



Finance Act 2004

2004 CHAPTER 12

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 10

AVOIDANCE: MISCELLANEOUS

134 Finance leasebacks

- (1) After section 228 of the Capital Allowances Act 2001 (c. 2) (sale and leaseback: election) insert—

“Finance leaseback: parties' income and profits

228A Application of sections 228B to 228E

- (1) Sections 228B to 228E apply where—
- plant or machinery is the subject of a sale and finance leaseback for the purposes of section 221, and
 - section 222 (restriction of disposal value) applies.
- (2) Sections 228B to 228D also apply, with the modifications set out in section 228F, where plant or machinery is the subject of a lease and finance leaseback (as defined in section 228F).

228B Lessee's income or profits: deductions

- (1) For the purpose of income tax or corporation tax, in calculating the lessee's income or profits for a period of account the amount deducted in respect of amounts payable under the leaseback may not exceed the permitted maximum.

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- (2) The permitted maximum is the total of—
- (a) finance charges shown in the accounts, and
 - (b) depreciation, taking the value of the plant or machinery at the beginning of the leaseback to be the restricted disposal value.
- (3) In relation to a period of account during which the leaseback terminates, the permitted maximum shall also include an amount calculated in accordance with subsection (4).
- (4) The calculation is—

$$\text{CurrentBookValue} \times \frac{\text{OriginalConsideration}}{\text{OriginalBookValue}}$$

where—

“Current Book Value” means the net book value of the leased plant or machinery immediately before the termination,

“Original Consideration” means the consideration payable to S for entering into the relevant transaction, and

“Original Book Value” means the net book value of the leased plant or machinery at the beginning of the leaseback.

228C Lessee’s income or profits: termination of leaseback

- (1) Subsection (2) applies where the leaseback terminates.
- (2) For the purpose of the calculation of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period in which the termination occurs shall be increased by an amount calculated in accordance with subsection (3).
- (3) The calculation is—

$$\text{NetConsideration} \times \frac{\text{CurrentBookValue}}{\text{OriginalBookValue}}$$

where—

“Net Consideration” means—

- (a) the consideration payable to S for entering into the relevant transaction, minus
- (b) the restricted disposal value,

“Current Book Value” means the net book value of the leased plant or machinery immediately before the termination, and

“Original Book Value” means the net book value of the leased plant or machinery at the beginning of the leaseback.

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- (4) In this section “relevant qualifying activity” means the qualifying activity for the purposes of which the leased plant or machinery was used immediately before the termination.
- (5) Section 228B has no effect on the treatment for the purposes of income tax or corporation tax of amounts received by way of refund on the termination of a leaseback of amounts payable under it.
- (6) In subsection (5), “amounts received by way of refund” includes any amount that would be so received in respect of the lessee’s interest under the leaseback if any amounts due to the lessor under the leaseback were disregarded.

228D Lessor’s income or profits

- (1) This section applies in relation to the calculation of the lessor’s income or profits for a period of account for the purpose of income tax or corporation tax.
- (2) Where—
 - (a) an amount receivable in respect of the lessor’s interest under the leaseback falls to be taken into account in that calculation, and
 - (b) that amount is reduced by an amount due to the lessee under the leaseback,that reduction shall be disregarded when taking the amount receivable into account.
- (3) The amounts receivable in respect of the lessor’s interest under the leaseback that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the permitted threshold (whether or not subsection (2) applies).
- (4) The permitted threshold is the total of—
 - (a) gross earnings, and
 - (b) the allowable proportion of the capital repayment.
- (5) In subsection (4)(a) “gross earnings” means the amount shown in the lessor’s accounts in respect of the lessor’s gross earnings under the leaseback.
- (6) In subsection (4)(b) “allowable proportion of the capital repayment” means the amount obtained by this calculation—

$$\text{Restricted Disposal Value} \times \frac{\text{Investment Reduction}}{\text{Net Investment}}$$

where—

“Investment Reduction For Period” means the amount shown in the lessor’s accounts in respect of the reduction in net investment in the leaseback, and

“Net Investment” means the amount shown in the lessor’s accounts as the lessor’s net investment in the leaseback at the beginning of its term.

- (7) This section does not apply to a leaseback if the lessee is a lessee by way of an assignment made before 17 March 2004.

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228E Lessor's income or profits: termination of leaseback

- (1) Subsection (2) applies where—
 - (a) the leaseback terminates,
 - (b) the lessor disposes of the plant or machinery, and
 - (c) the amount of the disposal value required to be brought into account because of that disposal is limited by section 62.
- (2) For the purpose of income tax or corporation tax, in calculating the lessor's income or profits for the period in which the termination occurs the amount deducted in respect of any amount refunded to the lessee may not exceed the amount to which the disposal value is limited by section 62.

228F Lease and finance leaseback

- (1) Sections 228B, 228C and 228D apply, with the following modifications, where plant or machinery is the subject of a lease and finance leaseback.
- (2) In determining the permitted maximum for the purposes of section 228B, depreciation shall be disregarded.
- (3) In the calculation under section 228C(3), the amount of the consideration referred to in subsection (6)(b) of this section shall be substituted for the Net Consideration.
- (4) In determining the permitted threshold for the purposes of section 228D, the allowable proportion of the capital repayment shall be disregarded.
- (5) Plant or machinery is the subject of a lease and finance leaseback if—
 - (a) a person (“S”) leases the plant or machinery to another (“B”),
 - (b) after the date of that transaction, the use of the plant or machinery falls within sub-paragraph (i), (ii) or (iii) of section 221(1)(b), and
 - (c) it is directly as a consequence of having been leased under a finance lease that the plant or machinery is available to be so used after that date.
- (6) For the purposes of subsection (5), S leases the plant or machinery to B only if—
 - (a) S grants B rights over the plant or machinery,
 - (b) consideration is given for that grant, and
 - (c) S is not required to bring all of that consideration into account under this Part.
- (7) Plant or machinery is not the subject of a lease and finance leaseback for the purposes of this section in any case where the condition in subsection (6)(c) is met only because of an election under section 199 made before 18 May 2004.
- (8) In the application of sections 228B to 228D in relation to a lease and finance leaseback—
 - (a) references to the lessee are references to the person referred to as S in this section, and

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- (b) references to the lessor are references to the person referred to as B in this section or, where appropriate, to an assignee of that person.

228G Leaseback not accounted for as finance lease in accounts of lessee

- (1) Sections 228B and 228C are subject to this section in their application in relation to a leaseback that is not accounted for as a finance lease in the accounts of the lessee.
- (2) Subsection (3) applies where the leaseback is accounted for as a finance lease in the accounts of a person connected with the lessee; and in that subsection “relevant calculation” means the calculation of—
 - (a) the permitted maximum for the purposes of section 228B, or
 - (b) the amount by which the income or profits of the lessee are to be increased in accordance with section 228C.
- (3) Where an amount that falls to be used for the purposes of a relevant calculation—
 - (a) cannot be ascertained by reference to the lessee’s accounts because the leaseback is not accounted for as a finance lease in those accounts, but
 - (b) can be ascertained by reference to the connected person’s accounts for one or more periods,that amount as ascertained by reference to the connected person’s accounts shall be used for the purposes of the relevant calculation.
- (4) Subsections (5) and (6) apply in a case where the leaseback is not accounted for as a finance lease in the accounts of a person connected with the lessee.
- (5) Sections 228B and 228C do not apply in relation to the leaseback.
- (6) If the term of the leaseback begins on or after 18 May 2004 then, for the purposes of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period of account during which the term of the leaseback begins shall be increased by—
 - (a) the net consideration for the purposes of section 228C(3) (in the case of a sale and finance leaseback), or
 - (b) the consideration referred to in section 228F(6)(b) (in the case of a lease and finance leaseback).
- (7) For the purposes of this section the leaseback is accounted for as a finance lease in a person’s accounts if—
 - (a) the leaseback falls, under generally accepted accounting practice, to be treated in that person’s accounts as a finance lease or loan, or
 - (b) in a case where the leaseback is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.

228H Sections 228A to 228G: supplementary

- (1) In sections 228A to 228G—
 - “lessee” does not include a person who is lessee by way of an assignment;

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the “net book value” of leased plant or machinery means the book value of the plant or machinery having regard to any relevant entry in the lessee’s accounts, but—

- (a) also having regard to depreciation up to the time in question, and
 - (b) disregarding any revaluation gains or losses and any impairments;
- “restricted disposal value” means the disposal value under section 222;

“termination” in relation to a leaseback includes (except in section 228E)—

- (a) the assignment of the lessee’s interest,
- (b) the making of any arrangements (apart from an assignment of the lessee’s interest) under which a person other than the lessee becomes liable to make some or all payments under the leaseback, and
- (c) a variation as a result of which the leaseback ceases to be a finance lease.

- (2) In a case where accounts drawn up are not correct accounts, or no accounts are drawn up—
 - (a) the provisions of sections 228A to 228G apply as if correct accounts had been drawn up, and
 - (b) amounts referred to in any of those sections as shown in accounts are those that would have been shown in correct accounts.
- (3) In a case where accounts are drawn up in reliance upon amounts derived from an earlier period of account for which correct accounts were not drawn up, or no accounts were drawn up, amounts referred to in sections 228A to 228G as shown in the accounts for the later period are those that would have been shown if correct accounts had been drawn up for the earlier period.
- (4) In subsections (2) and (3) “correct accounts” means accounts drawn up in accordance with generally accepted accounting practice.

228J Plant or machinery subject to further operating lease

- (1) This section applies where—
 - (a) plant or machinery is the subject of—
 - (i) a sale and finance leaseback, or
 - (ii) a lease and finance leaseback, and
 - (b) some or all of the plant or machinery becomes, while the subject of the leaseback, also the subject of a lease in relation to which the following conditions are met—
 - (i) the term of the lease begins on or after 18 May 2004;
 - (ii) S, or a person connected with S, is the lessee under the lease;
 - (iii) the lease is not accounted for as a finance lease in the accounts of the lessee.
- (2) For the purpose of income tax or corporation tax, in calculating the lessee’s income or profits for a period of account the amount deducted in respect of amounts payable under the operating lease shall not exceed the relevant amount.

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- (3) Subsections (4) and (5) apply in relation to the calculation of the lessor's income or profits for a period of account for the purpose of income tax or corporation tax.
- (4) Where—
- (a) an amount receivable in respect of the lessor's interest under the operating lease falls to be taken into account in that calculation, and
 - (b) that amount is reduced by an amount due to the lessee under the operating lease,
- that reduction shall be disregarded when taking the amount receivable into account.
- (5) The amounts receivable in respect of the lessor's interest under the operating lease that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the relevant amount (whether or not subsection (4) applies).
- (6) Where only some of the plant or machinery is the subject of the operating lease, subsections (2) to (5) shall apply subject to such apportionments as may be just and reasonable.
- (7) For the purposes of this section a lease is accounted for as a finance lease in a person's accounts if—
- (a) the lease falls, under generally accepted accounting practice, to be treated in that person's accounts as a finance lease or loan, or
 - (b) in a case where the lease is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.
- (8) In this section—
- “lease and finance leaseback” has the meaning given in section 228F;
- “lessee” means the lessee under the operating lease;
- “lessor” means the lessor under the operating lease;
- “operating lease” means the lease referred to in subsection (1)(b);
- “relevant amount” means an amount equal to the permitted maximum under section 228B as it applies in relation to the leaseback.”.
- (2) In sections 228A to 228J of the Capital Allowances Act 2001 (c. 2) (as inserted by subsection (1) above), a reference to a provision of that Act includes a reference to an equivalent provision of the Capital Allowances Act 1990 (c. 1) (with any necessary modification).
- (3) This section applies to income tax and corporation tax chargeable in relation to periods that end on or after 17 March 2004.
- (4) Schedule 23 contains transitional provision.

^{F1}135 Rent factoring of leases of plant or machinery

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Textual Amendments

- F1 S. 135 omitted (with effect in accordance with Sch. 25 para. 10 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 25 para. 9(3)(d)**

136 Manufactured dividends

Schedule 24 to this Act (which makes provision in relation to cases where payments are or have been made, or treated as made, which are representative of dividends on shares of companies resident in the United Kingdom) has effect.

137 Manufactured payments under arrangements having an unallowable purpose

- F2(1)
- F3(2)
- F4(3)
- F4(4)
- F4(5)
- F4(6)
- F4(7)

Textual Amendments

- F2 S. 137(1) repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)
- F3 S. 137(2) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F4 S. 137(3)-(7) repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F5 138 Gilt strips

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Textual Amendments

- F5 S. 138 repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 3** (with Sch. 2)

F6 139 Gifts of shares, securities and real property to charities etc

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Textual Amendments

- F6** S. 139 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

F7 140 Life policies etc.: restriction of corresponding deficiency relief

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Textual Amendments

- F7** S. 140 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 3** (with [Sch. 2](#))

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