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Amendment 160

Clause 127, page 113, line 35, leave out from ‘machinery’ to end of line 36.

Amendment 161

Clause 127, page 113, line 39, at end insert—

‘() Plant or machinery is not the subject of a lease and finance leaseback for the purposes of this section in any case where the condition in subsection (6)(c) is met only because of an election under section 199 made before 18 May 2004.’

Amendment 170

Schedule 23, page 391, line 5, after ‘subject to’ insert ‘paragraphs 2 to 8 of’.

Amendment 171

Schedule 23, page 391, line 6, at end insert—

‘() Paragraph 8A of this Schedule makes provision in relation to the taxation of chargeable gains where an existing leaseback terminates.’.

Amendment 181

Schedule 23, page 395, line 24, at end insert—

‘Chargeable gains

8A (1) Sub-paragraph (2) applies where—

(a) an existing leaseback is the leaseback in a lease and finance leaseback,

- (b) the leaseback terminates,
 - (c) on or after the termination there is a disposal, by the user, of the whole or part of the plant and machinery subject to the leaseback, and
 - (d) a chargeable gain that accrues on that disposal (“the relevant chargeable gain”) falls to be taken into account for the purposes of a chargeable gains computation.
- (2) The following fraction of the relevant chargeable gain shall instead be taken into account for the purposes of the chargeable gains computation —

$$\frac{\text{Net Rentals – Termination Charge}}{\text{Lease Premium}}$$

where—

“Net Rentals” means—

- (a) the total of the amounts deducted in calculating the user’s income or profits, for the purpose of income tax or corporation tax, in respect of amounts payable under the leaseback, minus
- (b) the total of the amounts shown in the user’s accounts in respect of finance charges relating to the leaseback;

“Termination Charge” means the amount by which the user’s income or profits are to be increased by virtue of section 228C(2) of the CAA 2001 because of the termination;

“Lease Premium” means the consideration relating to the leaseback referred to in section 228F(6)(b) of the CAA 2001.

- (3) References in this paragraph to termination of the leaseback shall be construed in accordance with section 228H(1) of the CAA 2001.
- (4) In this paragraph—
- “CAA 2001” means the Capital Allowances Act 2001;

“chargeable gains computation” means the computation, for the purposes of the TCGA 1992, of the total amount of chargeable gains that accrue to the user in any chargeable period that ends on or after 17 March 2004;

“disposal” shall be construed in accordance with the TCGA 1992;

“lease and finance leaseback” has same meaning as in section 228F of the CAA 2001;

“TCGA 1992” means the Taxation of Chargeable Gains Act 1992;

“user” means the person who is the lessee under the leaseback.’.

EXPLANATORY NOTE

SUMMARY

1. These amendments relate to assets subject to lease and leaseback arrangements. Amendment 160 removes some unnecessary words that might cause confusion under Scots law. Amendment 161 ensures that businesses are not disadvantaged where there has been a lease and leaseback of fixtures and an election has been made under section 199 Capital Allowances Act 2001.
2. Amendments 170, 171 and 181 are all connected with the insertion of a new paragraph (paragraph 8A) that reduces the chargeable gain that might accrue where assets that have been subject to a lease and leaseback are sold after the arrangement has been terminated.

DETAILS

3. Amendment 160 removes some words in section 228F(6)(a) that were intended to add clarification but which might cause confusion under Scots law.

4. Amendment 161 disapplies section 228F (the lease and finance leaseback legislation) where an election under section 199 Capital Allowances Act 2001 was made before 18 May 2004 and results in a disposal value being brought into account by the leaseback lessee. Section 199 may have the effect of attributing a disposal value to the leaseback lessee, but section 228F assumes there is none.
5. Amendments 170 and 171 are consequential amendments arising from amendment 181 which is concerned with chargeable gains. Amendment 170 makes it clear the provisions in new paragraph 8A do not affect the Capital Allowances Act. Amendment 171 explains the purpose of new paragraph 8A.
6. Amendment 181 introduces new paragraph 8A into Schedule 23 to the Finance Bill. This paragraph deals with chargeable gains on assets that have been subject to a lease and finance leaseback entered into prior to 17 March 2004 and sold on or after 17 March 2004.
7. Sub-paragraph (1) gives the conditions that must be met for sub-paragraph (2) to apply.
8. Sub-paragraph (2) provides for just a fraction of the relevant chargeable gain to be taken into account for the purposes of the chargeable gains computation. The fraction is determined by reference to the lease rentals that, excluding finance charges, that were allowed as a deduction in computing income or profits for the purposes of income tax or corporation tax, and the lease premium received for granting the lease.
9. Sub-paragraph (3) confirms that termination has the meaning given to it in section 228H(1).
10. Sub-paragraph (4) gives the meaning of the terms used.

BACKGROUND NOTE

11. This clause and Schedule close loopholes in the Capital Allowances legislation that some businesses have used to gain an unintended double benefit.

**BOARD OF INLAND REVENUE
RESOLUTION 47**

**FINANCE BILL 2004
COMMITTEE
CLAUSE 127
SCHEDULE 23**

12. Following publication of the Finance Bill discussions with representatives of, and advisers to, business highlighted a number of areas where the operation of the legislation was uncertain or might have had more of a restrictive effect than intended.
13. These amendments ensure that the legislation delivers the intention of the Budget announcement, is fair to business and works at the technical level.