beginning on or after the transfer date, as expenditure by reference to which capital allowances may be made to the transferee instead of to the predecessor.

- (3) Where an amount of expenditure is allocated under sub-paragraph (2) above to the transferee then, subject to sub-paragraph (4) below, there shall be made to or on the transferee in accordance with the Capital Allowances Acts all such allowances and charges as would have fallen to be made to or on him had he incurred expenditure of that amount on the transfer date in the acquisition, for the purposes of a trade carried on by him, of anything falling within paragraphs (a) and (b) of sub-paragraph (2) above.
- (4) For the purposes of the Corporation Tax Acts, only such amounts (if any) as may be specified in or determined in accordance with the PPP scheme providing for a relevant transfer shall be allocated to the transferee in respect of expenditure by reference to which capital allowances may be made by virtue of sub-paragraph (3) above in relation to anything to which the transfer relates.
- (5) The allocation in accordance with sub-paragraphs (2) and (4) above of an amount of expenditure to the transferee shall affect the amounts falling to be taken into account in relation to the predecessor as expenditure by reference to which capital allowances may be made only so far as necessary to give effect to a reduction of any such amount by a sum equal to so much of that amount as is so allocated to the transferee.
- (6) If the PPP scheme in question so provides, then, notwithstanding sub-paragraph (5) above,—
 - (a) the predecessor shall be entitled, for its accounting period in which the transfer date falls, to allowances, determined in accordance with the PPP scheme, in respect of the amount so allocated, but
 - (b) for that purpose that amount shall be treated as reduced to the amount which bears to it the proportion which that part of the accounting period which falls before the transfer date bears to twelve months;
 and a PPP scheme which makes any such provision may also make provision for or in connection with the making of an adjustment, determined in accordance with the PPP scheme, in relation to the transferee's entitlement to allowances.
- (7) Subject to sub-paragraph (8) below, the provisions of a PPP scheme providing for the determination of any amount which for the purposes of sub-paragraphs (2) and (4) above is to be allocated, in the case of any relevant transfer, to the transferee may include provision—
 - (a) for such a determination to be made by the Secretary of State in such manner as may be described in the scheme;
 - (b) for any amount determined to be calculated by reference to such factors, or to the opinion of such person, as may be so described;
 - (c) for or in connection with the making of any related determinations under sub-paragraph (6) above; or
 - (d) for a determination under those provisions, or under sub-paragraph (6) above, to be capable of being modified, on one or more occasions, in such manner and in such circumstances as may be so described.
- (8) The consent of the Treasury shall be required for the making or modification of a determination of any such amount as is mentioned in sub-paragraph (7) above.

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- (9) Neither section 343 of the Taxes Act 1988 (company reconstructions without change of ownership) nor section 77 of the ^{M6}Capital Allowances Act 1990 (successions to trades: connected persons) shall have effect by virtue of a relevant transfer in relation to which this paragraph applies.
- (10) Except as provided by this paragraph, a relevant transfer in relation to which this paragraph applies shall be taken for the purposes of the Capital Allowances Acts not to give rise to—
- (a) any balancing allowance under section 24(2)(b) of the ^{M7}Capital Allowances Act 1990;
 - (b) any balancing charge under section 24(5) of that Act;
 - (c) any qualifying expenditure being deemed to be incurred for the purposes of section 25 of that Act; or
 - (d) any disposal value being deemed to be received for the purposes of section 24 of that Act.

Marginal Citations

M6 1990 c. 1.

M7 1990 c. 1.

Leases and easements

- 11 (1) This paragraph applies where by or under, or otherwise in connection with, a PPP agreement a relevant body—
- (a) enters into an agreement to grant to a company a lease of, or an easement over, land which consists of or includes the whole or any part of a relevant site; or
 - (b) grants such a lease or easement to a company.
- (2) In this paragraph “relevant site” means—
- (a) an industrial building or structure, within the meaning of Part I of the ^{M8}Capital Allowances Act 1990; or
 - (b) land which, in relation to any fixture, within the meaning of Chapter VI of Part II of that Act, is the relevant land for the purposes of that Chapter.
- (3) Where this paragraph applies, the relevant body shall be deemed for the purposes of the Corporation Tax Acts to have such an interest in the relevant site in question as is sufficient for the agreement or grant to confer an appropriate interest on the company to which the lease or easement is, or is to be, granted (and the agreement or grant shall accordingly be taken for those purposes to confer such an interest).
- (4) For the purposes of sub-paragraph (3) above, an “appropriate interest”—
- (a) in the case of a relevant site falling within sub-paragraph (2)(a) above, is such an interest in the industrial building or structure in question as is, or is capable of being, for the purposes of Part I of the ^{M9}Capital Allowances Act 1990 the relevant interest (within the meaning of that Part) in relation to capital expenditure incurred by the company; or

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- (b) in the case of a relevant site falling within sub-paragraph (2)(b) above, is such an interest in the land in question as constitutes for the purposes of Chapter VI of Part II of the ^{M10}Capital Allowances Act 1990 an interest in land (within the meaning of that Chapter) by virtue of paragraph (c) or (d), as the case may be, of section 51(3) of that Act.

(5) In this paragraph—

- (a) any reference to granting a lease or easement includes a reference to purporting to do so; and
(b) any reference to a grant, or to a lease or easement, shall be construed accordingly.

(6) In this paragraph “lease” includes underlease.

Marginal Citations

- M8** 1990 c. 1.
M9 1990 c. 1.
M10 1990 c. 1.

Machinery and plant

12 (1) Nothing in—

- (a) section 51(1) of the ^{M11}Capital Allowances Act 1990, so far as preventing a person being entitled to an allowance in respect of machinery or plant treated as belonging to another person,
(b) section 52(2) of that Act, or
(c) section 60 of that Act,

shall, by reason only of any provision made by or under a PPP agreement, affect the entitlement of any company to capital allowances in respect of capital expenditure incurred by it.

(2) Where, in accordance with any provision made by or under a PPP agreement, any machinery or plant in respect of which a company has been entitled to allowances under Part II of the ^{M12}Capital Allowances Act 1990 falls to be transferred, on the expiration of the term of the PPP agreement, from the company—

- (a) to a relevant body, or
(b) to such other body or person as a relevant body may specify in accordance with the PPP agreement,

the disposal constituted by that transfer shall be deemed for the purposes of that Part to be for a nil consideration, notwithstanding section 26(1)(f) of that Act.

Marginal Citations

- M11** 1990 c. 1.
M12 1990 c. 1.

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Sale and leaseback

- 13 (1) Neither section 779 (limitation on tax reliefs) nor section 782 (leased assets: special cases) of the ^{M13}Income and Corporation Taxes Act 1988 shall apply to any payment which falls to be made under a PPP agreement.
- (2) Section 781 of that Act (assets leased to traders and others) shall not apply to, or by reason of, any such payment.

Marginal Citations

M13 1988 c. 1.

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