HM Revenue & Customs

**PBRN 06**

**9 October 2007**

# LEASED PLANT AND MACHINERY: ANTI-AVOIDANCE

**Who is likely to be affected?**

1. Businesses leasing plant or machinery.

**General description of the measure**

2. This measure will counter avoidance involving the sale and finance leaseback of existing plant or machinery by removing a rule that allows businesses to dispose of plant or machinery free of tax and by bringing the finance leaseback within the scope of the rules for taxing long funding leases.

3. It will also counter attempts to exploit the rules for taxing long funding leases to create a tax loss where there is little or no commercial loss by bringing the measure of taxable profits into line with commercial profits.

**Operative date**

4. The measure will have effect for transactions entered into on or after 9 October 2007.

**Current law and proposed revisions**

<u>Sale and finance leaseback</u>

5. Rules were introduced in 1997 to counter tax avoidance involving the sale and finance leaseback of plant or machinery by entities that were not liable to tax. These arrangements relied on the purchaser being able to claim capital allowances on the plant or machinery it leased back to the original owner.

6. These rules allow most of the sales proceeds to be received untaxed but restricted the capital allowances that could be claimed by the purchaser. Abuse of these rules was partially countered in 2004 but new arrangements continue to exploit the 1997 rules.

7. Legislation will be introduced in Finance Bill 2008 to remove the 1997 legislation that is being exploited. As a consequence, most of the rules introduced in 2004 will be removed as well.

8. In order to ensure that the avoidance countered in 1997 does not return, leases in sale and finance leaseback arrangements will be brought within the scope of the long funding lease rules. This aspect of the measure will not have effect if the plant or machinery is less than four months old when sold.

Long funding leases

9. A lessor under a long funding lease is not entitled to claim capital allowances on the cost of the leased asset but, to compensate, it is only taxed on a small proportion of the lease rental income. Avoidance schemes have been developed that purport to establish an alternative deduction for the cost of the leased asset. If these arrangements are effective they will generate a tax loss approximately equivalent to the cost of the leased asset, even though there is no commercial loss.

10. Legislation will be introduced in Finance Bill 2008 to put beyond doubt that where a deduction is available for the cost of the leased asset the rules restricting the amount of taxable income do not apply. This will prevent the lessor generating artificial losses.

11. Legislation will also be introduced in Finance Bill 2008 to counter alternative attempts to avoid tax by using the long funding lease rules to create a substantial tax loss where there is little or no commercial loss.

Draft legislation

12. Further details of this measure, including draft legislation and draft explanatory notes, are contained in a Technical Note published today on the HM Revenue & Customs website.

**Further advice**

13. If you have any questions about this measure, please contact Paul Lane on 020 7147 2637 (email: paul.lane@hmrc.gsi.gov.uk). Information about Pre-Budget Report measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk