

EXPLANATORY NOTE**CLAUSE 24: COMPANIES CARRYING ON BUSINESSES OF
LEASING PLANT OR MACHINERY****AMENDMENTS 15 to 22****SUMMARY**

1. Clause 24 makes changes to the sale of lessor company provisions to prevent groups taking advantage of the different definitions of group for the purposes of the sale of lessor company provisions and tonnage tax. Amendments 15 to 22 change the event related to tonnage tax that triggers the sale of lessor company provisions and prevents possible double taxation.

DETAILS OF THE AMENDMENT

2. As currently drafted clause 24 introduces a new trigger event so that the effect of the sale of lessor company provisions is triggered when a company enters tonnage tax. This would affect companies moving into tonnage tax without any change of grouping.
3. Amendments 15, 16 and 18 are consequential changes that reflect Amendment 17 and the change to the trigger event so that only arrangements that involve a change of grouping are targeted. These consequential changes substitute 'joining a tonnage tax group' for 'moving into tonnage tax'.
4. Amendment 17 determines the way that the 'relevant day' is determined depending on whether or not a company enters tonnage tax at the same time as it joins a tonnage tax group.
5. Amendment 19 inserts new paragraph 79A into Schedule 22 to FA 2000. This 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.
6. New subparagraph (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.
7. New subparagraph (2) identifies a part of the sales of lessors expense, defined in new subparagraph (3), that has not been utilised in any way and provides that this reduces the balancing charge.

8. New subparagraph (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).
9. New subparagraph (5) deals with a situation 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.
10. Amendments 20, 21, and 22 deal with commencement.
11. Amendment 20 replaces the provisions in clause 24 dealing with the commencement of provisions about the carry-back of losses.
12. Amendment 21 replaces the provisions in clause 24 dealing with the commencement of provisions about entering tonnage tax.
13. Amendment 22 replaces the provisions in clause 24 dealing with the commencement of provisions about the transfer of assets as part of a transfer of trade without a change of ownership.
14. In each instance the amendment changes the commencement provisions in clause 24, in so far as the provisions are referable to companies becoming members of tonnage tax groups or entering tonnage tax.
15. Amendment 20 ensures that restrictions on loss carry-back apply when income arises as a result of a company becoming a member of a tonnage tax group on or after 21 March 2012 except where a company becomes a member of the tonnage tax group without entering tonnage tax at the same time. In this instance, the restrictions on loss carry-back have effect as a result of the company becoming a member of the tonnage tax group on or after 23 April 2012.
16. Amendment 21 ensures that there is a relevant change in the relationship between a company and its principal company where a company becomes a member of the tonnage tax group on or after 21 March 2012 when it 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.
17. Amendment 22 ensures that transfers of assets on or after 21 March 2012 as part of the transfer of the trade are affected 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

18. Clause 24 was introduced in response to disclosures showing that groups were exploiting a mismatch in definitions of group for the purposes of tonnage tax and the sales of lessors provisions.
19. Discussions with representatives of the shipping industry indicated that the clause could have a significant impact on companies moving into tonnage tax that were already members of tonnage tax groups or groups moving into tonnage tax for the first time.
20. The tonnage tax regime deals with new entrants through a tapered balancing charge when assets held at the time of entry are sold. The new clause would have created a potential double charge in the event that a sale gave rise to a balancing charge.
21. The amendments to the clause ensure that only arrangements that result in a company joining a tonnage tax group will be affected by the sale of lessor provisions leaving new entrants into the tonnage tax regime to be dealt with under the provisions of the tonnage tax regime including ensuring that where there is a disposal of assets giving rise to a balancing charge after a sale of lessors event this will not result in a double charge to tax.

Tuesday 24 April 2012

PUBLIC BILL COMMITTEE

FINANCE (NO. 4) BILL

David Gauke

15

Clause 24, page 15, line 32, leave out ‘moving into tonnage tax’ and insert ‘joining tonnage tax group’.

David Gauke

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Clause 24, page 15, line 34, leave out ‘**moving into tonnage tax**’ and insert ‘**joining tonnage tax group**’.

David Gauke

17

Clause 24, page 15, line 36, leave out from ‘if’ to end of line 38 and insert ‘—

- (a) on that day A becomes a member of a tonnage tax group for the purposes of Schedule 22 to FA 2000 without entering tonnage tax on that day, or
- (b) the day ends immediately before the day on which, for the purposes of that Schedule, A both becomes a member of a tonnage tax group and enters tonnage tax.”’.

David Gauke

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Clause 24, page 16, line 26, leave out ‘moving into tonnage tax’ and insert ‘joining tonnage tax group’.

David Gauke

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Clause 24, page 16, line 28, at end insert—
(7A) In Schedule 22 to FA 2000 (tonnage tax), after paragraph 79 insert—

"79A(1) This paragraph applies if—

- (a) a balancing charge under this Part of this Schedule arises to the company on the disposal of any plant or machinery, and
- (b) the plant or machinery is taken into account in calculating income that the company is treated as receiving under section 383 or 417 of the Corporation Tax Act 2010 (sales of lessors) as a result of section 394ZA of that Act (company joining tonnage tax group).

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- (2) The balancing charge is to be reduced by the relevant part of the sales of lessors expense so far as relief has not previously been given for that expense (whether under this sub-paragraph or otherwise).
- (3) “The sales of lessors expense” means—
- (a) the expense which the company is treated as incurring under section 383 or 417 of the Corporation Tax Act 2010 as a result of section 394ZA of that Act, or
 - (b) if section 386 or 419 of that Act applies or has applied, the expense which derives from the expense within paragraph (a).
- (4) If the sales of lessors expense is incurred at a time when the company is in tonnage tax, the “relevant part” of that expense is so much of it as, on a just and reasonable basis, is attributable to the matters set out in paragraph 56(1)(a) or (b).
- (5) If—
- (a) the sales of lessors expense is not incurred at a time when the company is in tonnage tax,
 - (b) that expense is taken into account in calculating a loss made by the company in a trade, and
 - (c) the loss is one to which paragraph 56 applies,
- the “relevant part” of the sales of lessors expense is so much of the apportioned loss as, on a just and reasonable basis, is derived from the sales of lessors expense.
- (6) The reference here to the apportioned loss is to the loss that is attributable to the matters set out in paragraph 56(1)(a) or (b).”.

David Gauke

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Clause 24, page 16, line 30, leave out paragraphs (a) and (b) and insert—

- (a) where the income arises as a result of a company becoming a member of a tonnage tax group on or after 21 March 2012 and entering tonnage tax at the same time,
- (b) where the income arises as a result of a company becoming a member of a tonnage tax group on or after 23 April 2012 without entering tonnage tax at the same time, or
- (c) where the relevant day is on or after 21 March 2012 (in any case not within paragraph (a) or (b)).’.

David Gauke

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Clause 24, page 16, line 33, leave out from ‘(5)’ to end of line 35 and insert ‘and (7A) have effect—

- (a) where a company becomes a member of a tonnage tax group on or after 21 March 2012 and enters tonnage tax at the same time, or
- (b) where a company becomes a member of a tonnage tax group on or after 23 April 2012 without entering tonnage tax at the same time.’.

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Finance (No. 4) Bill, *continued*

David Gauke

22

Clause 24, page 16, line 36, leave out from ‘effect’ to end of line 37 and insert ‘—

- (a) except in a case within paragraph (b), where the transfer day is on or after 21 March 2012, and
- (b) in a case where the relevant change in the relationship occurs as a result of a company becoming a member of a tonnage tax group without entering tonnage tax at the same time, where the transfer day is on or after 23 April 2012.’.