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## SCHEDULES

### SCHEDULE 9

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

##### CAPITAL ALLOWANCES ACT 2001

###### *Withdrawal of first year allowances for lessors of certain plant or machinery*

- 11 (1) Section 46 of CAA 2001 (general exclusions applying to certain sections) is amended as follows.
- (2) For subsection (5) (exception of sections 45A, 45D, 45E and 45H from general exclusion 6 (leasing)) substitute—
- “(5) General exclusion 6 does not prevent expenditure being first-year qualifying expenditure under any of the following provisions—
- section 45A, if the condition in subsection (6) is met,
- section 45D,
- section 45H, if the condition in subsection (6) is met.
- (6) The condition is that the plant or machinery is provided for leasing under an excluded lease of background plant or machinery for a building, within the meaning given by section 70R.”.
- (3) The amendment made by this paragraph has effect in relation to expenditure incurred on or after 1st April 2006.

###### *Plant or machinery treated as owned by person entitled to benefit of contract etc*

- 12 (1) Section 67 of CAA 2001 is amended as follows.
- (2) After “qualifying activity”, in each place where those words occur in the section, insert “ or corresponding overseas activity ”.
- (3) In subsection (2), insert at the end— “ This subsection has effect subject to, and in accordance with, subsections (2A) to (2C). ”.
- (4) After subsection (2) insert—
- “(2A) If the contract is one which, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as a lease, subsection (2B) applies.
- (2B) Where that is the case, the plant or machinery is to be treated under subsection (2) as owned by the person at any time only if the contract falls (or would fall) to be treated by that person in accordance with generally accepted accounting practice as a finance lease.
- (2C) Where at any time the plant or machinery—

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- (a) is not treated under subsection (2) as owned by the person, but  
 (b) would be treated under that subsection as owned by the person, but for subsection (2B),  
 the plant or machinery is nevertheless to be treated under subsection (2) as not owned by any other person at that time.”.
- (5) Renumber subsection (5) as subsection (7).
- (6) Before that subsection, as so renumbered, insert—
- “(6) If—
- (a) a person enters into two or more agreements, and  
 (b) those agreements are such that, if they together constituted a single contract, the condition in subsection (1)(b) would be met in relation to that person and that contract,  
 the agreements are to be treated for the purposes of this section as parts of a single contract.
- In this subsection, any reference to an agreement includes a reference to an undertaking, whether or not legally enforceable.”.
- (7) At the end of the section insert—
- “(8) In this section “corresponding overseas activity” means an activity that would be a qualifying activity if the person carrying it on were resident in the United Kingdom.”.
- (8) The amendments made by this paragraph have effect in relation to contracts that are finalised (within the meaning of Part 4 of Schedule 8) on or after 1st April 2006.

*Phasing out of overseas leasing rules*

- 13 (1) Section 105 of CAA 2001 (basic terms: “leasing”, “overseas leasing” etc) is amended as follows.
- (2) After subsection (2) (“overseas leasing”) insert—
- “(2A) In determining whether plant or machinery is used for overseas leasing, no account shall be taken of any lease finalised, within the meaning of Part 4 of Schedule 8 to the Finance Act 2006, on or after 1st April 2006.”.

*Anti-avoidance: meaning of “finance lease”*

- 14 (1) Section 219 of CAA 2001 (meaning of “finance lease” in Chapter 17 of Part 2) is amended as follows.
- (2) In subsection (1)(b), after sub-paragraph (ii) insert— “ and which are not a long funding lease in the case of the lessor. ”.
- (3) Paragraph 15 of Schedule 8 (commencement) also has effect in relation to the amendment made by this paragraph.

*Capital allowances: allocation of expenditure to a chargeable period*

- 15 (1) Section 220 of CAA 2001 is amended as follows.

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(2) Before subsection (1) insert—

“(A1) Subsection (1) applies to a company for a chargeable period if—

- (a) at the end of the ICTA period of account which is the basis period for the chargeable period, the company is a member of a group, and
- (b) the last day of that ICTA period of account is not also the last day of an ICTA period of account of the principal company of the group.”.

(3) In subsection (1)—

- (a) for “a person” substitute “ the company ”,
- (b) for “a chargeable period” substitute “ the chargeable period ”,
- (c) after “under a finance lease” insert “ or under a qualifying operating lease (see subsection (4)) ”, and
- (d) for “person's”, in both places, substitute “ company's ”.

(4) After subsection (2) insert—

“(3) The following provisions have effect for the interpretation of this section.

(4) A “qualifying operating lease” is a plant or machinery lease that meets the following conditions—

- (a) it is not a finance lease,
- (b) it is a funding lease,
- (c) its term is longer than 4 years but not longer than 5 years.

(5) An ICTA period of account is the basis period for a chargeable period if the chargeable period coincides with, or falls within, the ICTA period of account.

(6) An “ICTA period of account” is a period of account as defined in section 832(1) of ICTA.

(7) The provisions of section 170(3) to (6) of TCGA 1992 apply to determine for the purposes of this section—

- (a) whether a company is member of a group, and
- (b) which company is the principal company of the group.

(8) But, in applying those provisions for the purposes of this section, a company (“the subsidiary company”) that does not have ordinary share capital is to be treated as being a qualifying 75% subsidiary of another company (“the parent company”) if the parent company—

- (a) has control of the subsidiary company, within the meaning of section 840 of ICTA, and
- (b) is beneficially entitled to the appropriate proportion of profits and assets.

(9) The parent company is beneficially entitled to the appropriate proportion of profits and assets if (and only if) it—

- (a) is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the subsidiary company, and
- (b) would be beneficially entitled to at least 75% of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

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- (10) The provisions of Schedule 18 to ICTA (equity holders and profits or assets etc) also apply for the purposes of this section.
- (11) In this section, the following expressions have the same meaning as in Chapter 6A of Part 2 (interpretation of provisions about long funding leases)
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- “funding lease”,  
“plant or machinery lease”,  
“term”, in relation to a lease.”.
- (5) In consequence of the amendments made by this paragraph, the italic cross-heading preceding section 219 becomes “ Finance leases and certain operating leases ”.
- (6) The amendments made by this paragraph have effect in relation to expenditure incurred on or after 1st April 2006.

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