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## SCHEDULES

### SCHEDULE 12

#### LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

##### PART I

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

##### *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—
- [<sup>F1</sup>(a) Part 2 of the Capital Allowances Act (plant and machinery allowances),  
(b) Part 5 of that Act (mineral extraction allowances), or  
(c) Part 8 of that Act (patent 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.
- (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,

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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 [<sup>F2</sup>the Capital Allowances Act] 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 <sup>F3</sup>. . . 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 [<sup>F4</sup>section 40B(1) or 42 of the Finance (No. 2) Act 1992 [<sup>F5</sup>or section 135, 138, [<sup>F6</sup>138A,] 139 or 140 of ITTOIA 2005] (expenditure in connection with films etc.),] 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 [<sup>F7</sup>under section 40A(2) of the Finance (No. 2) Act 1992][<sup>F8</sup>or section 134(2) of ITTOIA 2005],
- arose to him from the trade or business in question on the relevant occasion.
- (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 [<sup>F9</sup>or section 170 of ITTOIA 2005] (cemeteries etc), or
  - (b) section 91A or 91B [<sup>F10</sup>of the Taxes Act 1988 or section 165 or 168 of ITTOIA 2005] (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 [<sup>F11</sup>sections 537 to 542 of the Capital

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Allowances Act] (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.

[<sup>F12</sup>(14) In sub-paragraph (8) above—

“the Capital Allowances Act” includes enactments which under the Taxes Act 1988 are to be treated as contained in the Capital Allowances Act;

“chargeable period” has the meaning given by section 6 of the Capital Allowances Act.]

<sup>F13</sup>(15) .....

#### Textual Amendments

- F1** Sch. 12 para. 11(3)(a)-(c) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 578, **Sch. 2 para. 98(1)**
- F2** Words in Sch. 12 para. 11(8) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 578, **Sch. 2 para. 98(2)**
- F3** Words in Sch. 12 para. 11(8) repealed (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 580, **Sch. 2 para. 98(2)**, **Sch. 4**
- F4** Words in Sch. 12 para. 11(9) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) for Sch. 12 para. 11(9)(a)(b) by 2001 c. 2, s. 578, **Sch. 2 para. 98(3)**
- F5** Words in Sch. 12 para. 11(9) inserted (6.4.2005) by **Income Tax (Trading and Other Income) Act 2005 (c. 5)**, s. 883(1), **Sch. 1 para. 494(2)(a)** (with Sch. 2)
- F6** Word in Sch. 12 para. 11(9) inserted (with effect in accordance with Sch. 3 para. 31(2) of the amending Act) by **Finance Act 2005 (c. 7)**, **Sch. 3 para. 25**
- F7** Words in Sch. 12 para. 11(10)(b) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 578, **Sch. 2 para. 98(4)**
- F8** Words in Sch. 12 para. 11(10)(b) inserted (6.4.2005) by **Income Tax (Trading and Other Income) Act 2005 (c. 5)**, s. 883(1), **Sch. 1 para. 494(2)(b)** (with Sch. 2)
- F9** Words in Sch. 12 para. 11(11)(a) inserted (6.4.2005) by **Income Tax (Trading and Other Income) Act 2005 (c. 5)**, s. 883(1), **Sch. 1 para. 494(2)(c)** (with Sch. 2)
- F10** Words in Sch. 12 para. 11(11)(b) substituted (6.4.2005) by **Income Tax (Trading and Other Income) Act 2005 (c. 5)**, s. 883(1), **Sch. 1 para. 494(2)(d)** (with Sch. 2)
- F11** Words in Sch. 12 para. 11(13) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 578, **Sch. 2 para. 98(5)**
- F12** Sch. 12 para. 11(14) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 578, **Sch. 2 para. 98(6)**
- F13** Sch. 12 para. 11(15) repealed (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 580, **Sch. 2 para. 98(7)**, **Sch. 4**

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