These notes refer to the Finance Act 2012 (c.14) which received Royal Assent on 17 July 2012

FINANCE ACT 2012

EXPLANATORY NOTES

INTRODUCTION

Section 24: Companies Carrying on Businesses of Leasing Plant Or Machinery

Summary

1. Section 24 makes changes to the provisions dealing with the sale of a lessor company in the Corporation Tax Act (CTA) 2010 to ensure that the legislation continues to protect the Exchequer from risks that tax could be lost following a sale of a lessor company. The changes made by this section will have effect from 21 March 2012 to prevent a risk of forestalling.

Details of the Section

2. Subsection (1) introduces the amendments to CTA 2010.

3. Subsection (2) substitutes new sections 385(2) and (3) into section 385 and makes a consequential amendment to the title of that section.

4. New section 385(2) prevents a loss, carried back under section 37(3)(b) CTA 2010 (relief for trade losses against total profits of earlier accounting periods), from being deducted from profits that are derived from the income amount calculated under the sale of lessors provisions.

5. New section 385(3) identifies that part of the profit derived from the income by treating it as the final amount to be added.

6. Subsection (3) makes a consequential amendment as a result of the insertion of new section 394ZA.

7. Subsection (4) inserts new section 394ZA.

8. New section 394ZA provides that there is a relevant change in the relationship between a lessor company (A) and a principal company on the day that A becomes a member of a tonnage tax group for the purposes of Schedule 22 to the Finance Act (FA) 2000 (tonnage tax) without entering tonnage tax, or, on the day before that day if A both joins the tonnage tax group and enters the tonnage tax regime.

9. Subsection (5) makes changes to section 394A to add a further subsection. New section 394A(2) ensures that if there is a qualifying change in the ownership of a company as a result of section 394ZA then the change of ownership is treated solely as occurring as a consequence of new section 394ZA regardless of whether there have simultaneously been other qualifying changes in the ownership of the company.

10. Subsection (6) makes changes to provisions dealing with the carry back of losses in the context of a leasing business carried on by a company in partnership. It makes changes to section 427 of CTA 2010 to substitute new sections 427(2) and (3) into section 472 and substitutes a new title to the section.

11. New section 427(2) prevents a loss, carried back under section 37(3)(b) of CTA 2010 (relief for trade losses against total profits of earlier accounting periods) in the notional trade carried on by the partner company, from being deducted from profits that are derived from the income amount calculated under the sale of lessors provisions.

12. New section 427(3) identifies that part of the profit derived from the income by treating it as the final amount to be added.

13. Subsection (7) makes consequential changes to section 950 of CTA 2010 (transfers of trade without change of ownership) to ensure that the qualifying change in ownership of a lessor company brought about by section 394ZA is reflected in section 950.

14. New section 950(3A) prevents the tax neutral treatment of a transfer of plant or machinery into a lessor company that has moved into tonnage tax. It does this by treating the principal company or companies of the predecessor and successor companies as different if they would otherwise have been the same. The subsection applies if the lessor company is the successor and there is a relevant change in its relationship with a principal company as a consequence of section 394ZA at any time on or before the day of the transfer. The section makes clear that this treatment applies even when the change in the relationship took place before 21 March 2012.

15. Subsection (8) inserts new paragraph 79A into Schedule 22 to the Finance Act 2000. The new paragraph prevents a possible double charge to tax on profits deferred on entry into tonnage tax. It does this by preserving access to any unrelieved amounts derived from the sale of lessors expense to reduce certain balancing charges.

16. New sub-paragraph 79A(1) identifies a balancing charge calculated on the disposal of an asset that has been taken into account in calculating an income amount under the sale of lessors provisions.

17. New sub-paragraph 79A(2) identifies a part of the sales of lessors expense, defined in new sub-paragraph 79A(3), that has not been utilised in any way and provides that this reduces the balancing charge.

18. New sub-paragraph 79A(4) deals with the situation where the sale of lessors expense is incurred when the company is in tonnage tax and allocates the expense on a just and reasonable basis in line with the approach in paragraph 56 (1)(a) or (b).

19. New sub-paragraph (5) deals with the case where the sale of lessors expense is incurred when the company is not in tonnage tax. In these circumstances any amount of the sales of lessors expense that has not been utilised will form part of a loss to which paragraph 56 applies. The amount allocated to the tonnage tax activity is then further apportioned to identify an amount derived from the sale of lessors expense.

20. New sub-paragraph 79A(6) explains the meaning of “apportioned loss” in subparagraph 79A(5).

21. Subsections (9) to (11) deal with commencement.

22. Subsection (9) deals with the effect of the change in the availability of losses to carry back against total profits. The new rules, in subsections (2) and (6), have effect in cases where income arises

    - as a result of the company becoming a member of a tonnage tax group on or after 21 March 2012 and entering tonnage tax at the same time;
    - as a result of the company becoming a member of a tonnage tax group on or after 23 April 2012 without entering tonnage tax at the same time
    - in other cases when the relevant day falls on or after 21 March 2012.

23. Subsection (10) deals with the effect of new section 394ZA and new paragraph 79A of Schedule 22 to the Finance Act 2000. These provisions have effect where there is a

relevant change in the relationship between a company and its principal company where the company becomes a member of the tonnage tax group on or after 21 March 2012 and enters tonnage tax at the same time and on or after 23 April 2012 when it becomes a member of the tonnage tax group without entering tonnage tax at the same time.

24. Subsection (11) provides that new section 950(3A) has effect where the transfer day is on or after 21 March 2012 and where the change in the relationship has come about as a result of the company becoming a member of the tonnage tax group and entering tonnage tax at the same time. Where the change in the relationship has come about as a result of the company becoming a member of the tonnage tax group and not entering tonnage tax at the same time the transfer is affected where the transfer day is on or after 23 April 2012.

Background Note

25. The sales of lessors provisions were introduced in FA 2006 to counter a risk that tax would not be paid on the profits of a leasing business following a sale of the company. Typically this risk arose as a consequence of a sale to a loss making group. There is a similar risk that tax would not be paid if a lessor company becomes subject to the tonnage tax rules. This is because on becoming subject to the tonnage tax rules the lessor company’s profits cease to be calculated by reference to the normal corporation tax rules.

26. A company can become subject to the tonnage tax rules by becoming a member of a tonnage tax group. Where this is achieved without triggering the effect of the sale of lessors provisions tax would be lost.

27. The changes made by this section will ensure that the effect of the sale of lessors provisions is triggered when a company joins a tonnage tax group so that tax can be collected on the deferred profits of the company.

28. The sale of lessors provisions are designed to collect tax on the deferred profits of the company through an income amount added to the profits in the accounting period when the company changes hands. A matching expense is delivered in the following accounting period and rules prevent this expense from being carried back against the earlier profits and thereby cancelling the effect of the income amount.

29. The changes made by this section refocus these restrictions so that any loss from an accounting period after a change of ownership cannot be carried back against the profits of the company that are derived from the income amount. This restriction prevents groups from arranging their affairs so that losses are available in the lessor company after the change of ownership which can be used to cancel the effect of the income amount.