

2008 Pre-Budget Report



PBRN12

24 November 2008

PLANT AND MACHINERY LEASING: ANTI-AVOIDANCE

Who is likely to be affected?

1. Businesses leasing plant or machinery.

General description of the measure

2. This measure counters avoidance involving a leaseback following the sale or lease of plant or machinery. It will ensure that:
 - a business entering into such arrangements 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.

Operative date

3. The measure will have effect for leasebacks entered into, and long funding leases granted or ending, on or after 13 November 2008.

Current law and proposed revisions

Leaseback following a sale or lease

4. Where a business has use of an asset and either sells or leases that asset to another business and then leases the same asset back, the arrangements are a form of secured loan.
5. Under current rules, it is possible to design these financing transactions to create a tax advantage that was not intended. This is achieved by ensuring that the amount on which capital allowances can be claimed under a long funding leaseback is greater than the amount brought into account as a disposal value on selling, or granting a head lease over, the plant or machinery.
6. This measure ensures that the amount on which the lessee can claim capital allowances under a leaseback does not exceed the amount brought in as a disposal value. It will also ensure that first year allowances are not available to the lessee under the leaseback.

7. This approach broadly mirrors existing anti-avoidance legislation applying to sale and leaseback arrangements.
8. The measure also applies where the leaseback is a hire purchase or similar arrangement.

Claw back of relief on grant of long funding finance lease

9. The lessor under a long funding lease is not entitled to claim capital allowances. Therefore, where the existing owner of an asset grants such a lease, a disposal value is brought in that effectively leaves them with relief for the net cost of that asset. However, arrangements involving long funding finance leases are being structured in ways that mean that the disposal value is artificially low.
10. The measure will ensure that an appropriate disposal value is brought into account when a person grants a long funding finance lease of plant or machinery.

Claw back of relief at the end of a long funding lease

11. A lessee under a long funding lease is entitled to claim capital allowances in much the same way as they would be able to if they had bought the asset. When the lease ends, a disposal value is brought into account, again in a similar manner to the disposal of an owned asset. This ensures that where relief is front loaded, any excess is clawed back when the lease ends.
12. The current legislation does not produce the appropriate disposal value in some circumstances, such as where the lease includes a residual value guarantee.
13. This measure will ensure that an appropriate disposal value is brought into account in all circumstances.

Further advice

14. Further details of this measure, including draft legislation and draft explanatory notes, are contained in a Technical Note published on 13 November 2008 on the HM Revenue & Customs website.
15. If you have any questions about this change, please contact Ann Sterenberg on 020 7147 2710 (email: ann.sterenberg@hmrc.gsi.gov.uk). Information about Pre-Budget Report measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk