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## SCHEDULES

### SCHEDULE 9

#### LEASES OF PLANT OR MACHINERY: MISCELLANEOUS AMENDMENTS

##### *Finance Act 2000*

###### *Tonnage tax: introductory*

8 Schedule 22 to FA 2000 (tonnage tax) is amended as follows.

###### *Meaning of “finance costs”*

9 (1) In Part 7 (the ring fence: general provisions) paragraph 63 (meaning of finance costs) is amended as follows.

(2) In sub-paragraph (2), for the word “and” at the end of paragraph (d) substitute the following paragraph—

“(dd) where the tonnage tax company is the lessee under a long funding operating lease, the amount deductible (or the total amount that could, if there were no tonnage tax election, be deductible) in respect of payments under the lease in computing the profits of the lessee for the purposes of corporation tax (after first making against any such amount any reductions falling to be made by virtue of section 502K of the Taxes Act 1988); and”.

(3) At the end of the paragraph insert—

“(4) In this paragraph “long funding operating lease” means a long funding operating lease for the purposes of Part 2 of the Capital Allowances Act (see section 70YI(1) of that Act).”.

(4) The amendments made by this paragraph have effect in relation to payments due on or after 1st April 2006.

###### *Capital allowances: ship leasing*

10 (1) Part 10 (the ring fence: capital allowances: ship leasing) is amended as follows.

(2) In paragraph 89 (introduction), in sub-paragraph (1), after the paragraph relating to paragraphs 90 and 91 (defeased leasing) insert—

“paragraphs 91A to 91F (long funding leases),”.

(3) After paragraph 91 (defeased leasing: excepted forms of security) insert—

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*“Long funding leases: conditions for alternative treatment*

- 91A (1) This paragraph applies if the lease would fall to be regarded as a long funding lease for the purposes of Part 2 of the Capital Allowances Act 2001, apart from this paragraph.
- (2) The lease is to be treated for tax purposes as not being a long funding lease at any time when the lease—
- (a) meets the conditions in sub-paragraph (3), or
  - (b) is expected to meet those conditions when the ship is first brought into use under the lease,
- but this is subject to the qualification in sub-paragraph (4) and the exception in sub-paragraph (5).
- (3) The conditions are—
- (a) that the lease falls within paragraph 91B (lease to tonnage tax company or group),
  - (b) that the lease falls within paragraph 91C (tonnage tax company to operate and manage qualifying ship),
  - (c) that the lease falls within paragraph 91D (period and rate of sublease of qualifying ship).
- (4) The condition in paragraph (c) of sub-paragraph (3) has to be met, or be expected to be met, only at times when the company within tonnage tax is leasing the ship to a company not within tonnage tax.
- (5) The conditions in paragraphs (b) and (c) of sub-paragraph (3) do not have to be met, or be expected to be met, if the lease was finalised (within the meaning of Part 4 of Schedule 8 to the Finance Act 2006) before 1st April 2006.
- (6) Sub-paragraph (2) is subject to paragraph 91E (anti-avoidance).

*Lease to tonnage tax company or group*

- 91B (1) A lease falls within this paragraph if—
- (a) it is a lease of a qualifying ship provided directly to a company within tonnage tax, or
  - (b) it is a lease of a qualifying ship provided indirectly to a company within tonnage tax (“T”) and sub-paragraph (2) applies.
- (2) This sub-paragraph applies where—
- (a) the owner of the qualifying ship provides it directly to a company (“C”) under a lease,
  - (b) C provides the qualifying ship directly to T under a lease, and
  - (c) C and T are in the same group.

*Tonnage tax company to operate and manage qualifying ship*

- 91C (1) A lease of a qualifying ship provided, directly or indirectly, to a company within tonnage tax (“T”) falls within this paragraph if T is responsible—

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- (a) for the operation of the ship, including the appointment of the master and those members of the crew engaged in navigation, and
  - (b) for defraying all expenses in connection with the ship, or substantially all such expenses other than those directly incidental to a particular voyage or to the employment of the ship during any period for which the ship is leased by T to another person.
- (2) For the purposes of this paragraph, T is “responsible” if—
- (a) he is responsible as principal, or
  - (b) he appoints another person (“P”) to be responsible in his place and the condition in sub-paragraph (3) is met.
- (3) The condition is that—
- (a) P is not a person to whom the ship is leased by T and is not connected with such a person, or
  - (b) P is a company within tonnage tax.
- (4) Any reference in this paragraph to a lease by T includes a reference to a contract of affreightment entered into by T that provides for the carriage of goods by the qualifying ship.
- (5) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this paragraph.

*Period and rate of sublease of qualifying ship*

- 91D (1) A lease of a qualifying ship provided, directly or indirectly, to a company within tonnage tax (“T”) falls within this paragraph if each lease of the ship by T (a “sublease”) to a company not within tonnage tax meets the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) that the amount payable under the sublease is the market rate, and
  - (b) that the period of the sublease does not exceed 7 years.
- (3) For the purposes of this paragraph the market rate is the rate at which the qualifying ship could reasonably be expected to be leased, taking into account all the circumstances of the lease including the period of the lease, the date at which the lease commences and the size and description of the qualifying ship.
- (4) For the purposes of this paragraph the period of a sublease is the period comprising—
- (a) the term specified in the sublease, and
  - (b) any subsequent periods which meet the conditions in sub-paragraph (5).
- (5) The conditions are that—
- (a) there is an option to continue the sublease for that period, and

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- (b) the amount payable under the sublease for that period is not the market rate applicable at the start of that period.
- (6) Where—
  - (a) an option to continue a sublease for a period is exercised, and
  - (b) the amount payable under the sublease for that period is the market rate applicable at the start of that period,
 the parties to the sublease are to be treated for the purposes of this paragraph as if the sublease had terminated immediately before the commencement of the period and a new sublease had immediately been entered into.
- (7) Where a sublease is for an indefinite period, the period of the sublease is to be taken for the purposes of this paragraph to be a period of more than 7 years, unless the condition in sub-paragraph (8) is met.
- (8) The condition is that—
  - (a) the amount payable under the sublease must be reviewed at least once every 7 years, and
  - (b) if the amount payable under the sublease is found on such a review not to be the market rate applicable at the time of the review, it must be changed to the market rate applicable at that time.
- (9) Where there is an option to continue a sublease for an indefinite period, the period of the sublease is to be taken for the purposes of this paragraph to be a period of more than 7 years, unless the condition in sub-paragraph (10) is met.
- (10) The condition is that the amount payable under the sublease for any period for which the option may be exercised is the market rate applicable at the start of that period, except that—
  - (a) the amount for the time being payable under the sublease may subsequently be changed at any time to the market rate applicable at that time,
  - (b) the amount payable under the sublease must be reviewed at least once every 7 years, and
  - (c) if the amount payable under the sublease is found on such a review not to be the market rate applicable at the time of the review, it must be changed to the market rate applicable at that time.
- (11) Any reference in this paragraph to a lease by T includes a reference to a contract of affreightment entered into by T that provides for the carriage of goods by the qualifying ship.

*Anti-avoidance*

- 91E Paragraph 91A(2) does not have effect in the case of the lease if the main purpose, or one of the main purposes—
- (a) of the leasing of the ship,
  - (b) of a series of transactions of which the leasing of the ship is one, or

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(c) of any of the transactions in such a series,  
was to obtain a writing down allowance determined without regard to  
any of paragraphs 90, 92 and 94 to 102 in respect of expenditure incurred  
by any person on the provision of the ship.

*Consequences of paragraph 91A(2) ceasing to have effect*

- 91F (1) This paragraph applies if sub-paragraph (2) of paragraph 91A ceases to have effect in relation to a lease (the “existing lease”) because one or more of the conditions in sub-paragraph (3) of that paragraph cease to be met.
- (2) In any such case it is to be assumed for tax purposes that—
- (a) the existing lease terminates at the time of the cessation;
  - (b) another lease (the “new lease”) is entered into immediately after the cessation;
  - (c) the term of the new lease is the portion of the term of the existing lease that remains unexpired at the time of the cessation;
  - (d) the date on which the cessation occurs is the date of both—
    - (i) the inception of the new lease, and
    - (ii) the commencement of the term of the new lease.
- (3) Where this paragraph applies, subsection (4) of section 70X of the Capital Allowances Act 2001 (transfers, assignments etc by lessee) does not.
- (4) For the purposes of this paragraph, the following expressions have the meaning given in Chapter 6A of Part 2 of the Capital Allowances Act 2001 (interpretation of provisions about long funding leases)—
- “commencement”, in relation to the term of a lease;
  - “inception”, in relation to a lease;
  - “term”, in relation to a lease;
  - “terminate”.
- (4) In paragraph 93 (certificates required to support claim by lessor), in sub-paragraph (1)(b) after “in relation to the lease” insert “and, if the lease is one that would (apart from paragraph 91A) fall to be regarded as a long funding lease for the purposes of Part 2 of the Capital Allowances Act 2001, that paragraph 91A(2) has effect in relation to the lease.”
- (5) Paragraph 15 of Schedule 8 (commencement) also has effect in relation to the amendments made by this paragraph.