

*Status: Point in time view as at 01/04/2009.*

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## SCHEDULES

### SCHEDULE 6

Section 31

#### COMPANIES CARRYING ON BUSINESS OF LEASING PLANT OR MACHINERY

##### *Company reconstructions without change of ownership*

- 1 (1) In section 343 of ICTA (company reconstructions without change of ownership), in subsection (2) (continuity of treatment for capital allowances), insert at the end “;and are subject to section 343A (company reconstructions involving business of leasing plant or machinery) ”.
- (2) After that section insert—

##### **“343A Company reconstructions involving business of leasing plant or machinery**

- (1) This section applies if the trade is or forms part of a business of leasing plant or machinery which the predecessor or the successor carries on on the day of cessation.
- (2) If, on the day of cessation, both the predecessor and the successor carry on the trade otherwise than in partnership, section 343(2) does not apply unless—
- (a) the principal company or companies of the predecessor immediately before the cessation are the same as the principal company or companies of the successor immediately afterwards, and
  - (b) if any such principal company is a consortium principal company, the relevant fraction in relation to the predecessor immediately before the cessation is the same as the relevant fraction in relation to the successor immediately afterwards (irrespective of whether the members of each consortium are the same).
- (3) If, on the day of cessation, the predecessor or the successor carries on the trade in partnership, section 343(2) does not apply unless—
- (a) the predecessor ceases to carry on the whole of its trade, and
  - (b) that trade is a business of leasing plant or machinery which the predecessor carries on in partnership on the day of cessation.
- (4) In any case where section 343(2) does not apply as a result of this section, the plant or machinery belonging to the trade shall be treated for the purposes of the Corporation Tax Acts as sold by the predecessor to the successor on the day of the cessation for an amount equal to its market value as at that day.
- (5) In this section—
- “business of leasing plant or machinery”—

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- (a) has the same meaning as in Part 2 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), and
  - (b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership),
- “consortium principal company” means a company which is a principal company as a result of paragraph 12 of that Schedule,
- “market value”, in relation to plant or machinery, is to be construed in accordance with paragraph 41(8) of that Schedule,
- “plant or machinery” has the same meaning as in Part 2 of the Capital Allowances Act,
- “principal company” is to be construed in accordance with paragraph 11 or (as the case may be) 12 of Schedule 10 to the Finance Act 2006, and
- “relevant fraction” has the same meaning as in paragraph 12 of that Schedule.”
- (3) Subsection (2) of section 343A of ICTA (as inserted by sub-paragraph (2) above) has effect in relation to cessations occurring on or after 22nd November 2006.
  - (4) But, if the cessation occurs before 21st March 2007, that subsection has effect as if for paragraphs (a) and (b) there were substituted “; on that day each company which is a principal company of the predecessor is also a principal company of the successor”.
  - (5) Subsection (3) of section 343A of ICTA has effect in relation to cessations occurring on or after that date.

*Sale etc of lessor companies etc*

- 2 (1) Schedule 10 to FA 2006 (sale etc of lessor companies etc) is amended as follows.
- (2) In paragraph 1(4) (contents of Schedule), for “an anti-avoidance provision” substitute “; anti-avoidance provisions”.
- (3) In—
  - (a) paragraph 7(3)(b) (provision for the purposes of condition A in paragraph 6), and
  - (b) paragraph 17(2)(b) (meaning of “PM” in paragraph 16),
 for “it transfers” substitute “ is transferred ”.
- (4) After paragraph 38 insert—
 

“38A(1) This paragraph applies if—

  - (a) a question arises as to the application of this Schedule,
  - (b) for the purpose of determining that question 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,
  - (c) there would (but for this paragraph) be a reduction or increase in any such amount,
  - (d) the reduction or increase arises directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and
  - (e) the main purpose, or one of the main purposes, of the arrangements is to secure that there is a relevant tax advantage.

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- (2) There is a relevant tax advantage if (but for this paragraph)—
- (a) any company would not be regarded for the purposes of any provision of this Schedule 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 provision of this Schedule would be reduced, or
  - (c) the amount of any expense which any company is treated as incurring under any provision of this Schedule would be increased.
- (3) For the purpose of determining any question which arises as to the application of this Schedule, 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 is to be ignored.
- (4) For the purposes of this paragraph and paragraph 38B a question arises as to the application of this Schedule if a question arises—
- (a) as to whether any company carries on a business of leasing plant or machinery (whether alone or in partnership) for the purposes of any provision of this Schedule, or
  - (b) as to the amount (if any) of any income or expense which any company is treated as receiving or incurring under any provision of this Schedule.
- (5) In this paragraph—
- “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.

- 38B (1) This paragraph applies if—
- (a) a company owns any plant or machinery at any time on any day (“the relevant day”),
  - (b) a question arises as to the application of this Schedule,
  - (c) for the purpose of determining that question 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
  - (d) condition A or B is met.
- (2) Condition A is met if there would (but for this paragraph) be no amount which would fall to be shown in the balance sheet of the company in respect of the plant or machinery.
- (3) Condition B is met if the amount which (but for this paragraph) 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, on the relevant assumption, would fall to be so shown.

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- (4) For the purpose of determining any question which arises as to the application of this Schedule, 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 relevant assumption (as well as on the other assumptions applicable under other provisions of this Schedule).
  - (5) The relevant assumption is that the company has no liabilities of any kind at any time on that day.
  - (6) For this purpose “liabilities” includes any share capital issued by the company which falls to be treated for accounting purposes as a liability.”
- (5) For the purposes of Schedule 10 to FA 2006 the amendments made by sub-paragraphs (3) and (4) have effect in relation to—
- (a) any qualifying change of ownership in relation to a company which occurs on or after 22nd November 2006, and
  - (b) any qualifying change in a company's interest in a business which occurs on or after that date.
- (6) For all other purposes those amendments have effect for the purpose of determining whether a company carries on a business of leasing plant or machinery (whether alone or in partnership) on or after that date.

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