

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 63 Schedule 31: Sale of Lessor Companies Etc: Anti-Avoidance

Summary

1. [Section 63](#) and Schedule 31 make changes to Schedule 10 to the Finance Act (FA) 2006 to ensure that it applies appropriately to the sale of an intermediate lessor company.

Details of the Section

2. Paragraph 2 makes changes to paragraph 6(3) of Schedule 10 to FA 2006 to remove the reference to plant or machinery that the company "owns" and substitute "relevant plant or machinery".
3. Paragraph 3 makes changes to paragraph 7 of the Schedule.
4. Sub-paragraph (2) substitutes new sub-paragraphs (2) and (3).
5. New sub-paragraph (2) introduces new sub-paragraph (3) which defines the relevant plant or machinery value and makes new sub-paragraph (3) subject to new paragraph 7A.
6. New sub-paragraph (3) defines the balance sheet amounts in respect of plant or machinery to be taken into consideration for the purposes of condition A. Firstly, in new sub-paragraph (3)(a), it ensures that the amount includes amounts shown in the company's balance sheet in respect of plant or machinery at the start of the day, and secondly, in new sub-paragraph (3)(b), it ensures that the amount includes amounts shown in the company's balance sheet at the end of the day in respect of relevant transferred plant or machinery.
7. New sub-paragraph (3A) defines "relevant transferred plant or machinery" as plant or machinery that appeared in the balance sheet of an associated company at the start of the day. The combined effect of new sub-paragraph (3)(b) and new sub-paragraph (3A) is to capture assets transferred to the lessor company in the course of the relevant day from associated companies.
8. Sub-paragraph (3) makes clear that these amounts are for the purposes of this paragraph only by substituting "the purposes of this paragraph" for "this purpose".
9. Sub-paragraph (5) introduces new sub-paragraph (10). The new sub-paragraph provides a signpost to paragraph 9 of the Schedule which defines an associated company.
10. Paragraph 4 insert new paragraph 7A into Schedule 10. New paragraph 7A makes adjustments to the aggregate if certain conditions are met. When the conditions are met any amount included in the aggregate in respect of the plant or machinery is deducted and the market value of the plant or machinery is added to the aggregate. If the aggregate is nil the market value will constitute the relevant plant or machinery value.

*These notes refer to the Finance Act 2009 (c.10)
which received Royal Assent on 21 July 2009*

11. New sub-paragraph (2) introduces these conditions, conditions A and B.
12. New sub-paragraph (3) makes general provisions for condition A. The condition will be satisfied if the plant or machinery falls into the terms of the condition at the start of the relevant day or at the end of the relevant day having been acquired from an associated company on that day.
13. New sub-paragraph (4) sets out the terms of condition A. Condition A is satisfied if the company is the lessee of the plant or machinery under a long funding finance lease or treated as the owner under a hire purchase or similar contract under section 67 of the Capital Allowances Act 2001 (CAA).
14. New sub-paragraph (5) sets out condition B. Condition B is satisfied if the company is the lessee of the plant or machinery under a long funding operating lease at the start of the relevant day, or is the lessee of the plant or machinery under a long funding operating lease at the end of the relevant day and it was acquired from an associated company on that day.
15. Paragraph 5 makes changes to paragraph 17 of the Schedule.
16. Sub-paragraph (2) introduces a reference to new paragraph 17A in sub-paragraph (1) and substitutes new sub-paragraphs (1)(a) and (aa) for sub-paragraph (1)(a).
17. New sub-paragraph (1)(a) excludes plant or machinery where the company has not incurred qualifying expenditure for the purposes of part two of CAA. New sub-paragraph (1)(aa) excludes plant or machinery where the company is the lessor under a long funding lease.
18. Sub-paragraph (3) substitutes new sub-paragraph (2). The new sub-paragraph signposts new sub-paragraph (2A) and the effect of new paragraph 17A.
19. New sub-paragraph (2A) defines the amounts to be included in the aggregate for the purposes of "PM" in paragraph 16. Firstly, in (2A)(a), it ensures that the amount includes amounts shown in the company's balance sheet in respect of plant or machinery at the start of the day, and secondly, in (2A)(b), it ensures that the amount includes amounts shown in the company's balance sheet at the end of the day in respect of relevant transferred plant or machinery.
20. New sub-paragraph (2B) defines "relevant transferred plant or machinery" as plant or machinery that appeared in the balance sheet of an associated company at the start of the day. The combined effect of new sub-paragraph (2)(b) and new sub-paragraph (2B) is to capture assets transferred to the lessor company in the course of the relevant day from associated companies.
21. Sub-paragraph (4) makes clear that these amounts are for the purposes of this paragraph only by substituting "the purposes of this paragraph" for "this purpose" in sub-paragraph (3).
22. Paragraph (6) inserts new paragraph 17A. New paragraph 17A makes adjustments to the aggregate if certain conditions are met. When the conditions are met any amount included in the aggregate in respect of the plant or machinery is deducted and the market value of the plant or machinery is added to the aggregate. If the aggregate is nil the market value will constitute the relevant plant or machinery value.
23. New sub-paragraph (2) introduces these conditions, conditions A and B.
24. New sub-paragraph (3) makes general provisions for condition A so that it is clear that the condition will be satisfied if the plant or machinery satisfies the conditions at the start of the day or if it satisfies the conditions at the end of the day having been acquired from an associated company on that day.

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25. New sub-paragraph (4) sets out condition A. Condition A is satisfied if the company is the lessee of the plant or machinery under a long funding finance lease or treated as the owner under a hire purchase or similar contract under section 67 of CAA.
26. New sub-paragraph (5) sets out condition B. Condition B is satisfied if the company is the lessee of the plant or machinery under a long funding operating lease at the start of the relevant day, or is the lessee of the plant or machinery under a long funding operating lease at the end of the relevant day and it was acquired from an associated company on that day.
27. Paragraph 7 makes changes to paragraph 22(2) (migration) by substituting "in respect of which an amount would be shown in a balance sheet of the company drawn up immediately before the relevant day" for assets "owned by the company".
28. Paragraph 9 adds new sub-paragraph (5A) in paragraph 41 (definitions). It ensures that "long funding finance lease", "long funding lease" and "long funding operating lease" have the same meaning as in Part 2 of CAA (Leasing Reform).
29. Paragraph 10 makes consequential changes to paragraph 42 (index) to accommodate the new definitions.
30. Paragraph 11 repeals paragraph 2(3) of Schedule 6 to FA 2007.
31. Paragraph 12 brings the schedule into effect where the relevant day is on or after 13 November 2008.

Background Note

32. The Schedule will make changes to Schedule 10 to FA 2006, to ensure that lessors of plant or machinery, whether acting as head lessor or intermediate lessor have parity of treatment for the purposes of the operation of Schedule 10.
33. [Schedule 10](#) to FA 2006 calculates an amount of income by reference to the difference between the balance sheet value of assets owned by the lessor company and their tax written down value. The charge recovers the tax timing advantage derived from a claim to capital allowances.
34. Disclosures revealed that lessor companies had sought to avoid the consequences of Schedule 10 by entering into sale and finance leaseback arrangements so that the lessor company no longer owned the asset subject to a lease but continued to benefit from the availability of capital allowances. Schedule 10 does not take into consideration assets where the lessor does not own the asset so that the sale of the intermediate lessor company would escape the effect of Schedule 10 even though it had continued to benefit from the capital allowances.
35. The Schedule will remove the requirement for the lessor company to own an asset subject to a lease and make provisions for ascertaining a value in respect of an asset whether or not that asset is reflected on the balance sheet of the lessor company. As a result the sale of an intermediate lessor company will attract an appropriate charge.
36. Where the sale and finance leaseback takes place on the same day as the sale of the company there is still a possibility that no charge under Schedule 10 would arise as a consequence of paragraph 40 of Schedule 10. Paragraph 40 removes assets from the calculation of the Schedule 10 charge where the sale of the asset on the relevant day comes within section 228K of CAA. While section 228K applies in principle to a sale and finance leaseback transaction it may in practice give rise to no charge and as a result the sale of the lessor company could still be achieved without tax effect. This opportunity will be blocked by the repeal of paragraph 40.