

# **CORPORATION TAX ACT 2010**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### **Part 9: Leasing plant or machinery**

##### **Overview**

1108. This Part rewrites two sets of provisions relating to the leasing of plant or machinery:
- Chapter 5A of Part 12 of ICTA (special rules for long funding leases of plant or machinery); and
  - Schedule 10 to FA 2006 (sale etc of lessor companies etc).

##### *Chapter 1: Introduction*

##### *Section 358: Introduction to Part*

1109. This section provides an overview of the Chapters of the Part and their subject matter. It is based on paragraph 1 of Schedule 10 to FA 2006.
1110. *Subsection (4)* defines the term “the sales of lessors Chapters” to mean Chapters 3 to 6 of this Part.
1111. *Subsections (5) to (7)* introduce, and provide signposts to the definitions of, a “qualifying change of ownership” and a “qualifying change in a company’s interest in a business”. These are the events which give rise to charges and reliefs under the sales of lessors Chapters.

##### *Chapter 2: Long funding leases of plant or machinery*

##### **Overview**

1112. This Chapter rewrites Chapter 5A (special rules for long funding leases of plant or machinery) inserted into Part 12 of ICTA by Part 2 of Schedule 8 to FA 2006.
1113. Schedule 8 to FA 2006 reformed the way in which certain finance leases of plant or machinery, and operating leases of plant or machinery akin to such finance leases, are taxed. In broad terms it does so by amending ICTA, CAA and ITTOIA:
- to move entitlement to capital allowances in relation to the plant or machinery under such a lease – a “long funding lease” – from lessor to lessee; and
  - to tax the lessor and lessee in relation to the financing of the plant or machinery through such a lease in much the same way as lender and borrower would be taxed in relation to financing the plant or machinery through a loan.

***Section 359: Overview of Chapter***

- 1114. This section sets out the structure of the Chapter and contains a signpost to section 381 for the meaning of terms used in the Chapter. It is new.
- 1115. The Chapter is arranged so that it deals first with the calculation of the taxable profits of the lessor and then with the calculation of the taxable profits of the lessee. In each case it deals with the lessor or lessee first as party to a long funding finance lease and then as party to a long funding operating lease.
- 1116. The terms “long funding lease” and “long funding finance lease” take their meaning from Chapter 6A of Part 2 of CAA and “long funding operating lease” is defined by reference to those terms. See section 381(2).
- 1117. It is an integral part of the definition of “long funding lease” in CAA that the subject matter of the lease is plant or machinery (see sections 70G, 70J and 70K of CAA).

***Section 360: Lessor under long funding finance lease: rental earnings***

- 1118. This section determines the taxable income of the lessor from a long funding finance lease. It is based on section 502B of ICTA.
- 1119. The taxable income is the amount of rental earnings. The calculation of rental earnings follows GAAP. The rental earnings is the amount that in accordance with that practice is to be treated as gross return on investment or, in a case where in accordance with that practice the lease is to be treated as a loan, as interest.
- 1120. Section 502B(3) of ICTA includes in relation to the lease the words “where it meets the finance lease test”. Those words are otiose and have been omitted from *subsection (3)*.
- 1121. Section 502B(4) of ICTA refers to the lease being “treated as a loan in the accounts in question”. There is no other reference to “accounts” in section 502B and those words have been changed in *subsection (4)* to read “treated as a loan for the period of account” linking back to the “period of account” mentioned in *subsection (1)*.

***Section 361: Lessor under long funding finance lease: exceptional items***

- 1122. This section treats as taxable income or a revenue expense certain profits or losses in connection with a long funding finance lease which would not apart from this section be brought into account for corporation tax purposes. It is based on section 502C of ICTA.
- 1123. The profits and losses to be brought into account are those (whether of an income or capital nature) which in accordance with GAAP fall to be recognised for accounting purposes.

***Section 362: Lessor under long funding finance lease making termination payment***

- 1124. This section prohibits a deduction by a lessor for a payment made in respect of the termination of a long funding finance lease if the amount of the payment is calculated by reference to “termination value”. It is based on section 502D of ICTA.
- 1125. On termination of a finance lease of an asset, the lessor often makes a payment to the lessee, commonly referred to as a rebate of rentals. This payment principally represents partial reimbursement of payments made by the lessee in respect of the capital value of the asset, unencumbered possession of which has reverted to the lessor as a result of the termination. This section prevents such a payment from being deducted by the lessor for corporation tax purposes. But the section does not prevent the deduction of a payment to the extent it is in respect of a sum included in computing rental earnings (see *subsection (3)*).
- 1126. *Subsection (4)* is new and provides a signpost to the definition of “termination value”.

***Section 363: Lessor under long funding operating lease: periodic deduction***

1127. This section compensates a lessor under a long funding operating lease for the fact that capital allowances in relation to the leased plant or machinery are not available to it. It is based on section 502E(1) to (3) and (6) to (9) of ICTA.
1128. In the case of an operating lease, the gross rentals are to be brought into account for corporation tax purposes. This achieved the correct result prior to FA2006, as the lessor was entitled to capital allowances which over the term of the lease balanced the amount brought into charge that represented payment of the capital value of the leased plant or machinery.
1129. This section replaces the role of capital allowances. It allows deductions in calculating the profits of the lessor for corporation tax purposes, which over the term of the lease equate in total to the expected reduction in value of the plant or machinery over the term.
1130. The words “had that value been estimated at that time” have been added in *subsection (4)(b)* to explain the reasoning behind the use of the words “would have been expected” in section 502E(6)(b) of ICTA.
1131. This section, together with sections 364 and 365, presents the calculation required by section 502E of ICTA in a substantially different way. The provision has been restructured to improve the accessibility of the legislation for lessor companies and their advisers, in particular by splitting out the different basis of calculation required where the lessor incurred expenditure on the provision of the plant or machinery otherwise than for a qualifying purpose.

***Section 364: “Starting value”: general***

1132. This section determines the “starting value” of the plant or machinery for the purposes of the calculation required by section 363 except in the circumstances where section 365 applies. It is based on section 502E(4) and (5) of ICTA.

***Section 365: “Starting value” where plant or machinery originally unqualifying***

1133. This section determines the “starting value” of the plant or machinery for the purposes of the calculation required by section 363 in a case where, before the long funding operating lease commenced, the lessor incurred expenditure on the plant or machinery otherwise than for the purposes of a qualifying activity within the meaning of Part 2 of CAA. It is based on section 502E(4) and (5) of ICTA.

***Section 366: Long funding operating lease: lessor’s additional expenditure***

1134. This section provides for an additional deduction by a lessor under a long funding operating lease if the lessor incurs additional expenditure in relation to the leased plant or machinery. It is based on section 502F(1) to (4) and (7) to (11) of ICTA.
1135. This section, together with sections 367 and 368, presents the calculation required by section 502F of ICTA in a substantially different way. The provision has been restructured to improve the accessibility of the legislation for lessor companies and their advisers, in particular by splitting out the different basis of calculation required where the lessor has previously incurred additional expenditure.

***Section 367: Determination of remaining residual value resulting from lessor’s first additional expenditure***

1136. This section determines the amount of the remaining residual value of the plant or machinery for the purposes of section 366 as a result of the first occasion on which the lessor incurs additional expenditure. It is based on section 502F(5) and (6) of ICTA.

1137. The words “(or, if section 365 applies, would have been expected to be that value had that value been estimated at that time)” in *subsection (2)(b)* reflect the wording of section 363(4)(b). See the commentary on section 363.

***Section 368: Determination of remaining residual value resulting from lessor’s further additional expenditure***

1138. This section determines the amount of the remaining residual value of the plant or machinery for the purposes of section 366 as a result of the second and subsequent occasions on which the lessor incurs additional expenditure. It is based on section 502F(5) and (6) of ICTA.
1139. The words “(or, if section 365 applies, would have been expected to be that value had that value been estimated at that time)” in *subsection (3)(a)* reflect the wording of section 363(4)(b). See the commentary on section 363.

***Section 369: Lessor under long funding operating lease: termination of lease***

1140. This section provides for the lessor to be treated as receiving income or, depending on the circumstances, incurring a revenue expense for corporation tax purposes on the termination of a long funding operating lease. It is based on section 502G of ICTA.
1141. Whether or not income is treated as being received or a revenue expense as being incurred is determined by reference to “the termination amount” and the amounts mentioned in *subsection (3)(a) to (c)*, but the amounts mentioned in *subsection (3)(a)* (amounts paid to the lessee by reference to the termination value) may not themselves be deducted (see *subsection (5)*).
1142. The presentation of the calculation required by section 502G of ICTA has been substantially restructured to improve the accessibility of the legislation for lessor companies and their advisers.

***Section 370: Plant or machinery held as trading stock***

1143. This section disapplies sections 360 to 369 if, apart from those sections, any part of the lessor’s expenditure on the acquisition of the plant or machinery is allowable as a deduction for corporation tax purposes as a result of the plant or machinery forming part of the lessor’s trading stock. It is based on section 502GA(1) to (3) of ICTA.

***Section 371: Adjustments where sections 360 to 369 subsequently disappplied by section 370***

1144. This section applies if sections 360 to 369 previously applied, but the condition in section 370(2) is subsequently met. It is based on section 502GA(4) and (5) of ICTA.
1145. The section provides for just and reasonable assessments and adjustments to assessments to be made in relation both to the amounts taken into account in accordance with sections 360 to 369 and to those to be taken into account in accordance with section 370.

***Section 372: Lessor also lessee under non–long funding lease***

1146. This section disapplies sections 360 to 369 in the case of a company which as lessor grants a long funding lease (lease B) of plant or machinery in which its interest is that of a lessee under a lease (lease A) which is not a long funding lease. It is based on section 502GB of ICTA.
1147. Section 70H of CAA provides that a lease otherwise capable of being a long funding lease is not a long funding lease as regards the lessee unless the lessee has made a tax return treating the lessee as taxable in relation to the lease in accordance with Chapter 5A of Part 12 of ICTA. *Subsection (3)(a)* ensures that, if a tax return is made validly

treating lease A as being a long funding lease after lease B has been entered into, this section is treated as never having applied to lease B. *Subsection (3)(b)* ensures that this section does apply to lease B, if a tax return which treated lease A as being a long funding lease is subsequently amended so as not to treat it as such a lease.

***Section 373: Other avoidance***

1148. This section disapplies sections 360 to 369 where three conditions are met. It is based on section 502GC(1) to (3) and (5) of ICTA.
1149. The three conditions counter arrangements involving a long funding lease which are intended to create tax profits which are substantially less than, or tax losses which are substantially greater than, the profits or losses arising from the arrangements as shown in the lessor company's accounts. The section may also apply where there is a tax loss and an accounting profit.

***Section 374: Provision supplementing section 373***

1150. This section provides definitions and interpretation for the purposes of section 373. It is based on section 502GC(2), (4) and (6) to (8) of ICTA.

***Section 375: Adjustments where sections 360 to 369 subsequently disapplied by section 373***

1151. This section applies if sections 360 to 369 have previously applied, but the conditions in section 373 are subsequently met. It is based on section 502GC(9) and(10) of ICTA.
1152. The section provides for just and reasonable assessments and adjustments to assessments to be made in relation both to the amounts taken into account in accordance with sections 360 to 369 and to those to be taken into account in accordance with section 373.

***Section 376: Films***

1153. This section disapplies sections 360 to 369 in the case of a long funding lease of a film. It is based on section 502GD of ICTA.

***Section 377: Lessee under long funding finance lease: limit on deductions***

1154. This section, the first of those relating to lessees, limits the amount which a lessee of plant or machinery under a long funding finance lease may deduct in calculating its profits for corporation tax purposes. It is based on section 502I of ICTA.
1155. The amount which may be deducted is limited to the amounts which in accordance with GAAP fall to be shown in the lessee's accounts as finance charges in respect of the lease (see *subsections (2) and(3)*).
1156. In certain circumstances in accordance with GAAP a long funding finance lease is treated as a loan for accounting purposes. This section applies as if such a lease were treated as a finance lease (see *subsection (4)*).

***Section 378: Lessee under long funding finance lease: termination***

1157. This section avoids double taxation by excluding from the lessee's calculation of its profits for corporation tax purposes any sum received by the lessee in relation to a long funding finance lease which is calculated by reference to "termination value". It is based on section 502J of ICTA.
1158. Such sums must, however, be brought into account as part of the disposal value for the purpose of capital allowances (see *subsection (3)* and section 70E of CAA).
1159. *Subsection (4)* is new and provides a signpost to the definition of "termination value".

***Section 379: Lessee under long funding operating lease***

1160. This section reduces the deductions which a lessee under a long funding operating lease of plant or machinery may make in calculating its profits for corporation tax purposes. It is based on section 502K(1) to (3) and (6) to (9) of ICTA.
1161. The amount of the deduction is reduced by reference to the expected reduction in value of the plant or machinery over the term of the lease. As the lessee is entitled to capital allowances, it effectively obtains relief through the allowances for the amount of the lease payments which it cannot deduct in calculating its profits.
1162. The words “had that value been estimated at the commencement of the term” have been added in *subsection (6)(b)* to explain the reasoning behind the use of the words “would have been expected” in section 502K(6)(b) of ICTA.

***Section 380: “Starting value” in section 379***

1163. This section determines the “starting value” of the plant or machinery for the purposes of the calculation required by section 379. It is based on section 502K(4) and(5) of ICTA.

***Section 381: Interpretation of Chapter***

1164. This section defines or provides signposts to the provisions defining terms used in the Chapter. It is based on section 502L of ICTA.
1165. To assist the user, this section expands on section 502L(4) of ICTA, rewritten in *subsection (1)*, by including numerous signposts to specific sections of Part 6A of CAA in *subsections (2)* and *(3)*.

***Chapters 3 to 6: The sales of lessors Chapters***

**Overview**

1166. The sales of lessors Chapters, based on Schedule 10 to FA 2006, are designed to deter arrangements which have the effect of converting the corporation tax deferral arising from the availability of capital allowances to companies which carry on a business of leasing plant or machinery into a permanent deferral of tax.
1167. The sales of lessors Chapters counter these arrangements by imposing a charge to corporation tax on the leasing company on any day:
- if there is a qualifying change of ownership of the company on that day; or
  - in a case where the leasing business is carried on by the company in partnership, if there is a qualifying change on that day in the company’s interest in the business.
1168. The tax charge is broadly equivalent to the tax benefit enjoyed down to that day and the rules are designed to ensure that it is borne by the selling group.
1169. In the case of a qualifying change in the ownership of the leasing company, a relief equivalent to the charge is given to the company on the day after the qualifying change and the rules ensure that the relief can only be accessed by the buying group. In the case of a qualifying change in the company’s interest in a business carried on in partnership, relief is given to the other partner companies whose interest in the business carried on in partnership has increased.
1170. The effect of this is that a tax-driven sale to a loss making group is unattractive as the charge recovers the tax benefits taken by the selling group and a loss making buying group has no interest in an additional relief which merely increases its tax losses.



1171. The intended tax effect on a commercially driven sale to another (profitable) group is that it should be broadly neutral, as the charge and the relief cancel each other out. The relief is valuable to the profit making buying group and so it can be expected that the price paid reflects this and compensates the selling group for the tax charge.

### ***Chapter 3: Sales of lessors: leasing business carried on by a company alone***

#### **Overview**

1172. This Chapter deals with cases where a leasing business is carried on by a company alone. Chapter 4 deals with cases where the business is carried on by one or more companies in partnership with others.

#### ***Section 382: Introduction to Chapter***

1173. This section introduces Chapter 3. It is based on paragraph 1(1) and (2) of Schedule 10 to FA 2006.

#### ***Section 383: Income and matching expense in different accounting periods***

1174. This section provides for an accounting period to end if there is a “qualifying change of ownership” in relation to a company within the charge to corporation tax carrying on a business of leasing plant or machinery otherwise than in partnership. It is based on paragraph 3 of Schedule 10 to FA 2006.
1175. On the day the accounting period ends the company is treated as receiving an amount of income which is brought into account for that accounting period for corporation tax purposes. See *subsections (2) and (3)*.
1176. On the following day the company is treated as incurring an expense which is brought into account for a new accounting period for corporation tax purposes. See *subsections (4) and (5)*.

#### ***Section 384: Amount of income and expense***

1177. This section contains a signpost to the sections which contain the provisions for calculating the amount of the income to be brought into account in accordance with section 383(2) and (3) and provides that the amount of the expense to be brought into account in accordance with section 383(4) and (5) is the same as the amount of the income. It is based on paragraph 4 of Schedule 10 to FA 2006.

#### ***Section 385: No carry back of the expense***

1178. This section prevents any loss which arises in the later accounting period which derives from the expense from being carried back against profits of any earlier accounting period under section 37(3)(b). It is based on paragraph 5 of Schedule 10 to FA 2006.

#### ***Section 386: Relief for expense otherwise giving rise to carried forward loss***

1179. This section provides for the carrying forward of the expense to later accounting periods. It is based on paragraph 39 of Schedule 10 to FA 2006.
1180. If the company makes a loss in the accounting period which, in accordance with section 383(4)(b), begins on the day after the qualifying change of ownership, the loss derived from the expense treated as incurred under section 383(4)(a), which could otherwise only be carried forward and applied against the profits of the company’s leasing trade, is instead to be treated as an expense of the next accounting period and so available for group relief in that period.
1181. If the company continues to make losses, so much of the loss as derives from the expense can similarly be treated as an expense of subsequent accounting periods which start

within five years of the qualifying change of ownership, unless there is a subsequent qualifying change of ownership.

1182. The amount of the loss derived from the expense is indexed to up-rate its value and preserve the symmetry between the value of the charge and the value of the relief. See *subsection (2)*.
1183. Paragraph 39 of Schedule 10 to FA 2006 applies for the purposes of:
- paragraph 3 of that Schedule, in a case where the company carries on the leasing business alone; and
  - paragraphs 23(4A) and 33 of that Schedule, in a case where the company carries on the business in partnership.
1184. It has been rewritten here for the purposes only of section 383. It has also been rewritten in two places in Chapter 4: in section 419 for the purposes of section 417(5) and in section 428 for the purposes of section 425. It is considered that it is helpful to paint the complete picture in each Chapter.

***Section 387: “Business of leasing plant or machinery”***

1185. This section, read with sections 388 to 391, sets out the conditions for determining whether on any day a company carries on a “business of leasing plant or machinery” for the purposes of Chapter 3. It is based on paragraph 6 of Schedule 10 to FA 2006.
1186. Condition A in *subsection (3)* is that at least one half of “the relevant plant or machinery value” (see section 388) relates to “qualifying leased plant or machinery” (see *subsection (7)*).

***Section 388: “Relevant plant or machinery value” for condition A in section 387***

1187. This section sets out the method of calculating the relevant plant or machinery value on any day for the purposes of condition A in section 387(3). It is based on paragraph 7(1) to (3A) of Schedule 10 to FA 2006.

***Section 389: Provision supplementing section 388***

1188. This section contains further details of the basis of the calculation to be made in accordance with section 388. It is based on paragraph 7(4) to (9) of Schedule 10 to FA2006.

***Section 390: Relevant plant or machinery value where relevant company lessee under long funding lease etc***

1189. This section provides for adjustments to be made to the calculation in section 388 in certain circumstances. It is based on paragraph 7A of Schedule 10 to FA 2006.
1190. The circumstances are if the relevant company (see section 387(1)) is the lessee of the plant or machinery under a long funding finance lease or a long funding operating lease or is treated under section 67 of CAA as the owner of the plant or machinery under a hire purchase or similar contract.

***Section 391: Relevant company’s income for condition B in section 387***

1191. This section provides for the way in which income is to be calculated for the purposes of condition B in section 387(5). It is based on paragraph 8 of Schedule 10 to FA 2006.



**Section 392: “Qualifying change of ownership”**

1192. This section, read with sections 393 to 398, determines what constitutes a “qualifying change of ownership” for the purposes of the sales of lessors Chapters. It is based on paragraph 10 of Schedule 10 to FA 2006.
1193. A qualifying change of ownership is a “relevant change” in the relationship between the company carrying on a business of leasing plant or machinery (“A”) and its principal company. Section 393 determines what constitutes a “relevant change” where the relationship between A and its principal company is that of subsidiary and parent and section 394 deals with the case where the relationship is that of A and a member (or the parent company of a member) of a consortium, directly or indirectly, owning A.
1194. A qualifying change of ownership triggers A being treated as receiving income and incurring a matching expense not only for the purposes of section 383 in Chapter 3 where it carries on the business alone but also for the purposes of section 425 in Chapter 4 where it carries on the business in partnership.

**Section 393: Qualifying 75% subsidiaries**

1195. This section defines the relationship between a principal company and its subsidiary and determines what constitutes a “relevant change” in that relationship for the purposes of section 392. It is based on paragraph 11 of Schedule 10 to FA 2006.
1196. A company is only capable of being a principal company if it is not itself a 75% subsidiary of another company (see *subsections (1)(b), (3)(c) and (5)*).
1197. A company carrying on a business of leasing plant or machinery (“A”) has another company (“B”) as its principal company if A is a qualifying 75% subsidiary, as defined in section 398, of B unless B is a qualifying 75% subsidiary of another company (see *subsection (1)*).
1198. If B is a 75% subsidiary of another company (“C”), then C is the principal company of A. But if C is a 75% subsidiary of another company (“D”), then D is the principal company of A. And so on.
1199. There is a “relevant change” in the relationship of A and the principal company if the relationship of A to the principal company ceases to be that of a qualifying 75% subsidiary or the chain of 75% qualifying subsidiaries is broken (see *subsections (2), (4) and (6)*).

**Section 394: Consortium relationships**

1200. This section defines the relationship between a company carrying on a business of leasing plant or machinery (“A”) and a principal company of A where A is owned, directly or indirectly, by a consortium and determines what constitutes a “relevant change” in that relationship for the purposes of section 392. It is based on paragraph 12 of Schedule 10 to FA 2006.
1201. This section applies if A is either owned by a consortium or is a qualifying 90% subsidiary of a company owned by the consortium (see *subsections (1)(b) and (5)(b)*).
1202. A company is only capable of being a principal company if it is not itself a 75% subsidiary of another company (see *subsections (1), (5) and (7)*).
1203. Each company which is a member of the consortium (“E”) is a principal company of A unless it is a qualifying 75% subsidiary of another company (see *subsection (1)*).
1204. If E is a 75% subsidiary of another company (“F”), then F is the principal company of A. But if F is a 75% subsidiary of another company (“G”), then G is the principal company of A. And so on.

*These notes refer to the Corporation Tax Act 2010  
(c.4) which received Royal Assent on 3 March 2010*

1205. There is a “relevant change” in the relationship of A and a principal company on any day if E’s “ownership proportion” is less at the end of the day than it was at the start of the day (see *subsections (2), (6)(a) and (8)*).
1206. E’s ownership proportion is measured by reference to the lowest of E’s interest in the share capital of A, A’s profits available for distribution and A’s assets available on a winding up (see *subsection (3)*), except where A is a qualifying 90% subsidiary of a company owned by the consortium. In that case it is E’s interest in the company of which A is a qualifying 90% subsidiary which is measured (see *subsection (4)*).
1207. The term “ownership proportion” has been substituted for the term “relevant fraction” in paragraph 12 of Schedule 10 to FA 2006. Similarly “proportion” has been used in place of “percentage”. This change in language follows the change in language used in rewriting section 403C of ICTA (amount of relief in consortium cases) in this Act (see sections 143 and 144).
1208. If a company other than E is the principal company of A in relation to E’s membership of the consortium, there is also a “relevant change” in the relationship of A and the principal company if E ceases to be a qualifying 75% subsidiary of the other company or the chain of 75% qualifying subsidiaries between the other company and E is broken (see *subsections (6)(b) and (8)(b)*).

***Section 395: No qualifying change of ownership in the case of certain intra-group reorganisations***

1209. This section ensures that there is no qualifying change of ownership of A in the case of certain group reorganisations. It is based on paragraph 13 of Schedule 10 to FA 2006.
1210. The group reorganisations in question are ones following which A and all other companies involved remain qualifying 75% subsidiaries of the same principal company as before the reorganisation.

***Section 396: No qualifying change of ownership where principal company’s interest in consortium company unchanged***

1211. This section ensures that there is no qualifying change in ownership in the case of a change in the composition of a consortium but there is no change in the interest of the principal company in the consortium company. It is based on paragraph 13A of Schedule 10 to FA 2006.

***Section 397: Companies owned by consortiums and members of consortiums***

1212. This section defines, for the purposes of the sales of lessors Chapters, what a company owned by a consortium means and who are the members of the consortium in relation to that company. It is based on paragraph 14 of Schedule 10 to FA 2006.

***Section 398: “Qualifying 75% or 90% subsidiary” etc***

1213. This section sets out the tests for determining whether, for the purposes of the sales of lessors Chapters, a company is a “qualifying 75% subsidiary” or a “qualifying 90% subsidiary” of another company. It is based on paragraph 15 of Schedule 10 to FA 2006.
1214. It uses the same approach as is used for determining whether companies are in the same group for group relief purposes but with a modification. This is that companies without share capital, such as companies limited by guarantee, can be treated as subsidiaries if they fall to be treated as controlled by another company. Such companies are also accommodated by applying Chapter 6 of Part 5 of this Act to treat their members as if they were equity holders.
1215. The reference in paragraph 15(1)(b) of Schedule 10 to FA 2006 to the definition of control in section 840 of ICTA has not been rewritten. The definition of control is

rewritten in section 1124 and section 1176(2) applies that definition for the purposes of this Act unless otherwise indicated.

***Section 399: The amount of the income: the basic amount***

1216. This section gives the formula for determining the basic amount of income which is then to be adjusted in accordance with sections 404 to 406 to determine the amount of income for the purposes of section 383 on any day (“the relevant day”). It is based on paragraph 16 of Schedule 10 to FA 2006.

***Section 400: “PM” in section 399***

1217. This section, read together with sections 401 and 402, determines the amount which is “PM” in the formula in section 399 on the relevant day. It is based on paragraph 17(1) to (2B) of Schedule 10 to FA2006.

1218. *Subsection (2)(d)* is new. It provides a link to section 407 which requires plant or machinery to be ignored in certain circumstances.

***Section 401: Provisions supplementing section 400***

1219. This section contains further details of the basis of the calculation to be made in accordance with section 400 and gives the meaning of “the amounts shown in the appropriate balance sheet” in relation to the leasing company or an associated company. It is based on paragraph 17(3) to (8) of Schedule 10 to FA 2006.

***Section 402: “PM” where relevant company lessee under long funding lease etc***

1220. This section provides for adjustments to be made to the calculation in section 400 in certain circumstances. It is based on paragraph 17A of Schedule 10 to FA 2006.

1221. The circumstances are if the relevant company (see section 399(5)) is the lessee of the plant or machinery under a long funding finance lease or a long funding operating lease or is treated under section 67 of CAA as the owner of the plant or machinery under a hire purchase or similar contract.

***Section 403: “TWDV” in section 399***

1222. This section determines the amount which is “TWDV” in the formula in section 399 on the relevant day. It is based on paragraph 18 of Schedule 10 to FA2006.

1223. The TWDV amount is made up of the unrelieved qualifying expenditure in all single asset pools, class pools and the main pool. This is the amount at the start of the new accounting period following the relevant day but excludes any expenditure on the acquisition of plant or machinery on the relevant day except for plant or machinery acquired from associated companies. This adjustment ensures that amounts in respect of plant or machinery acquired from associated companies on the relevant day are included in both the PM and the TWDV amounts.

***Section 404: Amount to be nil if basic amount negative***

1224. This section ensures that, if the formula in section 399(3) produces a negative basic amount, the amount of the company’s income for the purposes of section 383 is nil. It is based on paragraph 19 of Schedule 10 to FA 2006.

***Section 405: Adjustment to the basic amount: qualifying 75% subsidiaries***

1225. This section provides for an adjustment to the basic amount if the company ceases to be a 75% subsidiary and becomes instead a consortium company or a qualifying 90% subsidiary of a consortium company. It is based on paragraph 20 of Schedule 10 to FA 2006.

1226. In these circumstances the basic amount is reduced to reflect the change in the economic control of the lessor company. The amount of the income is limited to the “appropriate percentage” of the basic amount, that is the difference between 100 per cent and the “ownership percentage” after the qualifying change of ownership (see *subsections (4) and (5)*).
1227. The term “ownership percentage” has been substituted for the term “relevant fraction” in paragraph 20 of Schedule 10 to FA 2006 and corresponds to the use of the term “ownership proportion” in sections 394 and 406.

***Section 406: Adjustment to the basic amount: consortium relationships***

1228. This section provides for an adjustment to the basic amount if the trigger event is a change in a consortium relationship. It is based on paragraph 21 of Schedule 10 to FA 2006.
1229. *Subsections (2) and (3)* apply if the qualifying change of ownership arises only because the ownership proportion (as defined in section 394(3) and (4)) at the end of the day is less than the ownership proportion at the start of the day (see section 394(2)). They provide that the amount of the income is limited to the “appropriate proportion” of the basic amount. The “appropriate proportion” is found by deducting the ownership proportion at the end of the day from the ownership proportion at the start of the day.
1230. *Subsection (4)* applies if the qualifying change of ownership does not arise solely because the ownership proportion at the end of the day is less than the ownership proportion at the start of the day (see for example section 394(6)(b) and (8)). It provides that the amount of the income is limited to the ownership proportion of the basic amount at the start of the day.

***Section 407: Migration***

1231. This section deals with situations where a company comes within the charge to corporation tax as a result of migration to the United Kingdom. It is based on paragraph 22 of Schedule 10 to FA 2006.
1232. The section prevents the migration of a company to the United Kingdom which is coupled with a qualifying change of ownership on the same day giving rise to an expense in its first accounting period in relation to plant or machinery which would be shown in a balance sheet of the company drawn up in accordance with GAAP immediately before the day of its migration.

***Section 408: “Associated company”***

1233. This section gives the meaning of “associated company” for the purposes of Chapter 3 only. It is based on paragraphs 7(10) and 9 of Schedule 10 to FA 2006.

***Chapter 4: Sales of lessors: leasing business carried on by a company in partnership***

**Overview**

1234. This Chapter deals with cases where the company is carrying on a leasing business in partnership with others. It is necessary to provide not only for changes in the ownership of the company itself but also for changes in the partners’ interests in the partnership business, including the introduction and retirement of partners and changes in profit sharing ratios.
1235. This Chapter is based on Part 3 of Schedule 10 to FA 2006. The opportunity has been taken to set out in full certain provisions which in the source legislation operate by applying provisions of Part 2 of that Schedule with modifications. See sections 410 to

414 which restate in full the provisions of paragraphs 6 to 8 of Schedule 10 to FA 2006 as modified by paragraph 25 of that Schedule.

1236. Sections 417 to 424 deal with changes in the partnership and sections 425 to 429 deal with changes in the ownership of a company carrying on business in partnership.

***Section 409: Introduction to Chapter***

1237. This section introduces the Chapter and contains signposts to its principal provisions. It is based on paragraphs 23(1), 25(1) and (2) and 33(1) of Schedule 10 to FA 2006.
1238. In particular, it highlights the two events which may give rise to a charge and relief where a company carries on a leasing business in partnership.

***Section 410: “Business of leasing plant or machinery”***

1239. This section, read with sections 411 to 414, sets out the conditions for determining whether on any day a partnership carries on a “business of leasing plant or machinery” for the purposes of this Chapter. It is based on paragraph 25 of Schedule 10 to FA 2006.
1240. This section restates in full the provisions of paragraph 6 of Schedule 10 to FA2006 as applied by paragraph 25(1) and modified by paragraph 25(2) of that Schedule.
1241. Condition A in *subsection (2)* is that at least half of “the relevant plant or machinery value” (see section 411) relates to “qualifying leased plant or machinery”.
1242. Paragraph 25(2) of Schedule 10 to FA 2006 provides that:  
“Any reference in [paragraphs 6 to 8] to the relevant company is to be read as a reference to the partnership.
1243. Paragraph 6(5) of Schedule 10 to FA 2006 refers to “any company” and “the company”. Although paragraph 25(2) of Schedule 10 to FA 2006 does not explicitly modify those references, it is implicit that for the purposes of Part 3 of that Schedule those references must also be read as references to the partnership. This has been made explicit in *subsection (6)*.

***Section 411: “Relevant plant or machinery value” for condition A in section 410***

1244. This section sets out the method of calculating the relevant plant or machinery value on any day for the purposes of condition A in section 410(2). It is based on paragraph 25 of Schedule 10 to FA 2006.
1245. This section restates in full the provisions of paragraph 7(1) to (3A) of Schedule 10 to FA 2006 as applied by paragraph 25(1) and modified by paragraph 25(2) and (3) of that Schedule.

***Section 412: Provision supplementing section 411***

1246. This section contains further details of the basis of the calculation to be made in accordance with section 411. It is based on paragraph 25 of Schedule 10 to FA 2006.
1247. This section restates in full the provisions of paragraph 7(4) to (9) of Schedule 10 to FA 2006 as applied by paragraph 25(1) and modified by paragraph 25(2) of that Schedule.
1248. In giving effect to the implicit modifications made by paragraph 25(2) of Schedule 10 to FA 2006 to paragraph 7(4) and (7) of that Schedule, references have been included in *subsections (1) and (4)* both to the partnership and to any company, a company or the company. This is necessary as the question whether any plant or machinery is “relevant transferred plant or machinery” as regards any company mentioned in section 411(5) is determined by reference to the amounts which would be shown in the appropriate balance sheet of that company (see section 411(4)).



***Section 413: Relevant plant or machinery value where partnership lessee under long funding lease etc***

1249. This section provides for adjustments to be made to the calculation in section 411 in certain circumstances. It is based on paragraph 25 of Schedule 10 to FA2006.
1250. This section restates in full the provisions of paragraph 7A of Schedule 10 to FA 2006 as applied by paragraph 25(1) and modified by paragraph 25(2) and (3) of that Schedule.
1251. The circumstances are if the partnership is the lessee of the plant or machinery under a long funding finance lease or a long funding operating lease or is treated under section 67 of CAA as the owner of the plant or machinery under a hire purchase or similar contract.

***Section 414: Partnership's income for condition B in section 410***

1252. This section provides for the way in which the partnership's income is to be calculated for the purposes of condition B in section 410(4). It is based on paragraph 25 of Schedule 10 to FA 2006.
1253. This section restates in full the provisions of paragraph 8 of Schedule 10 to FA2006 as applied by paragraph 25(1) and modified by paragraph 25(2) of that Schedule.

***Section 415: "Qualifying change" in company's interest in a business***

1254. This section defines a "qualifying change" in a company's interest in a business by reference to a reduction in its "percentage share" in the profits or loss of the business. It is based on paragraph 27 of Schedule 10 to FA 2006.

***Section 416: Determining the percentage share in the profits or loss of business***

1255. This section provides that a company's "percentage share" in the profits or loss of the business is to be determined on a just and reasonable basis. It is based on paragraph 28 of Schedule 10 to FA 2006.

***Section 417: Partner company's income and other companies' matching expense***

1256. This section provides for the consequences of a "qualifying change" on any day in a company's interest in a leasing business carried on by it in partnership. It is based on paragraph 23 of Schedule 10 to FA 2006.
1257. A "qualifying change" is defined in section 415 and occurs if there is a reduction in the company's interest in the business.
1258. On the day of the qualifying change, the company is treated as receiving an amount of income and the other companies carrying on the business are treated as incurring an expense. In this case, there is no ending of an accounting period such as in section 383. The income and expense are recognised in the accounting period of the company which relates to the day of the qualifying change.
1259. If a single company is carrying on the business alone after the qualifying change, *subsection (5)* provides that the expense is treated as incurred by it at a time when it is carrying the business alone and is allowed as a deduction in calculating the profits of the business for the accounting period in which it is treated as incurred.

***Section 418: Amount of income and expense***

1260. This section contains a signpost to the sections which contain the provisions for calculating the amount of the income to be brought into account in accordance with section 417(2)(a) and (3) and to the section determining the amount of the expense to be brought into account in accordance with section 417(2)(b) and (4) or (5). It is based on paragraph 24 of Schedule 10 to FA 2006.



***Section 419: Relief for expense otherwise giving rise to carried forward loss***

1261. This section applies if, as the result of a qualifying change in a partner company's interest in the partnership business, a single company succeeds to the partnership business and provides for the carrying forward of the expense incurred by the successor company to later accounting periods. It is based on paragraph 39 of Schedule 10 to FA 2006.
1262. If the successor company makes a loss in the accounting period in which it begins to carry on the business alone, the loss derived from the expense treated as incurred under section 417(5)(a), which could otherwise only be carried forward and applied against the profits of the company's leasing trade, is instead to be treated as an expense of the next accounting period and so available for group relief in that period.
1263. If the company continues to make losses, so much of the loss as derives from the expense can similarly be treated as an expense of subsequent accounting periods which start within the period of five years beginning with the day on which the qualifying change in the partner company's interest in the business occurs, unless there is a subsequent qualifying change of ownership.
1264. The amount of the loss derived from the expense is indexed to up-rate its value and preserve the symmetry between the value of the charge and the value of the relief. See *subsection (2)*.
1265. Paragraph 39 of Schedule 10 to FA 2006 applies for the purposes of:
- paragraph 3 of that Schedule, in a case where the company carries on the leasing business alone; and
  - paragraphs 23(4A) and 33 of that Schedule, in a case where the company carries on the business in partnership.
1266. It has been rewritten here for the purposes only of section 417(5). It has also been rewritten in section 386 for the purposes of section 383 and in section 428 for the purposes of section 425. It is considered that it is helpful to paint the complete picture in each Chapter.

***Section 420: Exception: companies carrying on business ceasing to share in its profits***

1267. This section disapplies section 417 subject to certain conditions where all the companies carrying on the business in partnership cease to be interested in the business on the same day. It is based on paragraph 23A of Schedule 10 to FA 2006.

***Section 421: The amount of the income: the basic amount***

1268. This section gives the formula (PM – TWDV) for determining the basic amount of income of the partnership which is then to be adjusted in accordance with section 422 or 423 to determine the amount of income of the company for the purposes of section 417 on any day ("the relevant day"). It is based on paragraph 29 of Schedule 10 to FA 2006.
1269. *Subsection (4)* applies the definition of PM in section 400 with modifications.
1270. *Subsection (5)* determines the amount which is TWDV.
1271. The TWDV amount is made up of the unrelieved qualifying expenditure in all single asset pools, class pools and the main pool. This is the amount that would be carried forward assuming that a chargeable period ends on the relevant day and a new one begins on the following day (see *subsection (6)(a)*).
1272. But any expenditure on the acquisition of plant or machinery on the relevant day is excluded, except for plant or machinery acquired from qualifying companies

*These notes refer to the Corporation Tax Act 2010  
(c.4) which received Royal Assent on 3 March 2010*

(see *subsection (6)(b)*). This adjustment ensures that amounts in respect of plant or machinery acquired from qualifying companies (as defined in *subsection (7)*) on the relevant day are included in both the PM and the TWDV amounts.

***Section 422: Amount to be nil if basic amount negative***

1273. This section ensures that, if the formula in section 421(3) produces a negative basic amount, the amount of the company's income for the purposes of section 417 is nil. It is based on paragraph 30 of Schedule 10 to FA 2006.

***Section 423: Adjustment to the basic amount***

1274. This section limits the amount of the company's income for the purposes of section 417 to a percentage of the basic amount. It is based on paragraph 31 of Schedule 10 to FA 2006.

1275. The percentage of the basic amount is found by deducting the company's percentage share in the profits or loss of the partnership at the end of the day from its percentage share at the beginning of the day.

***Section 424: The amount of expense***

1276. This section determines the amount of expense treated as incurred by a company in accordance with section 417(2)(b) as the result of a qualifying change in the partner company's interest in the business on any day. It is based on paragraph 32 of Schedule 10 to FA 2006.

1277. Except where a single company is carrying on the business at the end of the day, the amount of the expense is determined by reference to any increase of the company's percentage interest in the profits or loss of the partnership which is attributable to the qualifying change in the interest in the business of the partner company (see *subsections (2) and (3)*).

1278. Where a single company is carrying on the business at the end of the day, the amount of the expense is equal to the amount of the income (see *subsection (4)*).

***Section 425: Partner company's income and matching expense in different accounting periods***

1279. This section provides for an accounting period to end if there is a "qualifying change of ownership" in relation to a company within the charge to corporation tax carrying on a business of leasing plant or machinery in partnership. It is based on paragraph 33 of Schedule 10 to FA 2006.

1280. This section is the equivalent of section 383 which applies where the company is carrying on the business alone. "Qualifying change of ownership" has the same meaning in this section as it does in section 383 (see sections 392 to 398).

1281. On the day the accounting period ends the company is treated as receiving an amount of income which is brought into account in calculating the profits of the company's "notional business" for that accounting period for corporation tax purposes. See *subsections (2) and (3)*.

1282. On the following day the company is treated as incurring an expense which is brought into account in calculating the profits of the company's "notional business" for a new accounting period for corporation tax purposes. See *subsections (4) and (5)*.

***Section 426: Amount of income and expense***

1283. This section contains a signpost to the section which contains the provisions for calculating the amount of the income to be brought into account in accordance with

section 425(2) and (3) and provides that the amount of the expense to be brought into account in accordance with section 425(4) and (5) is the same as the amount of the income. It is based on paragraph 34 of Schedule 10 to FA 2006.

***Section 427: No carry back of the expense***

1284. This section prevents any loss which arises in the later accounting period which derives from the expense from being carried back against profits of any earlier accounting period under section 37(3)(b). It is based on paragraph 35 of Schedule 10 to FA 2006.

***Section 428: Relief for expense otherwise giving rise to carried forward loss***

1285. This section provides for the carrying forward of the expense to later accounting periods. It is based on paragraph 39 of Schedule 10 to FA 2006.

1286. If the company makes a loss in the accounting period which, in accordance with section 425(4)(b), begins on the day after the qualifying change of ownership, the loss derived from the expense treated as incurred under section 425(4)(a), which could otherwise only be carried forward and applied against the profits of the company's leasing trade, is instead to be treated as an expense of the next accounting period and so available for group relief in that period.

1287. If the company continues to make losses, so much of the loss as derives from the expense can similarly be treated as an expense of subsequent accounting periods which start within five years of the qualifying change of ownership, unless there is a subsequent qualifying change of ownership.

1288. The amount of the loss derived from the expense is indexed to up-rate its value and preserve the symmetry between the value of the charge and the value of the relief. See *subsection (2)*.

1289. Paragraph 39 of Schedule 10 to FA 2006 applies for the purposes of:

- paragraph 3 of that Schedule, in a case where the company carries on the leasing business alone; and
- paragraphs 23(4A) and 33 of that Schedule, in a case where the company carries on the business in partnership.

1290. It has been rewritten here for the purposes only of section 425. It has also been rewritten in section 386 for the purposes of section 383 and in section 419 for the purposes of section 417(5). It is considered that it is helpful to paint the complete picture in each Chapter.

***Section 429: The amount of the income***

1291. This section sets out the rules for determining the amount of the company's income for the purposes of section 425 on any day. It is based on paragraph 36 of Schedule 10 to FA 2006.

1292. The rules adopt concepts from Chapters 3 and 4 for this purpose. The basic amount is found in accordance with section 421 in Chapter 4 and is then adjusted in accordance with sections 404 to 406 in Chapter 3. The "appropriate percentage" of the adjusted amount is then taken.

1293. *Subsection (5)* ensures that, if on the same day there is also a qualifying change in the company's interest in the business carried on by the partnership, the percentage share in relation to which the amount of income under section 417 is calculated is not also taken into account in calculating the income under section 425.

***Section 430: “Associated company”***

1294. This section gives the meaning of “associated company” for the purposes of Chapter 4 only. It is based on paragraph 26 of Schedule 10 to FA 2006.
1295. This section is substantially similar to section 408 which gives the meaning of “associated company” for the purposes of Chapter 3 but includes additional provisions in *subsection (5)* for the case where the company is a consortium company and there is a qualifying change in its interest in the business carried on by it in partnership.

***Section 431: “Profits” and “loss”***

1296. This section provides that in calculating the amount of income and expense for the purposes of this Chapter a company’s percentage share does not include its share in any chargeable gains or losses. It is based on paragraph 37 of Schedule 10 to FA2006.
1297. In the case of some partnerships, different profit sharing ratios are agreed for income profits and losses and capital profits and losses. This provision ensures certainty in such cases by looking only at the profit sharing ratios for income profits and losses.

***Chapter 5: Sales of lessors: anti-avoidance provisions***

**Overview**

1298. This Chapter contains two sets of anti-avoidance provisions.

***Section 432: Restrictions on relief for Chapter 3 or 4 expenses: introduction***

1299. This section provides for the circumstances in which section 433 applies. It is based on paragraph 38(1), (2), (6) and (7) of Schedule 10 to FA 2006.
1300. Section 433 applies if a company incurs an expense under Chapter 3 or 4 which arises in consequence of or in connection with arrangements the main purpose, or one of the main purposes, of which is to secure that the company is treated as incurring the expense (see *subsection (1)*).

***Section 433: Restrictions applying to the restricted loss amount***

1301. This section is an anti-avoidance provision. It is based on paragraph 38(2) to(5), (8) and (9) of Schedule 10 to FA 2006.
1302. The section restricts the manner in which the loss derived from the expense referred to in section 432 may be utilised. It ensures that the loss can only be set against income from certain leases of plant or machinery entered into before the day on which the company is treated as incurring the expense.

***Section 434: Introduction to sections 435 and 436***

1303. This section explains when sections 435 and 436 apply and what is meant by a question as to the application of Chapter 3 or 4. It is based on paragraphs 38A(1) and (4) and 38B(1) of Schedule 10 to FA 2006.
1304. A question as to the application of Chapter 3 or 4 is one which concerns:
- whether a company carries on a business of leasing plant or machinery (whether alone or in partnership); or
  - the amount (if any) of any income or expense treated as received or incurred.

***Section 435: Disregard of increases and decreases in balance sheet amounts***

1305. This section is an anti-avoidance provision. It is based on paragraph 38A(1) to(3) and (5) of Schedule 10 to FA 2006.
1306. The section targets arrangements that increase or reduce the amounts shown in a company's balance sheet in respect of plant or machinery.
1307. *Subsection (1)* provides that this section applies if:
- there is a question as to the application of Chapter 3 or 4 and the answer to the question relies on amounts in respect of plant or machinery shown in any balance sheet of any company;
  - there has been an arrangement that results in an increase or reduction of the amount that would otherwise have been shown on the balance sheet; and
  - that arrangement had as its main purpose, or one of its main purposes, securing a relevant tax advantage (see *subsection (2)*).
1308. If this section applies the increase or decrease in the amount in respect of plant or machinery is to be ignored (see *subsection (3)*).

***Section 436: Balance sheet amounts determined on assumption company has no liabilities***

1309. This section is an anti-avoidance provision. It is based on paragraph 38B of Schedule 10 to FA 2006.
1310. The section targets situations where the amount shown in a company's balance sheet in respect of plant or machinery is affected by the liabilities of the company.
1311. It applies if, apart from this section, on any day:
- no amount would fall to be shown in the company's balance sheet in respect of plant or machinery (see *subsection (2)*); or
  - the amount which would fall to be shown in the balance sheet of the company in respect of plant or machinery is less than the amount which would fall to be shown on the assumption that the company had no liabilities of any kind on that day (see *subsections (3) and (4)*).
1312. In either of those cases, a question as to the application of Chapter 3 or 4 is to be answered applying the assumption that the company had no liabilities of any kind on that day (see *subsection (5)*).

***Chapter 6: Sales of lessors: general interpretation***

***Section 437: Interpretation of the sales of lessors Chapters***

1313. This section defines terms and provides interpretation for the purposes of the sales of lessors Chapters. It is based on paragraph 41 of Schedule 10 to FA 2006.
1314. The definition of connected persons by reference to section 839 of ICTA in paragraph 41(9) of Schedule 10 to FA 2006 has not been rewritten. Section 839 of ICTA is rewritten in section 1122 and section 1176(1) applies the defined term for the purposes of this Act unless otherwise indicated.
1315. Paragraph 42 of Schedule 10 to FA 2006 (index of definitions) has not been rewritten in this Part, but Schedule 4 (Index of defined expressions) contains the principal defined terms used in the sales of lessors Chapters.