

SCHEDULES

SCHEDULE 22

TONNAGE TAX

PART X

THE RING FENCE: CAPITAL ALLOWANCES: SHIP LEASING

Introduction

- 89 (1) In the case of a finance lease of a qualifying ship provided, directly or indirectly, to a company within tonnage tax, the provisions of Part II of the Capital Allowances Act 1990 have effect subject to and in accordance with the provisions of—
paragraphs 90 and 91 (defeased leasing),
paragraph 92 (sale and lease back arrangements, and
paragraphs 94 to 102 (quantitative restrictions on allowances).
- (2) In this Part of this Schedule “finance lease”, and “lessor” and “lessee” in relation to a finance lease, have the same meaning as in that Part (see section 82A of the 1990 Act).
- (3) Other expressions used in this Part of this Schedule have the same meaning as in Part IX of this Schedule (the ring fence: capital allowances: general).

Defeased leasing

- 90 (1) The lessor under the finance lease is not entitled to capital allowances in respect of expenditure on the provision of the ship if—
(a) the lease, or
(b) any transaction or series of transaction of which the lease forms a part, makes provision the effect of which is to remove the whole, or the greater part of, any non-compliance risk which, apart from that provision, would fall directly or indirectly on the lessor.
- (2) For this purpose a “non-compliance risk” means a risk that a loss will be sustained by any person if payments under the lease are not made in accordance with its terms.
- (3) For the purposes of this paragraph the lessor and any persons connected with him shall be treated as the same person.
- (4) In this paragraph “connected person” has the meaning given by section 839 of the Taxes Act 1988.

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Defeased leasing: excepted forms of security

- 91 (1) Paragraph 90 (defeased leasing) is subject to the following exceptions.
- (2) It does not apply to the provision of security of any of the following kinds by the lessee, or a person connected with the lessee—
- (a) a mortgage of the ship;
 - (b) security attaching—
 - (i) to the ship’s earnings, or
 - (ii) to the proceeds of insurance policies on the ship;
 - (c) security over rental rebates arising from the arm’s length sale of the ship;
 - (d) any other form of security relating to assets, sums or rights arising directly from the ordinary operation of the ship or from arm’s length transactions involving the ship.

In this sub-paragraph “the ship” means the ship that is the subject of the lease.

- (3) It does not apply to the provision of security by the lessee, or a person connected with the lessee, if the following conditions are met—
- (a) no deposit of money or other property by way of security is obtained by the lessor or any third party;
 - (b) any payments under the security are limited to the amount of any rental payments under the lease in respect of which the lessee is in default.
- (4) It does not apply to the provision of security by a third party where no security other than security of a kind mentioned in sub-paragraph (2)(a) to (d) is held by the third party or any person connected with the third party.
- (5) It does not apply to the provision of security by a third party if the following conditions are met—
- (a) no deposit of money or other property by way of security is obtained by the lessor or any third party;
 - (b) the security does not involve the assumption of any obligations of the lessee under the lease in return for a payment made (directly or indirectly) by the lessee or a person connected with him;
 - (c) the security does not give rise to any payments to the lessor unless the lessee defaults on the rental payments under the lease;
 - (d) any payments under the security are limited to the amount of the rental payments in default.
- (6) For the purposes of this paragraph the lessor and any persons connected with him shall be treated as the same person.
- (7) In this paragraph—
- “connected person” has the meaning given by section 839 of the Taxes Act 1988; and
- “third party” means a person not connected with either the lessor or the lessee.

Sale and lease-back arrangements

- 92 (1) The lessor under the finance lease is not entitled to capital allowances if the lease is part of sale and lease-back arrangements.

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- (2) For this purpose “sale and lease-back arrangements” means, subject to sub-paragraph (3), any arrangements that take the following form:

Step One

The ship is owned by a tonnage tax company and used for the purposes of its tonnage tax trade.

Step Two

A transaction is entered into, as a result of which (apart from this paragraph) capital allowances would become available to the lessor, under which—

- (a) the ship (or an interest in it) is sold, or
- (b) a person enters into a contract on the performance of which he will or may become the owner of the ship (or an interest in it), or
- (c) a person entitled to the benefit of any such contract assigns the benefit of it so far as it relates to the ship (or an interest in it).

Step Three

After the time of that transaction the ship is used for the purposes of a tonnage tax trade carried on—

- (a) by the original company, or
- (b) by another tonnage tax company that is a member of the same group, without having been used since that time for the purposes of any other trade (except that of leasing).

- (3) This paragraph does not apply if the ship is newly-constructed and the transaction mentioned in Step Two in sub-paragraph (2) is effected not more than four months after the first occasion on which the ship is brought into use by any person for any purpose.
- (4) A person is regarded for the purposes of this paragraph as owning a ship if it is treated as belonging to him for the purposes of Part II of the Capital Allowances Act 1990.

Certificates required to support claim by finance lessor

- 93 (1) Any claim by the lessor under a finance lease for capital allowances in respect of expenditure on the provision of a qualifying ship must be accompanied by a certificate by the lessor and the lessee stating either—
- (a) that the ship is not leased, directly or indirectly, to a company subject to tonnage tax, or
 - (b) that neither paragraph 90 (defeased leasing) nor paragraph 92 (sale and lease-back arrangements) applies in relation to the lease.
- (2) If any matter so certified ceases to be the case, the lessor must give notice of that fact to the Inland Revenue.
- (3) Any such notice must be given within three months after the end of the chargeable period in which the change takes place.
- (4) In the second column of the Table in section 98 of the Taxes Management Act 1970 (penalty for failure to provide information etc.), after the final entry insert—

“Paragraph 93(2) of Schedule 22 to the
Finance Act 2000.

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Quantitative restrictions on allowances

- 94 (1) Where the lessor under the finance lease is entitled to capital allowances in respect of expenditure on the provision of the ship, the following provisions apply.
- (2) There is no entitlement to any first-year allowance.
- (3) The lessor is entitled—
- (a) in respect of the first £40 million of the cost of providing the ship, to writing-down allowances at a rate of 25% per annum on the reducing balance, and
 - (b) in respect of the next £40 million, to writing-down allowances at a rate of 10% per annum on the reducing balance.
- (4) The expenditure within each of those bands shall be allocated to separate pools and dealt with under Part II of the Capital Allowances Act 1990 in the same way as expenditure allocated to a class pool.
- These pools are referred to below as “the 25% pool” and “the 10% pool”.
- (5) If the cost of providing the ship exceeds £80 million, the lessor is not entitled to capital allowances in respect of the excess.

Quantitative restrictions: further provisions as to rate bands, limit and pooling

- 95 (1) The rate bands and limit in paragraph 94 (quantitative restrictions on allowances) apply separately in relation to each ship.
- (2) The amounts specified in that paragraph apply in relation to the whole cost of providing the ship.
- (3) If—
- (a) the cost is shared by two or more persons, or
 - (b) a person acquires a part share in the ship,
- that paragraph applies as if there were substituted in sub-paragraph (3)(a) and (b) and sub-paragraph (5) in relation to each person the proportion of the figure specified that his share of the cost bears to the whole cost.
- (4) The pools referred to in sub-paragraph (4) of that paragraph are class pools of all expenditure of a lessor that falls to be allocated to a 25% or 10% pool in respect of ships leased by him.

Quantitative restrictions: meaning of “cost of providing ship”

- 96 (1) For the purposes of paragraph 94 (quantitative restrictions on allowances) the cost of providing the ship means the total cost of providing it in a state ready to be brought into use for the purposes for which it is normally to be used.
- This includes the cost of any accessories or additional equipment, or fitting out, necessary for the operation of the ship for those purposes.
- (2) The cost of providing the ship shall be determined without regard to the provisions of the Capital Allowances Act 1990 as to—

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- (a) when expenditure is treated as incurred, or
 - (b) when expenditure may be brought into account as qualifying expenditure.
- (3) Further capital expenditure by the lessor on the ship shall be added to the original cost of providing the ship to determine—
- (a) whether the lessor is entitled to capital allowances in respect of the further expenditure, and
 - (b) if he is, the rate of writing-down allowances to which he is entitled.

References to the cost of providing the ship shall accordingly be read as including any such further expenditure.

- (4) The amounts to be taken into account under this paragraph are limited to the amounts that would otherwise have been qualifying expenditure for the purposes of capital allowances.

Quantitative restrictions: treatment of disposal proceeds

- 97 (1) The following provisions apply where—
- (a) there is a disposal of a ship in relation to which paragraph 94 applies to restrict the capital allowances available, and
 - (b) a disposal value falls fall to be brought into account.

The reference in paragraph (a) to a disposal of ship includes a disposal of a part of a ship, or of an interest in a ship or a part of a ship.

- (2) The disposal value is first allocated between the 25% pool and the 10% pool in the same proportions as the cost of providing the ship was allocated to those pools.
- (3) If the amount allocated to the 25% pool exceeds the amount of qualifying expenditure remaining in that pool, any excess shall be taken to the 10% pool.
- (4) A balancing charge arises only if the amount taken to the 10% pool exceeds the amount of qualifying expenditure remaining in that pool.

Quantitative restrictions: change of circumstances bringing case within restrictions

- 98 (1) The provisions of this paragraph apply where—
- (a) the lessor under a finance lease has been entitled to capital allowances in circumstances in which paragraph 94 (quantitative restrictions on allowances) did not apply, and
 - (b) a change of circumstances brings the case within paragraph 89(1) so that the restrictions in paragraph 94 do apply.

- (2) In this paragraph—

“the relevant period” means the period beginning—

- (a) with the beginning of the accounting period of the lessor in which there occurs the change of circumstances in relation to which this paragraph applies, or
- (b) if since the beginning of that period there has been a change of circumstances in relation to which paragraph 99 applied (change taking case out of restrictions), with the time of that change (or if there has been more than one such change, the last of them),

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and ending with the time of the change of circumstances in relation to which this paragraph applies; and

“the lessor’s normal pool” means the lessor’s pool that contains the qualifying expenditure relating to the ship at the beginning of the relevant period.

- (3) At the beginning of the relevant period an amount (“amount A”) equal to—
- (a) the tax written down value of the ship as at that time, or
 - (b) if less, the amount of unrelieved qualifying expenditure in the lessor’s normal pool at that time,
- shall be brought into account as a disposal value in the lessor’s normal pool.
- (4) At the same time an amount of qualifying expenditure equal to amount A shall be taken to a separate single-asset pool (“the temporary pool”).
- (5) Any qualifying expenditure or other items relating to the ship that would otherwise have been brought into account in the lessor’s normal pool in the relevant period shall instead be brought into account in the temporary pool.
- (6) At the end of the relevant period, the temporary pool shall be closed as if the ship had been disposed of by the lessor for an amount equal to its tax written down value at that time (“amount B”), and any resulting balancing allowance or balancing charge shall be given effect.
- (7) The lessor shall be treated as if he had incurred qualifying expenditure equal to amount B on the provision of the ship for the purposes of the lessee’s tonnage tax trade immediately after the end of the relevant period.
- (8) There shall be allocated to the lessor’s 25% and 10% pools the same proportions of amount B as the proportions of the actual cost of providing the ship that would have been so allocated if the case had been within paragraph 89(1) at all material times.

Quantitative restrictions: change of circumstances taking case out of restrictions

- 99 (1) The provisions of this paragraph apply where—
- (a) the lessor under a finance lease has been entitled to capital allowances in circumstances in which paragraph 94 (quantitative restrictions on allowances) applied, and
 - (b) a change of circumstances takes the case out of paragraph 89(1) so that the restrictions in paragraph 94 no longer apply.
- (2) When the change of circumstances occurs a disposal value shall be brought into account by the lessor equal to the tax written down value of the ship as at that time.
- The provisions of paragraph 97 (treatment of disposal proceeds) apply as regards the allocation of that amount to the lessor’s 25% and 10% pools.
- (3) The lessor shall be treated as if he had incurred qualifying expenditure on the provision of the ship for the purposes of the lessee’s non-tonnage tax trade immediately after the change of circumstances occurs.
- (4) The amount of that expenditure shall be taken to be the whole of the expenditure on the ship that would have qualified for capital allowances if paragraph 94 had never applied, written down at 25% per annum on the reducing balance for the period

beginning with the time when it was actually incurred and ending when the change of circumstances occurs.

Determination of tax written down value, etc.

- 100 (1) This paragraph supplements paragraphs 98 and 99.
- (2) The “tax written down value” of the ship at any time means what would be the amount of unrelieved qualifying expenditure at that time determined on the following assumptions—
- (a) that the qualifying expenditure relating to the ship had been held in a single asset pool, and
 - (b) that there had been made to the lessor—
 - (i) the first-year allowance (if any) that was actually made to him,
 - (ii) any first-year allowance falling to be made to him that was postponed under section 30(1)(a) or (c) of the Capital Allowances Act 1990, and
 - (iii) the maximum amount of any writing-down allowances that, on the preceding assumptions, could have been made.
- (3) The references in paragraph 98(3)(b) and sub-paragraph (2) above to the amount of “unrelieved qualifying expenditure” are to the balance that would otherwise have been carried forward under Part II of the Capital Allowances Act 1990.
- (4) For the purpose of determining that amount at a time other than the beginning or end of an accounting period of the lessor, it shall be assumed that an accounting period of the lessor began or ended at that time.

Quantitative restrictions: power to alter amounts by regulations

- 101 (1) The Inland Revenue may by regulations alter the amounts for the time being specified in sub-paragraph (3)(a) and (b) and sub-paragraph (5) of paragraph 94 (quantitative restrictions on allowances).
- (2) The regulations may contain such incidental, supplementary and transitional provisions as appear to the Inland Revenue to be appropriate.

Exclusion of leases entered into on or before 23rd December 1999

- 102 The provisions of this Part do not apply in relation to a finance lease entered into on or before 23rd December 1999.