

Budget 2009



BN33

22 April 2009

ANTI-AVOIDANCE: PLANT AND MACHINERY LEASING

Who is likely to be affected?

1. Businesses leasing plant or machinery.

General description of the measure

2. Legislation, which was announced and published in draft on 13 November 2008, will be introduced in Finance Bill 2009 to counter avoidance involving the leasing of plant or machinery. It will ensure that:
 - a business entering into a sale and leaseback or lease and leaseback does not gain more relief than it would have done had it obtained loan finance;
 - tax is not avoided when a lessor grants a long funding lease; and
 - when a long funding lease ends the lessee has obtained an appropriate amount of relief.
3. In addition:
 - the definitions of sale and leaseback arrangements in existing anti-avoidance legislation will be amended for consistency and to achieve their objective; and
 - amendments will be made to ensure initial payments under a lease do not escape taxation and to ensure consistency with the taxation of chargeable gains.

Operative date

4. The measure will generally have effect for transactions entered into on or after 13 November 2008 (as previously announced); some aspects of the measure will have effect on or after 22 April 2009, as explained below.

Current law and proposed revisions

5. In addition to the details of this measure previously announced the following changes will be made.

Sale and leaseback arrangements

6. The two definitions of sale and leaseback at section 216 and section 221 of the Capital Allowances Act 2001 (CAA) do not cover all the ways in which sale and leaseback arrangements can be structured, allowing some opportunities for tax avoidance involving the refinancing of existing assets.
7. This measure will amend the definitions in those sections to provide certainty and remove these avoidance opportunities. Amendments will be made to ensure the definitions will cover a sale and leaseback to a person connected to the seller where that person continues to use the asset in their qualifying activity after the date of the sale.
8. This change will have effect for sales on or after 22 April 2009.

Minor amendments and clarifications

9. Amendments will also be made to the published draft legislation to make it clear that where any part of an initial payment under a lease is not taken into account for capital allowances purposes then that part is taxed as income under section 785C of the Income and Corporation Taxes Act 1988. In addition, amendments will be made to section 25A of the Taxation of Chargeable Gains Act 1992 to reflect the revised capital allowance disposal value rules at item 5A of the Table at section 61 of CAA. These amendments will have effect on and after 22 April 2009. Other minor amendments will be made to clarify the legislation.

Further advice

10. If you have any questions about these changes, please contact Ann Sterenberg on 020 7147 2710 (email: ann.sterenberg@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk