

1 Leases

Schedule 1 contains provision relating to the taxation of leases.

SCHEDULE 1

Section 1

LEASES

PART 1

FINANCE LEASES: AMENDMENTS AS A RESULT OF CHANGES TO ACCOUNTING STANDARDS

- 1 (1) Part 2 of CAA 2001 (plant and machinery allowances) is amended as follows.
 - (2) In section 67 (plant or machinery treated as owned by person entitled to benefit of contract, etc), in subsection (2B), for the words from “falls (or would fall)” to the end substitute “—
 - (a) falls (or would fall) to be treated by that person in accordance with generally accepted accounting practice as a finance lease, or
 - (b) if that person is a lessee under a right-of-use lease, would fall to be treated in that person’s accounts as a finance lease were that person required under generally accepted accounting practice to determine whether the lease falls to be so treated.”
 - (3) In section 70E (disposal events and disposal values), in subsection (2D)(a), after “finance charges” insert “, or interest expenses,”.
 - (4) In section 70YA (changes in accountancy classification of long funding leases) —
 - (a) in subsection (1) —
 - (i) omit the “and” at the end of paragraph (a), and
 - (ii) after paragraph (b) insert “and
 - (c) the change of classification is not as the result of a change to an accounting standard which must be adopted by the person (including where such a change is adopted for periods before the first period for which it must be adopted).”, and
 - (b) after subsection (10) insert —

“(11) In this section “accounting standard” means any accounting standard issued or recognised by —

 - (a) the Accounting Standards Board (or successor body), or
 - (b) the International Accounting Standards Board (or successor body).”
 - (5) In section 70YI (general definitions), in subsection (1) —
 - (a) for the definition of “long funding finance lease” substitute —

““long funding finance lease” means —

 - (a) in relation to any person, a long funding lease that meets the finance lease test by virtue of section 70N(1)(a), or
 - (b) in relation to a lessee, a right-of-use lease which is a long funding lease that meets —
 - (i) the lease payments test in section 70O, or

- (ii) the useful economic life test in section 70P;”, and
- (b) at the appropriate place insert –
 - ““right-of-use lease”, in relation to a lessee, means a lease in respect of which, under generally accepted accounting practice –
 - (a) a right-of-use asset falls (or would fall) at the commencement date of the lease to be recognised for accounting purposes in the accounts of the lessee, or
 - (b) a right-of-use asset would fall to be so recognised but for the lessee granting a sublease of the leased asset;”.
- (6) In section 228J (anti-avoidance: plant or machinery subject to further operating lease), in subsection (7) –
 - (a) for paragraph (a) substitute –
 - “(a) the lease –
 - (i) falls, under generally accepted accounting practice, to be treated in that person’s accounts as a finance lease or loan, or
 - (ii) if that person is a lessee under a right-of-use lease, would fall to be treated in that person’s accounts as a finance lease were that person required under generally accepted accounting practice to determine whether the lease falls to be so treated,” and
 - (b) in paragraph (b), for the words from “fall” to the end substitute “ –
 - (i) fall, under generally accepted accounting practice, to be treated as a finance lease or loan, or
 - (ii) if that person is a lessee under a right-of-use lease, would fall to be treated in that person’s accounts as a finance lease were that person required under generally accepted accounting practice to determine whether the arrangements fall to be so treated.”

2 (1) ITTOIA 2005 is amended as follows.

(2) In section 148G (lessee under long funding finance lease: limit on deductions), in subsection (2), after “finance charges” insert “, or interest expenses,”.

(3) After that section insert –

“148GA Lessee under long funding finance leases: right-of-use leases

- (1) This section applies if –
 - (a) for the whole or part of any period of account, a person carrying on a trade, profession or vocation is the lessee of any plant or machinery under a right-of-use lease that is a long funding finance lease,
 - (b) there is a change in the amounts payable under the lease, and
 - (c) as a result of the change and in accordance with generally accepted accounting practice –

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- (i) a remeasurement of the lease liability is shown in the person's accounts for the period of account, or
 - (ii) a deduction is shown in those accounts other than as an interest expense under the lease or an amount of depreciation, or an impairment, in respect of the right-of-use asset arising from the lease.
 - (2) In calculating the profits of the person's trade, vocation or profession for the period of account, the amount deducted in respect of amounts payable under the lease (after taking account of any limitation as a result of section 148G) is to be increased or decreased so as to take account of the remeasurement or deduction mentioned in subsection (1)(c).
 - (3) No adjustment is to be made under subsection (2) if the remeasurement or deduction results in the person being treated by section 70D of CAA 2001 (long funding finance lease: additional expenditure: allowances for lessee) as having incurred further capital expenditure on the provision of the plant or machinery."
 - 3 (1) CTA 2010 is amended as follows.
 - (2) In section 288 (sale and lease-back) –
 - (a) in subsection (5), for sub-paragraph (a) substitute –
 - “(a) falls, in accordance with generally accepted accounting practice, to be treated in the accounts of the lessee –
 - (i) as a finance charge, or
 - (ii) as an interest expense where any such expenditure would fall to be treated in those accounts as a finance charge if the lessee were required under generally accepted accounting practice to determine whether that expenditure should be so treated,
 - (aa) if the lease is a right-of-use lease which is a long funding finance lease, falls, in accordance with generally accepted accounting practice, to be treated in the accounts of the lessee as an interest expense, or”, and
 - (b) in subsection (9), for the definition of “long funding operating lease” substitute –
 - “long funding finance lease”, “long funding operating lease” and “right-of-use lease” have the meanings given in Part 2 of CAA 2001 (see section 70YI(1) of that Act),”.
 - (3) In section 331 (meaning of “financing costs” etc) –
 - (a) in subsection (3), after paragraph (d) insert –
 - “(da) if the company is the lessee under a right-of-use lease which is a long funding finance lease, any costs falling, in accordance with generally accepted accounting practice, to be treated in the accounts of the company as interest expenses,”,
 - (b) in subsection (4), in paragraph (a), after “finance charge” insert “, or an interest expense,”,

(c) for subsection (6) substitute –

“(6) In this section “finance lease” means a lease which –

(a) under generally accepted accounting practice –

(i) falls (or would fall) to be treated, in the accounts of the lessee or a person connected with the lessee, as a finance lease or loan, or

(ii) is comprised in arrangements which fall (or would fall) to be so treated, or

(b) if the lease is a right-of-use lease –

(i) would fall to be treated in those accounts as a finance lease, or

(ii) is comprised in arrangements which would fall to be so treated,

were the lessee or person connected with the lessee required under generally accepted accounting practice to determine whether the lease falls, or arrangements fall, to be so treated.”, and

(d) in subsection (9) –

(i) omit the “and” at the end of the definition of “exchange gains” and “exchange losses”, and

(ii) after that definition insert –

““lease” means any arrangements which provide for an asset to be leased or otherwise made available by a person to another person (“the lessee”), and

“long funding finance lease”, “long funding operating lease” and “right-of-use lease” have the meanings given in Part 2 of CAA 2001 (see section 70YI(1) of that Act).”

(4) In section 377 (lessee under long funding finance lease: limit on deductions), in subsection (3), after “as finance charges” insert “, or interest expenses,”.

(5) After that section insert –

“377A Lessee under long funding finance leases: right-of-use leases

(1) This section applies if –

(a) for the whole or part of any period of account, a company is the lessee of any plant or machinery under a right-of-use lease that is a long funding finance lease,

(b) there is a change in the amounts payable under the lease, and

(c) as a result of the change and in accordance with generally accepted accounting practice –

(i) a remeasurement of the lease liability is shown in the person’s accounts for the period of account, or

(ii) a deduction is shown in those accounts other than as an interest expense under the lease or an amount of depreciation, or an impairment, in respect of the right-of-use asset arising from the lease.

(2) In calculating the company’s profits for the period of account, the amount deducted in respect of amounts payable under the lease (after taking account of any limitation as a result of section 377) is to

be increased or decreased so as to take account of the remeasurement or deduction mentioned in subsection (1)(c).

- (3) No adjustment is to be made under subsection (2) if the remeasurement or deduction results in the company being treated by section 70D of CAA 2001 (long funding finance lease: additional expenditure: allowances for lessee) as having incurred further capital expenditure on the provision of the plant or machinery.”
- (6) In section 381 (interpretation of Chapter 2 of Part 9), in subsection (2), for the definition of “long funding finance lease” substitute –
- ““long funding finance lease” means –
- (a) in relation to any person, a long funding lease that meets the finance lease test as a result of section 70N(1)(a) of that Act, or
- (b) in relation to a lessee, a right-of-use lease (see section 70YI(1) of that Act) which is a long funding lease that meets –
- (i) the lease payments test in section 70O of that Act, or
- (ii) the useful economic life test in section 70P of that Act;”.
- (7) In section 437 (interpretation of the sales of lessors Chapters) –
- (a) for subsection (4) substitute –
- “(4) “Finance lease” means –
- (a) in relation to any person, a lease that, in accordance with generally accepted accounting practice, falls (or would fall) to be treated in the accounts of that person as a finance lease or loan, or
- (b) in relation to a lessee under a right-of-use lease, a lease that would fall to be treated in the accounts of the lessee as a finance lease if the lessee were required under generally accepted accounting practice to determine whether the lease falls to be so treated.”,
- and
- (b) in subsection (6), for “and “long funding operating lease”” substitute “, “long funding operating lease” and “right-of-use lease””.
- (8) In section 544 (meaning of “property profits” and “property financing costs”), after subsection (5) insert –
- “(5A) In subsection (5) “finance lease” means –
- (a) in relation to any person, a lease that, in accordance with generally accepted accounting practice, falls (or would fall) to be treated in the accounts of that person as a finance lease or loan, or
- (b) in relation to a lessee under a right-of-use lease, a lease that would fall to be treated in the accounts of the lessee as a finance lease if the lessee were required under generally accepted accounting practice to determine whether the lease falls to be so treated.
- (5B) In subsection (5A)(b) “right-of-use lease” has the meaning given in Part 2 of CAA 2001 (see section 70YI(1) of that Act).”

- 4 In section 494 of TIOPA 2010 (corporate interest restriction: other interpretation), in subsection (1)–
- (a) for the definition of “finance lease” substitute–
 - ““finance lease”, in relation to a company or a worldwide group, a lease which–
 - (a) in accordance with generally accepted accounting practice, falls (or would fall) to be treated, in the accounts of the company or the financial statements of the group, as a finance lease or loan, or
 - (b) is a right-of-use lease that would fall to be treated in those accounts or financial statements as a finance lease if the company or group were required to determine for accounting purposes whether the lease falls to be so treated;”, and
 - (b) insert at the appropriate place–
 - ““right-of-use lease” means a lease in respect of which, under generally accepted accounting practice–
 - (a) a right-of-use asset falls (or would fall) at the commencement of the lease to be recognised for accounting purposes in the accounts of the lessee, or
 - (b) a right-of-use asset would fall to be so recognised but for the lessee having granted a sublease of the leased asset;”.

Commencement

- 5 (1) The amendments made by this Part of this Schedule have effect in relation to periods of account beginning on or after 1 January 2019.
- (2) But, for the purposes of Chapter 7 of Part 10 of TIOPA 2010 (corporate interest restriction: group-interest and group-EBITDA), the amendments made by paragraph 4 have effect in relation to periods of account of a worldwide group (within the meaning given by section 480 of that Act) beginning on or after 1 January 2019.

PART 2

LONG FUNDING LEASES

Amendments to Chapter 6A of Part 2 of CAA 2001

- 6 Chapter 6A of Part 2 of CAA 2001 (plant and machinery allowances: interpretation of provisions about long funding leases) is amended as follows.

Meaning of “short lease”

- 7 (1) In section 70I (“short lease”)–
- (a) in subsections (2) and (9)(d), for “5” substitute “7”, and
 - (b) omit subsections (3) to (8).

- (2) In section 70YF (the “term” of a lease) –
- (a) in subsection (5)(b), for “5” substitute “7”,
 - (b) in subsection (6), for “5” substitute “7”, and
 - (c) omit subsection (7).

The lease payments test: interest rate implicit in lease

- 8 (1) Section 70O (the lease payments test) is amended as follows.
- (2) In subsection (4), for paragraph (b) substitute –
- “(b) if a rate cannot be determined in accordance with paragraph (a), the interest rate implicit in the lease is taken to be 1% above LIBOR.”
- (3) After that subsection insert –
- “(5) For this purpose –
 - (a) LIBOR means the London interbank offered rate at the relevant time for deposits for a term of 12 months in the applicable currency,
 - (b) the relevant time is the inception of the lease, and
 - (c) the applicable currency is the currency in which payments under the lease are payable.”

Commencement

- 9 The amendments made by this Part of this Schedule have effect in relation to leases entered into on or after 1 January 2019.

PART 3

CHANGES TO ACCOUNTING STANDARDS AND TAX ADJUSTMENTS

Repeal of section 53 of FA 2011

- 10 (1) In FA 2011, omit section 53 (leases and changes to accounting standards).
- (2) The amendment made by this paragraph has effect in relation to periods of account beginning on or after 1 January 2019.
- (3) But, for the purposes of Chapter 7 of Part 10 of TIOPA 2010 (corporate interest restriction: group-interest and group-EBITDA), the amendment made by this paragraph has effect in relation to periods of account of a worldwide group (within the meaning given by section 480 of that Act) beginning on or after 1 January 2019.

Transitional provisions following repeal of section 53 of FA 2011: introductory

- 11 (1) This paragraph and paragraphs 12 to 16 modify the effect of the change of basis provisions in relation to periods of account of a lessee beginning on or after 1 January 2019 if the lease is one –
- (a) in respect of which, under generally accepted accounting practice, a right-of-use asset falls (or would fall) to be recognised for accounting purposes in the accounts of the lessee for any period of account (whether beginning before or on or after that date), and

- (b) which would not fall to be treated in those accounts as a finance lease if the lessee were required under generally accepted accounting practice to determine whether the lease would fall to be treated in those accounts as a finance lease.
- (2) In this Part of this Schedule, “the change of basis provisions” means –
- (a) Chapter 17 of Part 2 and Chapter 7 of Part 3 of ITTOIA 2005 (adjustment income), and
 - (b) Chapter 14 of Part 3 and sections 261 and 262 of CTA 2009 (adjustment on change of basis).

Cases where asset first recognised for period of account beginning on or after 1 January 2019

- 12 (1) This paragraph applies if the right-of-use asset falls (or would fall) to be first recognised for accounting purposes in the accounts of the lessee for the first period of account beginning on or after 1 January 2019 (“the first period of account”).
- (2) Any adjustment income or adjustment expense, or any receipt or expense, treated by any of the change of basis provisions as arising in consequence of a change of accounting policy that results in the right-of-use asset being first recognised for accounting purposes is to be treated as arising over a period (“the spreading period”) determined in accordance with the following steps –

Step 1

Find for each lease the amount by which the credits exceed the debits (or vice-versa). For this purpose, the credits and the debits are the amounts which, under generally accepted accounting practice –

- (a) are taken to equity as adjustments in the accounts of the lessee for the first period of account, and
- (b) are in consequence of the change of accounting policy that results in the right-of-use asset being first recognised for accounting purposes in those accounts.

Step 2

Calculate for each lease the percentage (“the relevant percentage”) that –

- (a) the amount found under Step 1 for the lease bears to
- (b) the total of all amounts found under Step 1 (treating such amounts as positive amounts).

Step 3

Find for each lease the period which results from applying the relevant percentage to the term of the lease that remains unexpired as at the date on which the first period of account begins. For this purpose, the term of a lease is to be determined in accordance with generally accepted accounting practice as it applies for the first period of account.

Step 4

Calculate the mean of all periods found under Step 3.

Step 5

The spreading period is the period equal to the mean calculated under Step 4 beginning with the day on which the first period of account begins.

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- (3) An amount to be treated as arising in any period falling wholly or partly in the spreading period is to be determined in proportion to the number of days of the period falling within the spreading period.
 - (4) This paragraph is subject to paragraphs 14 and 15 (transfers of leases and cessation of activities).

Cases where asset first recognised for an earlier period of account

- 13 (1) This paragraph applies if the right-of-use asset falls (or would fall) to be first recognised for accounting purposes in the accounts of the lessee for a period of account earlier than the first period of account.
- (2) The change of basis provisions and this Part of this Schedule have effect –
 - (a) as if there were a change of accounting policy with respect to the accounts of the lessee for the first period of account, and
 - (b) as if the right-of-use asset falls (or would fall) to be first recognised for accounting purposes in those accounts.
- (3) In this paragraph “the first period of account” has the same meaning as in paragraph 12.

Certain cases where there is a transfer of a lease

- 14 (1) This paragraph applies if –
 - (a) before the whole of an amount has been treated by paragraph 13 as arising to the lessee, there is a transfer of a lease or part of a lease from the lessee to another person,
 - (b) the transferee is connected to the lessee,
 - (c) immediately after the transfer, the transferee carries on activities the profits of which are chargeable to income tax or corporation tax, and
 - (d) the transfer is not one where it is reasonable to suppose that the transfer is, or arrangements of which the transfer is part are, designed to avoid tax.
- (2) The amount is to continue to be dealt with in accordance with paragraph 12 but is to be treated as arising to the transferee over so much of the spreading period as falls on or after the date on which the transfer takes place.
- (3) If, following the transfer, it is necessary to apportion between more than one person an amount treated by paragraph 12 or this paragraph as arising, the apportionment is to be made on a just and reasonable basis.
- (4) In this paragraph –

“connected” is to be read in accordance with sections 993 and 994 of ITA 2007 and sections 1122 and 1123 of CTA 2010, and

“the spreading period” has the same meaning as in paragraph 12.

Cases where lessee permanently ceases to carry on activities

- 15 (1) Sub-paragraph (2) applies if –
 - (a) before the whole of an amount has been treated by paragraph 12 as arising, the lessee permanently ceases to carry on activities the profits of which are chargeable to income tax or corporation tax, and

- (b) the whole of the amount so far as not treated by paragraph 12 as arising is not treated by paragraph 14(2) as arising to a transferee.
- (2) The amount so far as not otherwise treated as arising –
 - (a) is to be treated as arising to the lessee, and
 - (b) is to be brought into account in calculating the profits of the lessee, immediately before the cessation.

Application of paragraphs 11 to 15 to lease portfolios

- 16 (1) This paragraph applies if a lessee, in accordance with generally accepted accounting practice, prepares accounts by reference to a portfolio of leases having similar characteristics rather than by reference to the individual leases.
- (2) Paragraphs 11 to 13 and 15 apply to the portfolio (subject to any necessary modifications) in the same way as they apply to a lease.
- (3) If there is a transfer of the portfolio (or an individual lease within the portfolio), paragraph 14 applies to the transfer (subject to any necessary modifications) in the same way as it applies to the transfer of a lease.

Corporate interest restriction: changes of accounting policy

- 17 (1) In section 426 of TIOPA 2010 (changes of accounting policy), in subsection (3), after paragraph (e) insert –
 - “(f) paragraphs 11 to 16 of Schedule 1 to FA 2019 (transitional provision following the repeal of section 53 of FA 2011) so far as they have effect in relation to adjustments under Chapter 14 of Part 3 of CTA 2009 (trading profits).”
- (2) The amendment made by this paragraph has effect in relation to periods of account of a worldwide group (within the meaning given by section 480 TIOPA 2010) beginning on or after 1 January 2019.

Corporate interest restriction: treatment of certain adjustments

- 18 (1) Sub-paragraph (2) applies if –
 - (a) an amount is brought into account for corporation tax purposes for a period of account beginning on or after 1 January 2019 as a receipt or expense treated by any of the change of accounting policy provisions as arising to a company which is a lessee,
 - (b) the receipt or expense is treated as arising to the company in consequence of a change of accounting policy relating to a lease in respect of which the company is the lessee,
 - (c) under the old accounting policy, the lease fell to be treated as a finance lease in the accounts of the company, and
 - (d) under the new accounting policy, the lease would fall to be treated as a right-of-use lease in those accounts but for –
 - (i) the short term of the lease, or
 - (ii) the low value of the leased asset.
- (2) For the purposes of Part 10 of TIOPA 2010 (corporate interest restriction) –

- (a) if the amount is brought into account as an expense, “tax-interest expense amount” (see section 382 of that Act) does not include that amount;
 - (b) if the amount is brought into account as a receipt, “tax-interest income amount” (see section 385 of that Act) does not include that amount.
- (3) This paragraph has effect in relation to adjustments to which the financial statements of a worldwide group are treated by section 426 of TIOPA 2010 (changes in accounting policy) as subject in the same way as it has effect in relation to adjustments made under the change of accounting policy provisions by a company and accordingly –
 - (a) if the amount is brought into account as an expense, “relevant expense amount” (see section 411(1) of that Act) does not include that amount;
 - (b) if the amount is brought into account as a receipt, “relevant income amount” (see section 411(2) of that Act) does not include that amount.
- (4) In this paragraph –
 - “the change of accounting policy provisions” means Chapter 14 of Part 3 and sections 261 and 262 of CTA 2009 (adjustment on change of basis), and
 - “right-of-use lease” has the meaning given by section 494 of TIOPA 2010 (other interpretation).