
Changes to legislation: Finance Act 2003, SCHEDULE 32 is up to date with all changes known to be in force on or before 13 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 32

Section 169

TONNAGE TAX: RESTRICTIONS ON CAPITAL ALLOWANCES FOR LESSORS OF SHIPS

The ring fence: amendments to the provisions about capital allowances and ship leasing

- 1 (1) In Schedule 22 to the Finance Act 2000 (c. 17) (tonnage tax), Part 10 (the ring fence: capital allowances: ship leasing) is amended as follows.
- (2) Omit the word “finance” from the expression “finance lease” in paragraphs 89(1), 90(1), 92(1), 93(1), 94(1), 98(1)(a) and 99(1)(a).
- (3) At the end of sub-paragraph (1) of paragraph 89 (introduction to Part 10) insert—
“ This is subject to paragraph 89A (exception for ordinary charters). ”.
- (4) For sub-paragraph (2) of that paragraph substitute—
“(2) In this Part of this Schedule “lease” means any arrangements that provide for a ship to be leased or otherwise made available by a person (“the lessor”) to another person (“the lessee”).”.
- (5) After that paragraph insert—

“Quantitative restrictions not to apply to ordinary charters

89A(1) Paragraphs 94 to 102, and paragraph 89(1) so far as relating to those paragraphs, do not apply in the following cases.

- (2) The first case is where the ship is chartered out by a person who is responsible—
- (a) for the operation of the ship, including the appointment of the master and those members of the crew engaged in navigation, throughout the period of the charter, and
- (b) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses other than those directly incidental to a particular voyage or to the employment of the ship during that period.

For the purposes of this sub-paragraph a person is “responsible” if he is responsible as principal or if he appoints another person, other than the lessee or a person connected with the lessee, to be responsible in his place.

- (3) The second case is where—
- (a) the ship is chartered out by a person acting in the course of a trade that consists of, or to a significant extent includes, operating ships, and
- (b) the conditions in sub-paragraph (4) are met.

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- (4) Those conditions are—
- (a) that the period of the charter does not exceed seven years, and there is no provision or agreement under which it could be extended beyond seven years;
 - (b) that the period of the charter, together with any other periods in the same ten years during which the ship is chartered out to the lessee or a person connected with him, does not exceed seven years in total;
 - (c) that there are no arrangements under which the lessee or a person connected with him may acquire the ship, whether directly or indirectly, from the lessor.

In paragraph (b) “the same ten years” means any period of ten years that includes the period of the charter mentioned in that paragraph.

- (5) References in this paragraph to the period of a charter are to the term specified in the lease or, if longer, the actual period during which the ship is chartered.
- (6) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this paragraph.”.

Consequential amendments

- 2 (1) In paragraph 41(4) of that Schedule (the requirement not to enter into tax avoidance arrangements: exemption for finance leases)—
- (a) in the first sentence omit “finance”;
 - (b) for the second sentence substitute— “ In this sub-paragraph “lease”, and “lessor” in relation to a lease, have the meaning given by paragraph 89(2). ”.
- (2) In paragraph 147 (index of defined expressions)—
- (a) omit the entry for “finance lease (and lessor and lessee) (in Part X)”;
 - (b) insert at the appropriate place—

“lease (and lessor and lessee) (in Part X) paragraph 89(2)”.

Commencement and temporary provision

- 3 (1) Subject to paragraph 4(2), the amendments made by paragraphs 1 and 2 apply in relation to any lease entered into on or after 19th December 2002.
- (2) In sub-paragraph (4)(b) of the paragraph 89A inserted by paragraph 1(5) above, the reference to any other periods during which the ship is chartered out does not include any period during which it is chartered out under a lease entered into before 19th December 2002.
- 4 (1) This paragraph applies in relation to any lease entered into on or after 19th December 2002 and before 16 April 2003.
- (2) Part 10 of the Schedule 22 to the Finance Act 2000 (c. 17) has effect as if, instead of the paragraph inserted after paragraph 89 by paragraph 1(5) above, the following paragraph were inserted—

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“Exception for ordinary charters

- 89A (1) Paragraph 89(1), and the provisions of this Part of this Schedule listed there, do not apply in the following cases.
- (2) The first case is where the ship is chartered out by a person who is responsible—
- (a) for the operation of the ship, including the appointment of the master and those members of the crew engaged in navigation, throughout the period of the charter, and
 - (b) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses other than those directly incidental to a particular voyage or to the employment of the ship during that period.
- For the purposes of this sub-paragraph a person is “responsible” if he is responsible as principal or if he appoints another person, other than the lessee or a person connected with the lessee, to be responsible in his place.
- (3) The second case is where—
- (a) the ship is chartered out to another person (“the charterer”) because of short-term over-capacity,
 - (b) the person chartering out the ship does so in the course of a trade that consists of or includes operating ships, and
 - (c) the conditions in sub-paragraph (4) are met.
- (4) Those conditions are—
- (a) that the period of the charter does not exceed three years, and there is no provision or agreement under which it could be extended beyond three years;
 - (b) that the period of the charter, together with any other periods in the same five years during which the ship is chartered out to the charterer or a person connected with him, does not exceed three years in total;
 - (c) that neither the charterer nor any person connected with him has an option to purchase the ship.
- (5) In sub-paragraph (4)(b)—
- (a) the reference to any other periods during which the ship is chartered out does not include any period during which it is chartered out under a lease entered into before 19th December 2002;
 - (b) “the same five years” means any period of five years that includes the period of the charter mentioned in that sub-paragraph.
- (6) References in this paragraph to the period of a charter are to the term specified in the lease or, if longer, the actual period during which the ship is chartered.
- (7) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this paragraph.”.

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- (3) Paragraph 93(1) of that Schedule (certificates required to support claim by lessor) has effect as if after paragraph (a) there were inserted—
- “(aa) that the lease is such that, by virtue of paragraph 89A (exception for ordinary charters), paragraph 89(1) does not apply, or”.
- 5 In paragraphs 3 and 4 “lease” means any arrangements that provide for a ship to be leased or otherwise made available by one person to another.

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Changes and effects yet to be applied to :

- specified provision(s) savings for amendments by 2018 anaw 1, s. 6, Sch. 6 by [S.I. 2019/110 reg. 5](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 57(3) inserted by [2011 c. 11 Sch. 22 para. 4](#)
- s. 87(3)(a)(ia) inserted by [S.I. 2003/2760 Sch. para. 3\(4\)\(a\)](#) (This amendment not applied to legislation.gov.uk. The affecting S.I. is revoked and superseded by [S.I. 2003/2816](#))
- Sch. 12 para. 3(2)(aa) inserted by [2007 asp 3 Sch. 5 para. 32](#) (This effect was superseded by the repeal of Sch. 12 para. 3 by Finance Act 2008 (c. 9), s. 129(4), Sch. 43 para. 16)
- Sch. 12 para. 1A inserted by [2007 c. 15 Sch. 13 para. 147\(2\)](#) (The amending provision was repealed before coming into force.)
- Sch. 12 para. 1A omitted by [2008 c. 9 Sch. 43 para. 9](#) (The amending provision was repealed before coming into force.)