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SCHEDULES

SCHEDULE 23

Section 134

FINANCE LEASEBACKS: TRANSITIONAL PROVISION

Introduction

- 1 (1) Sections 228B to 228E of the Capital Allowances Act 2001 (c. 2) (as inserted by section 134) are subject to paragraphs 2 to 9 of this Schedule in their application in relation to existing leasebacks.
- (2) Paragraph 10 of this Schedule makes provision in relation to the taxation of chargeable gains where an existing leaseback terminates.

Section 228B

- 2 (1) This paragraph applies if the pre-commencement rentals are greater than the total of the actual rental deductions for periods of account up to, but excluding, the transitional period of account.
- (2) Section 228B shall not apply in relation to—
- (a) the transitional period of account if the lessee's excess rentals are greater than the notional rental deduction for that period, or
 - (b) a subsequent period of account if the unrelieved portion of the lessee's excess rentals is greater than the notional rental deduction for that period.
- (3) Section 228B is subject to sub-paragraph (4) in its application to—
- (a) the transitional period of account if the lessee's excess rentals are not greater than the notional rental deduction for that period, or
 - (b) a subsequent period of account if the unrelieved portion of the lessee's excess rentals is not greater than the notional rental deduction for that period.
- (4) The permitted maximum for that period of account is the total of—
- (a) the lessee's excess rentals (in the case of the transitional period of account) or the unrelieved portion of the lessee's excess rentals (in the case of a subsequent period of account), and
 - (b) the amount given by this calculation—

$$\text{Basic Amount} \times \frac{(\text{Notional Rental Deduction} - \text{Deduction})}{\text{Notional Rental Deduction}}$$

where—

“Basic Amount” means the amount calculated in accordance with section 228B(2),

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“Notional Rental Deduction” means the notional rental deduction for the period of account in question, and

“Deductible Excess” means the amount included in the permitted maximum by virtue of sub-paragraph (4)(a).

(5) But where, in relation to the transitional period of account, the amount given by sub-paragraph (4) is less than the appropriate fraction of the notional rental deduction for that period, the permitted maximum shall be that fraction of that deduction.

(6) In this paragraph—

(a) “the lessee’s excess rentals” means—

(i) the pre-commencement rentals, minus

(ii) the total of the actual rental deductions referred to in sub-paragraph (1), and

(b) “the unrelieved portion of the lessee’s excess rentals”, in relation to a period of account, means—

(i) the lessee’s excess rentals, minus

(ii) the total of the actual rental deductions for periods of account from and including the transitional period up to, but excluding, the period in question.

(7) In this paragraph—

“actual rental deduction”, in relation to a period of account, means the amount that may be deducted in respect of amounts payable under the existing leaseback in calculating the lessee’s income or profits for that period of account for the purpose of income tax or corporation tax;

“notional rental deduction”, in relation to a period of account, means the amount that could, if section 228B did not apply, be deducted in respect of amounts payable under the existing leaseback in calculating the lessee’s income or profits for that period of account for the purpose of income tax or corporation tax.

(8) Nothing in sub-paragraphs (3) to (5) prevents the inclusion of an amount in the permitted maximum by virtue of section 228B(3) and (4).

(9) This paragraph does not apply in relation to any period of account later than a period of account for which the permitted maximum has been determined in accordance with sub-paragraph (3) to (5).

Section 228B

3 (1) This paragraph applies where—

(a) the existing leaseback terminates, and

(b) in the period of account immediately following that in which it terminates, paragraph 2(2)(b) or 2(3)(b) would apply were it not for the termination.

(2) The permitted maximum for the period of account in which the leaseback terminates shall also include an amount equal to the amount that the unrelieved portion of the lessee’s excess rentals would have been in the period of account immediately following.

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Section 228C

- 4 Section 228C shall not apply where the existing leaseback terminates before 17 March 2004.

Section 228C

- 5 (1) Section 228C applies subject to this paragraph where—
- (a) the existing leaseback terminates otherwise than by expiry of its term, and
 - (b) the amount calculated in accordance with section 228C(3) exceeds the relevant cap.
- (2) In determining the amount by which income or profits are to be increased under section 228C(2), the amount calculated in accordance with section 228C(3) shall be disregarded to the extent that it exceeds the relevant cap.
- (3) The relevant cap is—

$$(\text{OriginalConsideration} - \text{RelevantRentals}) \times \frac{\text{NetConsideration}}{\text{OriginalConsideration}}$$

where—

“Original Consideration” has the same meaning as in section 228B;

“Relevant Rentals” means—

- (a) the pre-commencement rentals, minus
- (b) the total of—
 - (i) finance charges shown in the accounts for periods that end before 17 March 2004, and
 - (ii) the appropriate proportion of finance charges shown in the accounts for the transitional period of account;

“Net Consideration” has the same meaning as in section 228C.

Section 228C

- 6 (1) This paragraph applies if—
- (a) the existing leaseback terminates otherwise than by expiry of its term,
 - (b) upon the termination of the leaseback, or during the period of one month beginning with the date of termination, the lessee becomes the owner of the plant of machinery by acquiring it—
 - (i) from the lessor, or
 - (ii) where no person other than the lessor or a person connected with the lessee has owned the plant or machinery at any time since the termination of the leaseback, from a person connected with the lessee,
 - (c) the person who first acquires the plant or machinery from the lessor does so as a result of incurring capital expenditure equal (at least) to the market value of the plant or machinery at the termination of the leaseback, and
 - (d) the amount of the lessee acquisition expenditure that counts as qualifying expenditure is restricted under section 226.

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- (2) If the section 226 restriction is greater than the amount calculated in accordance with section 228C(3)—
- (a) section 228C(2) to (4) shall not apply, but
 - (b) if there is a taxable disposal, section 228C(2) to (4) shall apply subject to sub-paragraph (5).
- (3) If the section 226 restriction is not greater than the amount calculated in accordance with section 228C(3)—
- (a) the amount by which profits or income are increased in accordance with section 228C(2) shall be reduced by the section 226 restriction, and
 - (b) if there is a taxable disposal, section 228C(2) to (4) shall apply again subject to sub-paragraph (5).
- (4) For the purposes of sub-paragraphs (2) and (3) there is a taxable disposal if, during the period of six years beginning with the date of termination of the leaseback—
- (a) the whole of the plant or machinery is the subject of a disposal event (within the meaning of Part 2), or
 - (b) part of the plant or machinery is the subject of such a disposal event.
- (5) Where section 228C(2) to (4) applies subject to this sub-paragraph—
- (a) a reference to the termination shall be treated as a reference to the cessation of ownership of the plant or machinery, and
 - (b) the amount by which profits or income are increased in accordance with section 228C(2) shall be—
 - (i) in a case falling within sub-paragraph (2)(b), the relevant fraction of the amount calculated in accordance with section 228C(3), or
 - (ii) in a case falling within sub-paragraph (3)(b), the relevant fraction of the section 226 restriction.
- (6) In sub-paragraph (5)(b)(i) and (ii) “relevant fraction” means—

(Disposal Proceeds – Restricted Qualifying Expenditure)

(Lessee Acquisition Expenditure – Restricted Qualifying Expenditure)

where “Disposal Proceeds” means the consideration due to the lessee under the taxable disposal or, if higher, the market value of the plant or machinery at the time of the taxable disposal; but—

- (a) where that amount is greater than the lessee acquisition expenditure, the Disposal Proceeds shall be the amount of the lessee acquisition expenditure, or
 - (b) where that amount is less than the restricted qualifying expenditure, the Disposal Proceeds shall be the amount of the restricted qualifying expenditure.
- (7) Where there is a taxable disposal by virtue of sub-paragraph (4)(b), this paragraph applies in relation to that disposal with the following modifications—
- (a) references in sub-paragraphs (5)(a) and (6) to the plant or machinery shall be taken to be references to the part of the plant or machinery comprised in the taxable disposal;

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- (b) the amount by which profits or income are to be increased by virtue of sub-paragraph (5)(b) shall be the partial disposal fraction of the amount given by sub-paragraph (5)(b)(i) or (ii);
 - (c) the partial disposal fraction of the restricted qualifying expenditure and of the lessee acquisition expenditure shall be used for the purposes of sub-paragraph (6) instead of those amounts of expenditure.
- (8) For the purposes of sub-paragraph (7) the partial disposal fraction is—

Apportioned Lessee Acquisition Expenditure Lessee Acquisition Expenditure

where “Apportioned Lessee Acquisition Expenditure” means so much of the lessee acquisition expenditure as was attributable to the acquisition of the part of the plant or machinery comprised in the taxable disposal.

- (9) In this paragraph—
- “lessee acquisition expenditure” means the capital expenditure incurred by the lessee in acquiring the plant or machinery as described in sub-paragraph (1)(b),
 - “restricted qualifying expenditure” means the qualifying expenditure under section 226, and
 - “section 226 restriction” means—
 - (a) the lessee acquisition expenditure, minus
 - (b) the restricted qualifying expenditure.

Section 228D

- 7 (1) This paragraph applies if the pre-commencement rentals are greater than the total of the actual taxed rentals for periods of account up to, but excluding, the transitional period of account.
- (2) Section 228D shall not apply in relation to—
- (a) the transitional period of account if the lessor’s excess rentals are greater than the notional taxed rental for that period, or
 - (b) a subsequent period of account if the untaxed portion of the lessor’s excess rentals is greater than the notional taxed rental for that period.
- (3) Section 228D is subject to sub-paragraph (4) in its application to—
- (a) the transitional period of account if the lessor’s excess rentals are not greater than the notional taxed rental for that period, or
 - (b) a subsequent period of account if the untaxed portion of the lessor’s excess rentals is not greater than the notional taxed rental for that period.
- (4) The permitted threshold for that period of account is the total of—
- (a) the lessor’s excess rentals (in the case of the transitional period of account) or the untaxed portion of the lessor’s excess rentals (in the case of a subsequent period of account), and
 - (b) the amount given by this calculation—

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$$\text{Basic Amount} \times \frac{(\text{Notional Taxed Rental} - \text{Deductible Excess})}{\text{Notional Taxed Rental}}$$

where—

“Basic Amount” means the amount calculated in accordance with section 228D(4);

“Notional Taxed Rental” means the notional taxed rental for the period of account in question, and

“Deductible Excess” means the amount included in the permitted threshold by virtue of sub-paragraph (4)(a).

- (5) But where, in relation to the transitional period of account, the amount given by sub-paragraph (4) is less than the appropriate fraction of the notional taxed rental for that period, the permitted threshold shall be that fraction of that rental.
- (6) In this paragraph—
- (a) “the lessor’s excess rentals” means—
 - (i) the pre-commencement rentals, minus
 - (ii) the total of the actual taxed rentals referred to in sub-paragraph (1), and
 - (b) “the untaxed portion of the lessor’s excess rentals”, in relation to a period of account, means—
 - (i) the lessor’s excess rentals, minus
 - (ii) the total of the actual taxed rentals for periods of account from and including the transitional period up to, but excluding, the period in question.
- (7) In this paragraph—
- “actual taxed rental”, in relation to a period of account, means the amount that should be taken into consideration in respect of amounts receivable under the existing leaseback in calculating the lessor’s income or profits for that period of account for the purpose of income tax or corporation tax;
- “notional taxed rental”, in relation to a period of account, means the amount that would, if section 228D did not apply, be taken into consideration in respect of amounts receivable under the existing leaseback in calculating the lessor’s income or profits for that period of account for the purpose of income tax or corporation tax.
- (8) Nothing in sub-paragraphs (3) to (5) prevents the inclusion of an amount in the permitted threshold by virtue of section 228D(2).
- (9) This paragraph does not apply in relation to any period of account later than a period of account for which the permitted threshold has been determined in accordance with sub-paragraphs (3) to (5).

Section 228D

- 8 (1) This paragraph applies where—
- (a) the existing leaseback terminates, and

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- (b) in the period of account immediately following that in which it terminates, paragraph 7(2)(b) or 7(3)(b) would apply were it not for the termination.
- (2) The permitted threshold for the period of account in which the leaseback terminates shall also include an amount equal to the amount that the untaxed portion of the lessor's excess rentals would have been in the period of account immediately following.

Section 228E

- 9 Section 228E shall not apply where the existing leaseback terminates before 17 March 2004.

Chargeable gains

- 10 (1) Sub-paragraph (2) applies where—
- (a) an existing leaseback is the leaseback in a lease and finance leaseback,
 - (b) the leaseback terminates,
 - (c) on or after the termination there is a disposal, by the user, of the whole or part of the plant and machinery subject to the leaseback, and
 - (d) a chargeable gain that accrues on that disposal (“the relevant chargeable gain”) falls to be taken into account for the purposes of a chargeable gains computation.
- (2) The following fraction of the relevant chargeable gain shall instead be taken into account for the purposes of the chargeable gains computation—

$$\frac{(\text{NetRentals} - \text{TerminationCharge})}{\text{LeasePremium}}$$

where—

“Net Rentals” means—

- (a) the total of the amounts deducted in calculating the user's income or profits, for the purpose of income tax or corporation tax, in respect of amounts payable under the leaseback, minus
- (b) the total of the amounts shown in the user's accounts in respect of finance charges relating to the leaseback;

“Termination Charge” means the amount by which the user's income or profits are to be increased by virtue of section 228C(2) of the CAA 2001 because of the termination;

“Lease Premium” means the consideration relating to the leaseback referred to in section 228F(6)(b) of the CAA 2001.

- (3) References in this paragraph to termination of the leaseback shall be construed in accordance with section 228H (1) of the CAA 2001.
- (4) In this paragraph—
- “CAA 2001” means the Capital Allowances Act 2001 (c. 2);

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“chargeable gains computation” means the computation, for the purposes of the TCGA 1992, of the total amount of chargeable gains that accrue to the user in any chargeable period that ends on or after 17 March 2004;

“disposal” shall be construed in accordance with the TCGA 1992;

“lease and finance leaseback” has the same meaning as in section 228F of the CAA 2001;

“TCGA 1992” means the Taxation of Chargeable Gains Act 1992 (c. 12);

“user” means the person who is the lessee under the leaseback.

Interpretation

11 (1) In this Schedule—

“existing leaseback” means a leaseback the term of which began before 17 March 2004;

“pre-commencement rentals”, in relation to an existing leaseback, means—

- (a) any amounts payable by the lessee to the lessor under the leaseback before 17 March 2004,
- (b) any amounts so payable on or after 17 March 2004 in respect of a period that ends before 17 March 2004, or
- (c) where any amounts are so payable on or after 17 March 2004 in respect of a period which begins before that date and ends on or after that date, the appropriate fraction of each of those amounts;

“transitional period of account” means a period of account that includes 17 March 2004.

(2) In this Schedule the “appropriate fraction”, in respect of an amount that relates to a particular period, means this fraction—

$$\frac{\text{Pre-commencement Period}}{\text{Whole Period}}$$

where—

“Pre-commencement Period” means the number of days in the part of the period that falls before 17 March 2004, and

“Whole Period” means the number of days in the whole of the period.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 236ZA inserted by [S.I. 2024/357 art. 2\(2\)](#)