

SCHEDULES

SCHEDULE 12

Section 82.

LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

PART I

LEASING ARRANGEMENTS WHERE ANY OF THE RETURN ON INVESTMENT IS IN CAPITAL FORM

Purpose of this Part of this Schedule

- 1 (1) This Part of this Schedule is concerned with arrangements—
- (a) which involve the lease of an asset;
 - (b) which are or have been entered into by companies or other persons;
 - (c) which are of such a kind as, in the case of companies incorporated in any part of the United Kingdom, falls for the purposes of accounts of such companies to be treated in accordance with normal accountancy practice as finance leases or loans; and
 - (d) whose effect is that some or all of the return on investment in respect of the finance lease or loan—
 - (i) is or may be in the form of a sum which is not rent; and
 - (ii) would not, apart from this Schedule, be wholly brought into account for tax purposes as rent from the lease.
- (2) The principal purpose of this Part of this Schedule is, in the case of any such arrangements,—
- (a) to charge any person entitled to the lessor's interest under the lease of the asset to tax from time to time on amounts of income determined by reference to those which fall for accounting purposes to be treated in accordance with normal accountancy practice as the income return, on and after 26th November 1996, on investment in respect of the finance lease or loan (taking into account the substance of the matter as a whole, including in particular the state of affairs as between connected persons, or within a group of companies, as reflected or falling to be reflected in accounts of any of those persons or in consolidated group accounts);
 - (b) where the sum mentioned in sub-paragraph (1)(d) above falls due, to recover by reference to that sum the whole or any part of any reliefs, allowances or deductions which are or have been allowed or made in respect of capital expenditure incurred in respect of the leased asset.

Application of this Part of this Schedule

- 2 (1) This Part of this Schedule applies in any case where (whether before or after the passing of this Act)—
- (a) a lease of an asset is or has been granted; and

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- (b) in the case of the lease, the conditions in paragraph 3 below are or have been satisfied at some time in a period of account of the current lessor.
- (2) Where the conditions in paragraph 3 below have been satisfied at some time in a period of account of the person who was at that time the lessor, they shall be taken to continue to be satisfied for the purposes of this Part of this Schedule unless and until—
 - (a) the asset ceases to be leased under the lease; or
 - (b) the lessor’s interest under the lease is assigned to a person who is not connected with any of the persons described in sub-paragraph (3) below.
- (3) Those persons are—
 - (a) the assignor;
 - (b) any person who was the lessor at some time before the assignment; or
 - (c) any person who at some time after the assignment becomes the lessor pursuant to arrangements made by a person who was the lessor, or was connected with the lessor, at some time before the assignment.
- (4) Nothing in sub-paragraph (2) above prevents this Part of this Schedule from again applying in the case of the lease if the conditions for its application are satisfied after the assignment.

The conditions

- 3 (1) The condition in this sub-paragraph is that at the relevant time the leasing arrangements are such as fall for accounting purposes to be treated in accordance with normal accountancy practice as a finance lease or a loan and—
 - (a) the lessor, or a person connected with him, falls for accounting purposes to be treated in accordance with normal accountancy practice as the finance lessor in relation to the finance lease or loan, or
 - (b) the finance lease or loan falls for accounting purposes to be treated, in accordance with normal accountancy practice, as subsisting for the purposes of consolidated group accounts of a group of companies of which the lessor is a member.
- (2) The condition in this sub-paragraph is that, under the leasing arrangements, there is or may be payable to the lessor, or to a person connected with him, a sum (a “major lump sum”) which is not rent but is a sum such as falls for accounting purposes to be treated in accordance with normal accountancy practice—
 - (a) as to part, as repayment of some or all of the investment in respect of a finance lease or loan; and
 - (b) as to part, as a return on investment in respect of a finance lease or loan.
- (3) The condition in this sub-paragraph is that not all of that part of a major lump sum which falls within paragraph (b) of sub-paragraph (2) above would, apart from this Schedule, fall to be brought into account for tax purposes in chargeable periods of the lessor ending with the relevant chargeable period as the normal rent from the lease for periods of account of the lessor.
- (4) The condition in this sub-paragraph is that, as respects the lessor at the relevant time, —
 - (a) the period of account of his in which the relevant time falls, or
 - (b) an earlier period of account of his during which he was the lessor,

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is a period of account for which the accountancy rental earnings in respect of the lease exceed the normal rent for the period.

- (5) The condition in this sub-paragraph is that at the relevant time—
- (a) arrangements falling within sub-paragraph (1) of paragraph 4 below exist; or
 - (b) if the condition in paragraph (a) above is not satisfied, circumstances falling within sub-paragraph (2) of that paragraph exist.
- (6) In determining the normal rent for a period of account for the purpose of determining whether the condition in sub-paragraph (4) above is satisfied, rent which for the purposes of corporation tax under Schedule A falls to be brought into account as a person becomes entitled to it shall be treated—
- (a) as if it accrued evenly throughout the period to which, in accordance with the terms of the lease, each payment to which the person becomes entitled relates, and
 - (b) as if he had become entitled to the rent as it so accrues,
- unless any such payment falls due more than 12 months after the time at which any of the rent to which that payment relates is so treated as accruing.
- (7) In determining the normal rent for a period of account for the purpose of determining whether the condition in sub-paragraph (4) above is satisfied, rent which falls to be brought into account for tax purposes as it falls due shall be treated—
- (a) as accruing evenly throughout the period to which, in accordance with the terms of the lease, each payment falling due relates, and
 - (b) as falling due as it so accrues,
- unless any such payment falls due more than 12 months after the time at which any of the rent to which that payment relates is so treated as accruing.
- (8) In this paragraph—
- “the relevant chargeable period”, in the case of any major lump sum, means—
- (a) the chargeable period of the lessor which is related to his period of account in which that major lump sum is or may be payable in accordance with the leasing arrangements; or
 - (b) if there are two or more such chargeable periods, the latest of them;
- “the relevant time” means the time as at which it falls to be determined for the purposes of sub-paragraph (1) or (2) of paragraph 2 above whether the conditions in this paragraph are or, as the case may be, were satisfied.

The arrangements and circumstances in paragraph 3(5)

- 4 (1) The arrangements mentioned in paragraph 3(5)(a) above are arrangements under which—
- (a) the lessee or a person connected with him may acquire, whether directly or indirectly, the leased asset, or an asset representing the leased asset, from the lessor or a person connected with the lessor; and
 - (b) in connection with that acquisition, the lessor or a person connected with him may receive, whether directly or indirectly, a qualifying lump sum from the lessee or a person connected with the lessee.
- (2) The circumstances mentioned in paragraph 3(5)(b) above are circumstances which make it more likely—

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- (a) that the events described in sub-paragraph (3) below will occur, than
 - (b) that the event described in sub-paragraph (4) below will occur.
- (3) The events mentioned in sub-paragraph (2)(a) above are—
- (a) that the lessee or a person connected with him will acquire, whether directly or indirectly, the leased asset or an asset representing the leased asset from the lessor or a person connected with the lessor; and
 - (b) that, in connection with that acquisition, the lessor or a person connected with him will receive, whether directly or indirectly, a qualifying lump sum from the lessee or a person connected with the lessee.
- (4) The event mentioned in sub-paragraph (2)(b) above is that, before any such acquisition as is mentioned in sub-paragraph (3) above takes place, the leased asset or, as the case may be, the asset representing the leased asset, will have been acquired, in a sale on the open market, by a person who is not the lessor or the lessee and who is not connected with either of them.
- (5) In this paragraph, “qualifying lump sum” means any sum which is not rent but at least part of which would, if the recipient were a company incorporated in the United Kingdom, fall for accounting purposes to be treated in accordance with normal accountancy practice as a return on investment in respect of a finance lease or loan.

Current lessor to be taxed by reference to accountancy rental earnings

- 5 (1) Where, in the case of any period of account of the current lessor,—
- (a) this Part of this Schedule applies in the case of the lease, and
 - (b) the accountancy rental earnings in respect of the lease for that period of account exceed the normal rent for that period,
- he shall be treated for tax purposes as if in that period of account he had been entitled to, and there had arisen to him, rent from the lease of an amount equal to those accountancy rental earnings (instead of the normal rent referred to in paragraph (b) above).
- (2) Where a person is treated under sub-paragraph (1) above as if he had in a period of account been entitled to, and there had arisen to him, any rent from a lease of an asset, the rent shall be treated for tax purposes—
- (a) as if it had accrued at an even rate throughout so much of the period of account as falls within the period for which the asset is leased; and
 - (b) as if that person had become entitled to it as it accrued.

Reduction of taxable rent by certain excesses

- 6 (1) Subject to sub-paragraph (6)(b) below, if in the case of the lease—
- (a) the normal rent for a period of account of the current lessor throughout which the leasing arrangements are such as fall for accounting purposes to be treated in accordance with normal accountancy practice as a finance lease or loan, exceeds
 - (b) the accountancy rental earnings for the period,
- there is for the purposes of this paragraph a “normal rental excess” for that period of an amount equal to the excess.

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- (2) In this paragraph the “cumulative normal rental excess” in the case of the lease and a period of account of the current lessor means so much of the aggregate of the normal rental excesses for previous periods of account of his as (after taking account of any increases under paragraph 10 below) has not been—
- (a) set off under this paragraph against the taxable rent for any such previous period; or
 - (b) reduced under paragraph 10 below.
- (3) Subject to sub-paragraph (8)(b) below, if the taxable rent in the case of the lease for a period of account of the current lessor is, by virtue of paragraph 5 above, an amount equal to the accountancy rental earnings, there is for the purposes of this paragraph an “accountancy rental excess” for that period of an amount equal to the difference between—
- (a) the accountancy rental earnings for the period of account; and
 - (b) the normal rent for the period.
- (4) In this paragraph the “cumulative accountancy rental excess”, in the case of the lease and a period of account of the current lessor, means so much of the aggregate of the accountancy rental excesses for previous periods of account of his as (after taking account of any increases under paragraph 9 below) has not been—
- (a) set off under this paragraph against the taxable rent for any such previous period;
 - (b) reduced under paragraph 9 below; or
 - (c) set off under paragraph 12 below against the consideration for a disposal.
- (5) If a period of account of the current lessor is one—
- (a) for which the normal rent exceeds the accountancy rental earnings, and
 - (b) for which there is any cumulative accountancy rental excess,
- sub-paragraph (6) below shall apply.
- (6) Where this sub-paragraph applies—
- (a) the taxable rent for the period of account shall be reduced (but not below the accountancy rental earnings) by setting against it the cumulative accountancy rental excess; and
 - (b) the normal rental excess for the period shall be the amount (if any) by which—
 - (i) the normal rent, reduced by an amount equal to the reduction under paragraph (a) above, exceeds
 - (ii) the accountancy rental earnings,and if there is no such excess, there is no normal rental excess for the period.
- (7) If a period of account of the current lessor is one—
- (a) for which the taxable rent in the case of the lease is, by virtue of paragraph 5 above, an amount equal to the accountancy rental earnings, and
 - (b) there is any cumulative normal rental excess,
- sub-paragraph (8) below shall apply.
- (8) Where this sub-paragraph applies—
- (a) the taxable rent for the period of account shall be reduced (but not below the normal rent) by setting against it the cumulative normal rental excess, and

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- (b) the accountancy rental excess for the period shall be the amount (if any) by which—
 - (i) the accountancy rental earnings, reduced by an amount equal to the reduction under paragraph (a) above, exceeds
 - (ii) the normal rent,
 and if there is no such excess, there is no accountancy rental excess for the period.

- (9) In this paragraph “the taxable rent”, in the case of a period of account of the current lessor, means the amount which would, apart from this paragraph and paragraph 8(6) below, be treated for tax purposes as rent from the lease—
 - (a) which arises to him, and
 - (b) if rent arising to him from the lease is chargeable to corporation tax under Schedule A, to which he is entitled,
 in that period of account for the purpose of determining his liability to tax for the related chargeable period or periods.

Assignments on which neither a gain nor a loss accrues

- 7 (1) This paragraph applies in any case where—
 - (a) the current lessor assigns the lessor’s interest under the lease; and
 - (b) the assignment is a disposal on which, by virtue of any of the enactments specified in section 35(3)(d) of the Taxation of Chargeable Gains Act 1992, neither a gain nor a loss accrues.

- (2) Where this paragraph applies, this Schedule shall have effect as if—
 - (a) a period of account of the assignor ended, and
 - (b) a period of account of the assignee began,
 with the assignment.

- (3) Where this paragraph applies—
 - (a) any unused cumulative accountancy rental excess, or
 - (b) any unused cumulative normal rental excess,
 of the assignor shall become the cumulative accountancy rental excess or the cumulative normal rental excess (as the case may be) for the period of account of the assignee which begins with the assignment.

- (4) In sub-paragraph (3) above—
 - “unused cumulative accountancy rental excess”, in relation to the assignor, means the aggregate of—
 - (a) any cumulative accountancy rental excess, and
 - (b) any accountancy rental excess,
 for the period of account of his which ends with the assignment;
 - “unused cumulative normal rental excess”, in relation to the assignor, means the aggregate of—
 - (a) any cumulative normal rental excess, and
 - (b) any normal rental excess,
 for the period of account of his which ends with the assignment.

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Relief for bad debts etc: corporation tax under Schedule A

- 8 (1) Section 41 of the Taxes Act 1988 (which gives a person relief from corporation tax under Schedule A for rent etc not paid, by treating him as if he had never been entitled to the rent) shall be disregarded in determining for the purposes of this Part of this Schedule the amount of—
- (a) the accountancy rental earnings in respect of the lease, or
 - (b) the normal rent from the lease,
- for any period of account.
- (2) Where for any period of account—
- (a) a person is treated under paragraph 5 above as if he had been entitled to receive an amount of rent, and
 - (b) the amount is in respect of rents on the profits or gains arising from which that person is chargeable to corporation tax under Schedule A,
- section 41 of the Taxes Act 1988 shall not have effect in relation to amounts in respect of rents from the lease of the asset for that or any subsequent period of account of his, or of any person to whom the lessor's interest under the lease is assigned, until the lease terminates or is assigned in circumstances such that paragraph 7 above does not apply.
- (3) Where, by virtue of sub-paragraph (2) above, section 41 of the Taxes Act 1988 does not apply, sub-paragraph (4) below shall apply instead.
- (4) In computing the profits or gains on which a person is chargeable to corporation tax under Schedule A in a case falling within sub-paragraph (2) above, any sums falling within sub-paragraph (i), (ii) or (iii) of section 74(1)(j) of the Taxes Act 1988 in respect of amounts in respect of rents from the lease of the asset shall be deductible in a period of account as an expense to the extent that they would be deductible in that period of account if—
- (a) amounts in respect of rents from the lease of the asset fell to be taken into account as trading receipts in computing the profits or gains of a trade carried on by the person;
 - (b) the asset were leased in the course of that trade; and
 - (c) the charge to corporation tax under Schedule A were in respect of such annual profits or gains as are described in that Schedule arising from a trade.
- (5) Any such expense as is mentioned in sub-paragraph (4) above shall be treated for the purposes of section 25 of the Taxes Act 1988 (deductions from rent for the purposes of corporation tax under Schedule A) as if that expense—
- (a) were included among the permitted deductions, within the meaning of that section;
 - (b) were a payment made in respect of the premises comprised in the lease; and
 - (c) were a payment which became due, and was made, immediately before the end of the period of account mentioned in sub-paragraph (4) above.
- (6) Where—
- (a) a deduction has been made by virtue of sub-paragraph (4) above in respect of an amount, but
 - (b) subsequently an amount (“the relevant credit”) is recovered or credited in respect of the amount in respect of which the deduction was made, and

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- (c) the relevant credit would, on the suppositions in paragraphs (a) to (c) of sub-paragraph (4) above, be brought into account for tax purposes as a trading receipt for a period of account of the current lessor,
the taxable rent for that period of account shall be increased by the amount of the relevant credit.
- (7) In sub-paragraph (6) above, “the taxable rent”, in the case of a period of account of the current lessor, means the amount which would, apart from that sub-paragraph, be treated for tax purposes as rent from the lease—
- (a) which arises to him, and
 - (b) if rent arising to him from the lease is chargeable to corporation tax under Schedule A, to which he is entitled,
- in that period of account for the purpose of determining his liability to tax for the related chargeable period or periods.
- (8) After the time when the conditions in paragraph 3 above become satisfied as respects any particular lessor, no claim under section 41 of the Taxes Act 1988 shall be made in respect of any amount which that lessor was entitled to receive in respect of rents from the lease of the asset.
- (9) Where—
- (a) before the time at which the conditions in paragraph 3 above become satisfied as respects any particular lessor, a claim under section 41 of the Taxes Act 1988 in respect of an amount which he was entitled to receive in respect of any rents from the lease of the asset has been made, and
 - (b) the claim is to any extent allowed,
- no amount shall be deductible under sub-paragraph (4) above in respect of that amount so far as so allowed.

Relief for bad debts etc: cumulative accountancy rental excess

- 9 (1) If, in the case of the lease, for any period of account—
- (a) the accountancy rental earnings exceed the normal rent,
 - (b) a bad debt deduction falls to be made in respect of rent from the lease,
 - (c) the amount of the bad debt deduction exceeds the amount of the accountancy rental earnings, and
 - (d) there is a cumulative accountancy rental excess,
- the cumulative accountancy rental excess for the period of account shall be reduced (but not below nil) by the amount by which the bad debt deduction exceeds the accountancy rental earnings.
- (2) If, in the case of the lease, for any period of account—
- (a) the accountancy rental earnings do not exceed the normal rent,
 - (b) a bad debt deduction falls to be made in respect of rent from the lease, and
 - (c) there is a cumulative accountancy rental excess for that period of account,
- sub-paragraph (3) below shall apply.
- (3) Where this sub-paragraph applies, the amount of the cumulative accountancy rental excess which may be set against the taxable rent for the period of account shall not exceed the amount (if any) by which the normal rent exceeds the bad debt deduction (and, if the normal rent does not exceed the bad debt deduction, shall be nil).

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(4) If, in a case where sub-paragraph (3) above applies, the bad debt deduction exceeds the normal rent for the period of account, the cumulative accountancy rental excess for the period of account shall be reduced (but not below nil) by the amount by which the bad debt deduction exceeds the normal rent.

(5) Where—

- (a) the cumulative accountancy rental excess for any period of account of the current lessor has been reduced under sub-paragraph (1) or (4) above by reason of a bad debt deduction, but
- (b) in a subsequent period of account of his, an amount (“the relevant credit”) is recovered or credited in respect of the amount which constituted the bad debt deduction,

the cumulative accountancy rental excess (if any) for the period of account mentioned in paragraph (b) above shall, subject to sub-paragraph (6) below, be increased by the relevant credit.

(6) If, in a case falling within sub-paragraph (5) above,—

- (a) the relevant credit, exceeds
- (b) the aggregate of the reductions falling within paragraph (a) of that sub-paragraph,

the amount of the increase under that sub-paragraph shall not exceed that aggregate.

(7) In this paragraph—

“bad debt deduction”, in relation to a period of account, means the aggregate of any sums falling within sub-paragraph (i), (ii) or (iii) of section 74(1)(j) of the Taxes Act 1988 in respect of amounts in respect of rents from the lease of the asset which are deductible as expenses for that period, whether by virtue of paragraph 8(4) above or otherwise;

“taxable rent” has the same meaning as in paragraph 6 above.

Relief for bad debts etc: cumulative normal rental excess

10 (1) If, in the case of the lease, for any period of account—

- (a) the accountancy rental earnings do not exceed the normal rent,
- (b) a bad debt deduction falls to be made in respect of rent from the lease,
- (c) the amount of the bad debt deduction exceeds the amount of the normal rent, and
- (d) there is a cumulative normal rental excess,

the cumulative normal rental excess for the period of account shall be reduced (but not below nil) by the amount by which the bad debt deduction exceeds the normal rent.

(2) If, in the case of the lease, for any period of account—

- (a) the accountancy rental earnings exceed the normal rent,
- (b) a bad debt deduction falls to be made in respect of rent from the lease, and
- (c) there is a cumulative normal rental excess for that period of account,

sub-paragraph (3) below shall apply.

(3) Where this sub-paragraph applies, the amount of the cumulative normal rental excess which may be set against the taxable rent for the period of account shall not exceed the amount (if any) by which the accountancy rental earnings exceed the bad debt

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deduction (and, if the accountancy rental earnings do not exceed the bad debt deduction, shall be nil).

(4) If, in a case where sub-paragraph (3) above applies, the bad debt deduction exceeds the accountancy rental earnings for the period of account, the cumulative normal rental excess for the period of account shall be reduced (but not below nil) by the amount by which the bad debt deduction exceeds the accountancy rental earnings.

(5) Where—

- (a) the cumulative normal rental excess for any period of account of the current lessor has been reduced under sub-paragraph (1) or (4) above by reason of a bad debt deduction, but
- (b) in a subsequent period of account of his, an amount (“the relevant credit”) is recovered or credited in respect of the amount which constituted the bad debt deduction,

the cumulative normal rental excess (if any) for the period of account mentioned in paragraph (b) above shall, subject to sub-paragraph (6) below, be increased by the relevant credit.

(6) If, in a case falling within sub-paragraph (5) above,—

- (a) the relevant credit, exceeds
- (b) the aggregate of the reductions falling within paragraph (a) of that sub-paragraph,

the amount of the increase under that sub-paragraph shall not exceed that aggregate.

(7) In this paragraph—

“bad debt deduction”, in relation to a period of account, means the aggregate of any sums falling within sub-paragraph (i), (ii) or (iii) of section 74(1)(j) of the Taxes Act 1988 in respect of amounts in respect of rents from the lease of the asset which are deductible as expenses for that period, whether by virtue of paragraph 8(4) above or otherwise;

“taxable rent” has the same meaning as in paragraph 6 above.

Capital allowances

11 (1) This paragraph applies in any case where an occasion occurs on or after 26th November 1996 on which a major lump sum falls to be paid in the case of the lease of the asset.

(2) In this paragraph “the relevant occasion” means the occasion mentioned in sub-paragraph (1) above.

(3) If capital expenditure incurred by the current lessor in respect of the leased asset is or has been taken into account for the purposes of any allowance or charge under any of the following groups of provisions, that is to say—

- (a) sections 520 and 521 of the Taxes Act 1988 (patent rights),
- (b) Part II of the Capital Allowances Act 1990 (machinery and plant), or
- (c) Part IV of that Act (mineral extraction allowances),

the group of provisions in question (“the relevant provisions”) shall have effect as if the relevant occasion were an event by reason of which a disposal value is to be brought into account of an amount equal (subject to any applicable limiting provision) to the amount or value of the major lump sum.

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- (4) In this paragraph “limiting provision” means a provision to the effect that the disposal value of the asset in question is not to exceed an amount (“the limit”) described by reference to capital expenditure incurred in respect of the asset.
- (5) Where—
- (a) by virtue of sub-paragraph (3) above, a disposal value (“the relevant disposal value”) falls or has fallen to be brought into account by a person in respect of the leased asset for the purposes of the relevant provisions, and
 - (b) a limiting provision has effect in the case of those provisions,
- sub-paragraph (6) below shall apply.
- (6) Where this sub-paragraph applies, the limiting provision shall have effect (if or to the extent that it would not otherwise do so)—
- (a) in the case of the relevant disposal value, and
 - (b) in the case of any simultaneous or subsequent disposal value,
- as if, instead of any particular disposal value, it were the aggregate amount of all the disposal values brought into account for the purposes of the relevant provisions by the current lessor in respect of the leased asset which is not to exceed the limit.
- (7) In sub-paragraph (6) above “simultaneous or subsequent disposal value” means any disposal value which falls to be brought into account by the current lessor in respect of the leased asset by reason of any event occurring subsequent to, or at the same time as, the event by reason of which the relevant disposal value falls to be brought into account.
- (8) If any allowance is or has been given in respect of capital expenditure incurred by the current lessor in respect of the leased asset under any provision of the Capital Allowances Acts other than those specified in sub-paragraph (3) above, an amount equal to the lesser of—
- (a) the aggregate of the allowances so given (so far as not previously recovered or withdrawn),
 - (b) the amount or value of the major lump sum,
- shall, in relation to the current lessor, be treated as if it were a balancing charge to be made on him for the chargeable period or its basis period in which falls the relevant occasion.
- (9) If there is or has been allowed to the current lessor in respect of expenditure incurred in connection with the leased asset any deduction by virtue of—
- (a) subsection (3) of section 68 of the Capital Allowances Act 1990 (films, tapes and discs), so far as relating to expenditure to which subsection (1) of that section applies, or
 - (b) section 42 of the Finance (No.2) Act 1992 (production or acquisition expenditure on films),
- sub-paragraph (10) below shall apply.
- (10) Where this sub-paragraph applies, the current lessor shall be treated as if receipts of a revenue nature of an amount equal to the amount (if any) by which—
- (a) the amount or value of the major lump sum, exceeds
 - (b) the amount or value of so much of the major lump sum as is treated as receipts of a revenue nature under section 68(8) of the Capital Allowances Act 1990,
- arose to him from the trade or business in question on the relevant occasion.

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- (11) If there is or has been allowed to the current lessor in respect of capital expenditure incurred in connection with the leased asset any deduction by virtue of—
- (a) section 91 of the Taxes Act 1988 (cemeteries etc), or
 - (b) section 91A or 91B of that Act (restoration and preparation expenditure in relation to a waste disposal site),
- sub-paragraph (12) below shall apply.
- (12) Where this sub-paragraph applies, the current lessor shall be treated as if trading receipts of an amount equal to the lesser of—
- (a) the amount or value of the major lump sum,
 - (b) the deductions previously allowed,
- arose to him from the trade in question on the relevant occasion.
- (13) If, in a case where this paragraph applies, allowances are or have been made to a person (“the contributor”) by virtue of section 154 of the Capital Allowances Act 1990 (allowances in respect of contributions to capital expenditure) in respect of his contribution of a capital sum to expenditure on the provision of the leased asset, the foregoing provisions of this paragraph shall have effect in relation to the contributor and allowances by virtue of that section in respect of the contribution as they have effect in relation to the current lessor and allowances in respect of capital expenditure incurred by him in respect of the leased asset.
- (14) In sub-paragraph (8) above, “chargeable period or its basis period” shall be construed in accordance with the Capital Allowances Act 1990.
- (15) In the application of sub-paragraph (8) above—
- (a) in relation to a trade, profession or vocation set up and commenced on or after 6th April 1994, or
 - (b) as respects the year 1997-98 or any subsequent year of assessment in relation to a trade, profession or vocation set up and commenced before 6th April 1994,
- that sub-paragraph shall have effect with the omission of the words “or its basis period” and sub-paragraph (14) above shall accordingly have effect with the same omission.

Chargeable gains

- 12 (1) If, in the case of the lease,—
- (a) the current lessor or a person connected with him disposes of—
 - (i) the lessor’s interest under the lease, or
 - (ii) the leased asset, or
 - (iii) an asset representing the leased asset, and
 - (b) there is, for the period of account of the current lessor in which the disposal takes place, any cumulative accountancy rental excess,
- then, in determining for the purposes of the Taxation of Chargeable Gains Act 1992 the amount of any gain accruing to the person making the disposal, the consideration for the disposal shall be treated as reduced (but not below nil) by setting against it the cumulative accountancy rental excess.
- (2) If the disposal mentioned in sub-paragraph (1) above is, for the purposes of the Taxation of Chargeable Gains Act 1992, a part-disposal of an asset—

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- (a) the cumulative accountancy rental excess mentioned in sub-paragraph (1) above shall be apportioned between—
 - (i) the property disposed of, and
 - (ii) the property which remains undisposed of,in the proportions in which the sums which under paragraph (a) or (b) of section 38(1) of that Act are attributable to the asset fall to be apportioned under section 42 of that Act; and
 - (b) only that portion of the cumulative accountancy rental excess which is so apportioned to the property disposed of shall be set against the consideration for the part-disposal in accordance with sub-paragraph (1) above.
- (3) Sub-paragraph (1) above is without prejudice to section 37 of the Taxation of Chargeable Gains Act 1992 (deduction for money or money's worth charged to income tax etc) except as provided in sub-paragraph (4) below.
- (4) Section 37 of that Act shall not apply if or to the extent that any money or money's worth which, apart from this sub-paragraph, would be excluded by virtue of that section from the consideration for a disposal is represented by any cumulative accountancy rental excess which in accordance with sub-paragraph (1) above—
- (a) falls to be set against the consideration for the disposal; or
 - (b) has fallen to be set against the consideration for a previous disposal made by the person making the disposal in question or a person connected with him.
- (5) Where the current lessor or a person connected with him disposes of—
- (a) the lessor's interest under the lease, or
 - (b) the leased asset, or
 - (c) an asset representing the leased asset,
- this Schedule shall have effect as if a period of account of the current lessor ended, and another period of account of his began, immediately before the disposal.
- (6) If two or more disposals falling within sub-paragraph (1) above are made at the same time—
- (a) the cumulative accountancy rental excess mentioned in sub-paragraph (1) above shall, subject to sub-paragraph (2) above, be apportioned between them in such proportions as are just and reasonable; and
 - (b) sub-paragraph (5) above shall have effect in relation to those disposals as if they together constituted a single disposal.
- (7) In this paragraph “dispose” and “disposal” shall be construed in accordance with the Taxation of Chargeable Gains Act 1992.

Existing schemes where this Part does not at first apply

- 13 (1) This paragraph applies in any case where—
- (a) the lease of the asset forms part of an existing scheme, but
 - (b) the conditions in paragraph 3 above become satisfied after 26th November 1996.
- (2) This Schedule shall have effect as if a period of account of the current lessor ended, and another period of account of his began—
- (a) immediately before the time at which the conditions in paragraph 3 above become satisfied as mentioned in sub-paragraph (1)(b) above; and

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- (b) immediately after the time at which those conditions become so satisfied.
- (3) If, on the assumption that this Part of this Schedule (other than this paragraph) had applied in the case of the lease at all times on or after 26th November 1996, there would be an amount of cumulative accountancy rental excess for the period of account of the current lessor in which the conditions in paragraph 3 above become satisfied, then—
- (a) that amount shall be the cumulative accountancy rental excess for that period of account; and
 - (b) the current lessor shall be treated for tax purposes as if, in the immediately preceding period of account, he had been entitled to, and there had arisen to him, rent from the lease of an amount equal to that cumulative accountancy rental excess.
- (4) If, on the assumption that this Part of this Schedule (other than this paragraph) had applied in the case of the lease at all times on or after 26th November 1996, there would be an amount of cumulative normal rental excess for the period of account of the current lessor in which the conditions in paragraph 3 above become satisfied, that amount shall be the cumulative normal rental excess for that period of account.
- (5) The amount of rent mentioned in sub-paragraph (3)(b) above—
- (a) is in addition to any other rent from the lease for the period of account there mentioned; and
 - (b) shall be left out of account for the purposes of paragraph 5 above.
- (6) Where a person is treated under sub-paragraph (3)(b) above as if he had in a period of account been entitled to, and there had arisen to him, any rent, the rent shall be treated for tax purposes as if it had accrued, and he had become entitled to it, immediately before the end of that period of account.
- (7) In determining for the purposes of this paragraph the amount which would, on the assumption in sub-paragraph (3) or (4) above, be the amount of—
- (a) the cumulative accountancy rental excess, or
 - (b) the cumulative normal rental excess,
- for the period of account of the current lessor in which the conditions in paragraph 3 above become satisfied, any amount of relief given for a period of account on a claim under section 41 of the Taxes Act 1988 shall be treated as if it had instead been given under paragraph 8(4) above for that period of account.

New schemes where this Part begins to apply after Part II has applied

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If—

- (a) the conditions in paragraph 3 above become satisfied in the case of the lease of the asset, and
- (b) immediately before those conditions became so satisfied, Part II of this Schedule applied in the case of the lease,

then, in determining the cumulative accountancy rental excess or the cumulative normal rental excess for any period of account ending after those conditions become satisfied, this Schedule shall have effect as if this Part of this Schedule had applied in relation to the lease at any time when Part II of this Schedule applied in relation to it.

PART II

OTHER FINANCE LEASES

Purpose of this Part of this Schedule

- 15 (1) This Part of this Schedule is concerned with arrangements (other than arrangements with which Part I of this Schedule is concerned)—
- (a) which involve the lease of an asset;
 - (b) which are or have been entered into by companies or other persons; and
 - (c) which are of such a kind as, in the case of companies incorporated in any part of the United Kingdom, falls for the purposes of accounts of such companies to be treated in accordance with normal accountancy practice as finance leases or loans.
- (2) The principal purpose of this Part of this Schedule is, in the case of any such arrangements, to charge any person entitled to the lessor's interest under the lease of the asset to tax from time to time on amounts of income determined by reference to those which fall for accounting purposes to be treated in accordance with normal accountancy practice as the income return, on and after 26th November 1996, on investment in respect of the finance lease or loan (taking into account the substance of the matter as a whole, including in particular the state of affairs as between connected persons, or within a group of companies, as reflected or falling to be reflected in accounts of any of those persons or in consolidated group accounts).

Application of this Part of this Schedule

- 16 (1) This Part of this Schedule applies in any case where—
- (a) a lease of an asset is or has been granted on or after 26th November 1996;
 - (b) the lease forms part of a new scheme;
 - (c) in the case of the lease, the condition in sub-paragraph (1) of paragraph 3 above is or has been satisfied at some time on or after 26th November 1996 in a period of account of the current lessor; and
 - (d) Part I of this Schedule does not apply in the case of the lease by reason of the conditions in sub-paragraphs (2) to (5) of that paragraph not all being, or having been, satisfied as mentioned in paragraph 2 above.
- (2) Where the condition in paragraph 3(1) above has been satisfied at any time on or after 26th November 1996 in a period of account of the person who was at that time the lessor, it shall be taken to continue to be satisfied unless and until—
- (a) the asset ceases to be leased under the lease; or
 - (b) the lessor's interest under the lease is assigned to a person who is not connected with any of the persons described in sub-paragraph (3) below.
- (3) Those persons are—
- (a) the assignor;
 - (b) any person who was the lessor at some time before the assignment; or
 - (c) any person who at some time after the assignment becomes the lessor pursuant to arrangements made by a person who was the lessor, or was connected with the lessor, at some time before the assignment.

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- (4) Nothing in sub-paragraph (2) above prevents this Part of this Schedule from again applying in the case of the lease if the conditions for its application are satisfied after the assignment.

Application of provisions of Part I for purposes of Part II

- 17 Paragraphs 5 to 10 and 12 above shall apply for the purposes of this Part of this Schedule as they apply for the purposes of Part I of this Schedule.

PART III

INSURANCE COMPANIES

Accounting purposes

- 18 In the application of this Schedule in relation to companies carrying on insurance business, “accounting purposes” does not include the purposes of accounts which Part II of the Insurance Companies Act 1982 (the Department of Trade and Industry rules) requires to be prepared.

Companies carrying on life assurance business

- 19 (1) This paragraph applies if the current lessor is a company carrying on life assurance business.
- (2) Where the leased asset is an asset of the company’s long term business fund, no amount shall be brought into account by virtue of this Schedule in any computation of profits of life assurance business, or any class of life assurance business, carried on by the company where the computation is made in accordance with the provisions of the Taxes Act 1988 applicable to Case I of Schedule D.
- (3) In determining whether the condition in sub-paragraph (3) or (4) of paragraph 3 above is satisfied in the case of the company, an amount shall not be regarded—
- (a) as falling to be brought into account for tax purposes as rent which arises to the company from the lease, or to which the company is entitled, in a period of account, or
 - (b) as representing a portion of that part of a major lump sum which falls within paragraph 3(2)(b) above,
- by reason only that it falls to be taken into account for any purpose by virtue of section 83(2) of the Finance Act 1989 (investment income from, and increases in value of, assets of long term business fund treated as receipts of period).
- (4) Where—
- (a) under paragraph 5 or 13 above the company is treated for tax purposes as if in a period of account it had been entitled to, and there had arisen to it, any rent from the lease, and
 - (b) the leased asset is an asset of the company’s long term business fund or is linked to any category of insurance business, and
 - (c) any question arises for the purposes of the Corporation Tax Acts as to the extent to which that rent is referable to any category of the company’s long term business,

section 432A of the Taxes Act 1988 (apportionment of insurance companies' income) shall have effect in relation to the rent as it has effect in relation to the income arising from an asset.

PART IV

SUPPLEMENTARY PROVISIONS

Normal rent

- 20 ? For the purposes of this Schedule, the “normal rent” in respect of a lease for a period of account of the lessor is the amount which he would, apart from this Schedule, bring into account as rent from the lease—
- (a) which arises to him, and
 - (b) if rent arising to him from the lease is chargeable to corporation tax under Schedule A, to which he is entitled,
- in that period of account for the purpose of determining his liability to tax for the related chargeable period or periods.

Accountancy rental earnings

- 21 (1) For the purposes of this Schedule, the “accountancy rental earnings” in respect of the lease for a period of account of the lessor is the greatest of the amounts specified in sub-paragraph (2) below.
- (2) Those amounts are—
- (a) the rental earnings for the relevant period in respect of the lease, in the case of the lessor;
 - (b) the rental earnings for the relevant period in respect of the lease, in the case of a person connected with the lessor;
 - (c) the rental earnings for the relevant period in respect of the lease, for the purposes of consolidated group accounts of a group of companies of which the lessor is a member.
- (3) In sub-paragraph (2) above, “the relevant period” means the period of account of the lessor which is mentioned in sub-paragraph (1) above.

Rental earnings

- 22 In this Schedule “the rental earnings” for any period in respect of the lease of the asset is, in the case of any person or any consolidated group accounts, the amount which falls for accounting purposes to be treated in accordance with normal accountancy practice as the gross return for that period on investment in respect of a finance lease or loan in respect of the leasing arrangements.

Periods of account which straddle 26th November 1996

- 23 This Schedule shall apply in relation to a period of account which begins before 26th November 1996 and ends on or after that date as if—
- (a) so much of the period as falls before 26th November 1996, and
 - (b) so much of the period as falls on or after that date,

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were separate periods of account.

Time apportionment where periods do not coincide

- 24 (1) This paragraph applies in any case where—
- (a) a period of account of the lessor does not coincide with a period of account of a person connected with the lessor, or
 - (b) a period of account of the lessor does not coincide with a period for which consolidated group accounts of a group of companies of which the lessor is a member fall to be prepared.
- (2) Where this paragraph applies, any amount which falls for the purposes of this Schedule to be found for the lessor's period of account but by reference to the connected person or, as the case may be, the consolidated group accounts shall be found by making such apportionments as may be necessary—
- (a) between two or more periods of account of the connected person, or
 - (b) between two or more periods for which consolidated group accounts of the group fall to be prepared,
- as the case may be.
- (3) Any apportionment under sub-paragraph (2) above shall be made in proportion to the number of days in the respective periods which fall within the lessor's period of account.

Connected persons

- 25 (1) If a person is connected with another at some time during the period which—
- (a) begins at the earliest time at which any of the leasing arrangements were made, and
 - (b) ends when the current lessor finally ceases to have an interest in the asset or any arrangements relating to it,
- he shall be treated for the purposes of this Schedule, in its application in consequence of those leasing arrangements, as being connected with that other throughout that period.
- (2) Section 839 of the Taxes Act 1988 shall apply for the purposes of this Schedule.

Assets which represent the leased asset

- 26 For the purposes of this Schedule, the following assets shall be treated as representing the leased asset—
- (a) any asset derived from, or created out of, the leased asset;
 - (b) any asset from or out of which the leased asset was derived or created;
 - (c) any asset derived from or created out of an asset from or out of which the leased asset was derived or created; or
 - (d) any asset which derives the whole or a substantial part of its value from the leased asset or from an asset which itself represents the leased asset.

Existing schemes and new schemes

- 27 (1) For the purposes of this Schedule, a lease of an asset—

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- (a) forms part of an existing scheme if, and only if, the conditions in sub-paragraph (2) or (3) below are satisfied; and
 - (b) in any other case, forms part of a new scheme.
- (2) The conditions in this sub-paragraph are that—
- (a) a contract in writing for the lease of the asset has been made before 26th November 1996;
 - (b) either—
 - (i) the contract is unconditional; or
 - (ii) if the contract is conditional, the conditions have been satisfied before that date; and
 - (c) no terms remain to be agreed on or after that date.
- (3) The conditions in this sub-paragraph are that—
- (a) a contract in writing for the lease of the asset has been made before 26th November 1996;
 - (b) the condition in paragraph (b) or (c) of sub-paragraph (2) above is not satisfied in the case of the contract;
 - (c) either the contract is unconditional or, if it is conditional, the conditions are satisfied before the end of the finalisation period or within such further period as the Commissioners of Inland Revenue may allow in the particular case;
 - (d) no terms remain to be agreed after the end of the finalisation period or such further period as the Commissioners of Inland Revenue may allow in the particular case; and
 - (e) the contract in its final form is not materially different from the contract as it stood when it was made as mentioned in paragraph (a) above.
- (4) In sub-paragraph (3) above, “the finalisation period” means the period which ends with the later of—
- (a) 31st January 1997;
 - (b) the expiration of the period of six months next following the day on which the contract was made as mentioned in sub-paragraph (3)(a) above.

Accounting purposes and normal accountancy practice

- 28 (1) In the application of any provisions of this Schedule which relate to accounting purposes or normal accountancy practice, it shall be assumed, if it is not the case, that the person who is at any time entitled to the lessor’s interest under the lease of the asset, and any person connected with that person, is a company incorporated in a part of the United Kingdom.
- (2) A person who is not in fact a body corporate shall not by virtue of sub-paragraph (1) above be treated as a member of a group of companies for any purpose of this Schedule.
- (3) This Schedule shall have effect in relation to a person who, for accounting purposes, is not required to prepare accounts in accordance with normal accountancy practice as if he were required to do so.
- (4) Nothing in sub-paragraph (3) above applies in relation to consolidated group accounts.

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- (5) This Schedule shall have effect in relation to a body corporate (wherever incorporated) which is a parent undertaking but which, for accounting purposes, is not required to prepare consolidated group accounts in accordance with normal accountancy practice as if the body corporate were required to do so.
- (6) In sub-paragraph (5) above “parent undertaking” shall be construed in accordance with—
- (a) section 258 of the Companies Act 1985, or
 - (b) in Northern Ireland, Article 266 of the Companies (Northern Ireland) Order 1986.

Assessments and adjustments

- 29 All such assessments and adjustments shall be made as are necessary to give effect to the provisions of this Schedule.

Interpretation

- 30 (1) In this Schedule, unless the context otherwise requires—
- “accountancy rental earnings” has the meaning given by paragraph 21(1) above;
- “accountancy rental excess” shall be construed—
- (a) for the purposes of Part I of this Schedule, in accordance with paragraph 6 above; and
 - (b) for the purposes of Part II of this Schedule, in accordance with paragraph 6 above as it has effect by virtue of paragraph 17 above;
- “accounting purposes” means the purposes of—
- (a) accounts of companies incorporated in any part of the United Kingdom, or
 - (b) consolidated group accounts for groups all the members of which are companies incorporated in any part of the United Kingdom;
- “asset” means any form of property or rights;
- “asset representing the leased asset” shall be construed in accordance with paragraph 26 above;
- “assignment”, in the application of this Schedule to Scotland, means assignation;
- “consolidated group accounts” means group accounts which satisfy the requirements—
- (a) of section 227 of the Companies Act 1985, or
 - (b) in Northern Ireland, of Article 235 of the Companies (Northern Ireland) Order 1986;
- “cumulative accountancy rental excess” and “cumulative normal rental excess” shall be construed—
- (a) for the purposes of Part I of this Schedule, in accordance with paragraph 6 above; and
 - (b) for the purposes of Part II of this Schedule, in accordance with paragraph 6 above as it has effect by virtue of paragraph 17 above;
- “the current lessor”, in the case of a lease of an asset, means the person who is for the time being entitled to the lessor’s interest under the lease;

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“existing scheme” shall be construed in accordance with paragraph 27(1)(a) above;

“finance lessor” means a person who for accounting purposes is treated in accordance with normal accountancy practice as the person with—

- (i) the grantor’s interest in relation to a finance lease; or
- (ii) the lender’s interest in relation to a loan;

“group of companies” means a group as defined—

- (a) in section 262(1) of the Companies Act 1985, or
- (b) in Northern Ireland, in Article 270(1) of the Companies (Northern Ireland) Order 1986,

and “member”, in relation to a group of companies, means a company comprised in the group;

“lease”—

- (a) in relation to land, includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined; and
- (b) in relation to any form of property or right other than land, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset;

and “rent” shall be construed accordingly;

“the leasing arrangements”, in the case of a lease of an asset, means—

- (a) the lease of the asset,
- (b) any arrangements relating to or connected with the lease of the asset, and
- (c) any other arrangements of which the lease of the asset forms part,

and includes a reference to any of the leasing arrangements;

“the lessee”, in the case of a lease of an asset, means (except in the expression “the lessee’s interest under the lease”) the person entitled to the lessee’s interest under the lease;

“the lessor”, in the case of a lease of an asset, means (except in the expression “the lessor’s interest under the lease”) the person entitled to the lessor’s interest under the lease;

“major lump sum” shall be construed in accordance with paragraph 3(2) above;

“new scheme” shall be construed in accordance with paragraph 27(1)(b) above;

“normal rent” shall be construed in accordance with paragraph 20 above;

“normal rental excess” shall be construed—

- (a) for the purposes of Part I of this Schedule, in accordance with paragraph 6 above; and
- (b) for the purposes of Part II of this Schedule, in accordance with paragraph 6 above as it has effect by virtue of paragraph 17 above;

“period of account” means a period for which accounts are made up and, except for the purposes of paragraphs 2 to 4 and 23 above, means such a period which begins on or after 26th November 1996;

“related chargeable period” shall be construed in accordance with subparagraph (2) below;

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“sum” includes any money or money’s worth (and “pay” and cognate expressions shall be construed accordingly);

“the rental earnings”, in relation to the lease of the asset and any period, has the meaning given by paragraph 22 above.

- (2) For the purposes of this Schedule a chargeable period is related to a period of account (and a period of account is related to a chargeable period) if—
- (a) the chargeable period is an accounting period which consists of or includes the whole or any part of the period of account; or
 - (b) the chargeable period is a year of assessment whose basis period for the purposes of Case I or Case II of Schedule D consists of or includes the whole or any part of the period of account.