

Tax Law Rewrite

Bill 6

Responses to Papers
CC/SC (08) 41, 46 and 54

Leasing plant or machinery: the sales of lessors
Chapters

Leasing plant or machinery: tax avoidance

Long funding leases of plant or machinery

This document is available on the internet at:

<http://www.hmrc.gov.uk/rewrite>

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Introduction

1. We published Committee Papers CC/SC (08) 41 and 46 in October 2008 and Committee Paper CC/SC (08) 54 in November 2008, on the HMRC internet website www.hmrc.gov.uk/rewrite. The closing dates for responses were in the case of the first two papers 9 and 16 January 2009 respectively and in the case of the third paper 30 January 2009. The draft clauses for Bill 6 rewrite the provisions relating to:

- Leasing plant or machinery: sales of lessors (Schedule 10 to FA 2006),
- Leasing plant or machinery: tax avoidance (section 785ZA, 785ZB and 785B to 785E of ICTA) and
- Long funding leases of plant or machinery (Chapter 5A of Part 12 of ICTA).

2. The purpose of this response document is to provide details of the substantive points made and to explain our analysis and proposals in respect of them. Minor points such as suggestions to improve punctuation are not covered, but all comments received have been carefully considered.

3. We received written responses as follows:

- to all three Committee Papers from the Institute of Chartered Accountants in England and Wales, and
- to Committee Papers CC/SC (08) 41 and 46 from Pinsent Masons LLP and one individual.

4. We are very grateful for all the comments made, many of which were detailed and we appreciate the time and effort that went into them. We are sending each respondent a copy of this response document.

5. One respondent made policy suggestions for reform. Such issues are outside the remit of the Tax Law Rewrite project but we have passed them to the relevant specialists for consideration.

6. The following abbreviations for tax legislation are used:

- FA 2006 the Finance Act 2006
- ICTA the Income and Corporation Taxes Act 1988
- ITA the Income Tax Act 2007
- ITTOIA the Income Tax (Trading and Other Income) Act 2005.

Leasing plant or machinery: the sales of lessors Chapters

Clause 2[j60610s3]

A respondent queried whether any cross-reference between the provisions of Bill 5 relating to accounting dates and clause 2(2)(b) was necessary.

7. We understand that the respondent is referring to Chapter 2 of Part 2 of Bill 5 (accounting periods) which is based on section 12 of ICTA. Clause 10 of Bill 5 (end of accounting period) includes provision in the following terms:

This section is subject to any provision of the Corporation Tax Acts which provides for an accounting period of a company to which this section applies to end at a different time.

8. Clause 9 of Bill 5 (beginning of accounting period) includes a similar provision in relation to other provisions providing for an accounting period to begin at a different time.

9. ***We consider that the general provisions in clauses 9 and 10 of Bill 5 are sufficient and that nothing is required in clause 2[j60610s3] of this Bill.***

Clauses 5[j60610s391], 32[j60610s393] and 42[j60610s392]

Q1. We welcome comments on the proposal to rewrite paragraph 39 of Schedule 10 to FA 2006 separately in clause 5 for the purposes of clause 2, in clause 32 for the purposes of clause 30(5) and in clause 42 for the purposes of clause 39.

Respondents welcomed this proposal.

Clauses 6[j60610s6] and 26[j60610s6p]

A respondent queried whether in the words “the company is (or has at any time been) entitled, on the assumptions...” in clauses 6(7)(b) and 26(6)(b) there should be substituted for “is (or has at any time been)” the words “would be (or would at any time have been)”.

10. We agree that the respondent’s proposed change is grammatically correct.

11. ***We will amend the wording in these clauses.***

Clause 12[j60610s12]

A respondent queried whether within the brackets in clause 12(9) an “a” should be inserted before “consortium”.

12. ***We will amend the heading to clause 14[j60610s14] and the reference to that heading in clause 12(9) to include “a”.***

Clause 22[j60610s21]

A respondent pointed out that in the final sentence of paragraph 79 of the explanatory notes “end” should be substituted for “start” and “start” for “end”.

13. ***We are grateful for the respondent pointing this out and will amend the sentence to read:***

The “appropriate proportion” is found by deducting the ownership proportion at the end of the day from the ownership proportion at the start of the day

A respondent considered paragraph 80 of the explanatory notes was not readily intelligible. The respondent commented that it presumably meant that clause 22(4) applies where clause 12(6) or 12(8) are applicable where the relevant change is not only because the ownership proportion at the end of the day is less than that at the start of the day (when clause 12(2) applies), although this explanation does not apparently stand up if clause 12(6) is read excluding clause 12(6)(b).

14. The respondent is correct about the application of clause 22(4) and is also correct to observe that it would not apply in a case within clause 12[j60610s12](6) unless paragraph (b) applied.

15. ***We will amend this paragraph of the explanatory notes to make clearer the application of clause 22(4).***

Clause 25[j60610s23i]

Q2. *We welcome comments on the inclusion of clause 25.*

Respondents welcomed the inclusion of this clause.

Clauses 26[j60610s6p] to 29[j60610s8p]

A respondent commented that it is helpful to the user that these clauses set out in full for the purposes of Chapter 4 provisions in clauses 6[j60610s6] to 9[j60610s8] with modifications.

Chapter 4

A respondent commented that, in relation to Chapter 4 generally, it might make for easier navigation if the Chapter were split into two Chapters 4A and 4B to distinguish between the circumstance where a corporate partner changes their interest in the partnership business and where an interest in the corporate partner is itself disposed of, to follow the useful distinction made in clause 25 - otherwise the transition from clause 38 to 39 does not make it as clear as it could be that a new circumstance is being discussed.

16. The respondent's suggestion would seem logically to require the subdivision of Chapter 4 into not two but three short Chapters: one containing the introductory and definitional material in clauses 25 to 29, 33, 34, 44 and 45, one containing clauses 30 to 32 and 35 to 38 and one containing clauses 39 to 43.

17. *We consider that subdivision into separate short Chapters is not appropriate but that italic cross headings to each fasciculus within Chapter 4, taken with the provisions of clause 25[j60610s23i](2) and (3), are sufficient. We will, however, re-order some of the clauses of Chapter 4 and reduce the number of cross headings, in order to clarify the division between clauses under the heading "Change in the company's interest in business" and those under the heading "Qualifying changes of ownership".*

Paragraph 42 of Schedule 10 to FA 2006

A respondent commented that the respondent could see why paragraph 42 of Schedule 10 to FA 2006 (index of definitions) had not been re-written, and agreed that the Schedule to Bill 6 should contain the principal defined terms in the Bill index. The respondent considered, nonetheless, that it would be very useful if those definitions could be replicated in Chapter 5 as it would make it much easier to navigate within the sales of lessors Chapters.

18. The issue of including separate indexes for Parts or Chapters has been considered in relation to each Rewrite Bill and it has been decided that the balance of convenience is to ensure that all principal terms are gathered together in a single index at the end of the Bill.

19. *We do not intend to include a separate index for the sales of lessors Chapters.*

Leasing plant or machinery: tax avoidance

Clauses 1[j66786ZA1] and 2[j66785ZA2]

A respondent agreed that the restructuring of the provisions of sections 785ZA and 785ZB of ICTA in these clauses does improve accessibility. The respondent agreed that it appeared preferable to include the definition of "lease" in clause 1(6) as it fundamental to a leasing business but noted that the term was not used in clause 1.

20. *For the reasons given by the respondent we consider that the placing of the definition of "lease" in clause 1 is appropriate, notwithstanding that the term is not used in that clause.*

The respondent also queried whether in paragraph (b) of the definition of "notional business" in clause 1(6), the first reference to "for those purposes" should instead be "under that provision" in accordance with s 785ZB(4)(b) of

ICTA. The source reference is strictly to s 114(2) of ICTA rather than for the purposes of the charge to corporation tax.

21. ***We agree and will amend this clause.***

Clauses 3[j66785B] to 7[j66785E]

Q1. We welcome comments on the restructuring of sections 785B to 785E of ICTA and on the necessity or desirability of restructuring sections 809ZA to 809ZD of ITA in the same manner.

Respondents welcomed this restructuring.

One respondent considered that the general statement of applicability at the beginning of each clause was especially useful but that the ordering of the clauses was still a little curious. The respondent suggested that it may be more natural to place clauses 4 and 5 at the end as they are definitions and interpretation while clauses 6 and 7 are operative.

22. ***We agree with the respondent and will move clauses 4 and 5 to the end of the Chapter.***

Respondents also agreed that it was not imperative to restructure sections 809ZA to 809ZD of ITA in the same manner but one respondent considered that it was preferable to do so on the basis that the structure of the corporation tax clauses is considered superior. While the respondent considered that the present structure in ITA was acceptable if the project did not have the resources to restructure them, the respondent questioned whether provision of the extra resource to do this would be an unduly onerous matter.

23. ***We will keep under review the availability of resource to rewrite sections 809ZA to 809ZD of ITA.***

Clause 3[j66785B]

A respondent queried whether in clause 3(3) and (4) the references to “period of account” should be to “accounting period”.

24. Income of a trade or a property business is computed for periods of account. If the period of account of the trade or property business does not coincide with an accounting period, any necessary divisions, apportionments and aggregations are to be made in accordance with clause 52 of Bill 5 (based on section 72 of ICTA) as applied in the case of a property business by clause 210.

25. ***We will not be amending the references to “period of account”.***

Long funding leases of plant or machinery

Clause 3[j6502C]

The respondent noted the inclusion of ‘(or would fall)’ in clause 3(2)(a) and questioned whether the exclusion of this proviso from the source legislation in section 502C(2)(b) of ICTA was considered to be an omission in error.

26. *It is considered that the words were inadvertently omitted and they have been added to ensure consistency with other provisions.*

Clauses 5[j6502E] to 7[j6502EEe]

Q1. We welcome comments on the revised presentation of the calculation adopted in clauses 5 to 7 and seek views on whether it is necessary or desirable to amend the structure of section 148D of ITTOIA to conform with any restructuring of the provisions of section 502E of ICTA in this Bill.

The respondent commented that it is easier to understand the calculation of the allowable deduction applying clauses 5 to 7 than by applying the source section 502E of ICTA. The latter is comprehensible, but it requires greater mental effort. The use now of clauses 6 and 7 as supporting clauses to clause 5 enables the latter to more clearly express the essential calculation method. The use of the label “starting value” is also more self-explanatory and helpful as compared with “relevant value”. Rewriting s 502E(4)(e) as the separate clause 7, where the lessor incurred expenditure on the provision of plant or machinery otherwise than for a qualifying purpose, is particularly helpful in improving clarity; as is the inclusion now within clauses 6 and 7 of the definitions of the particular terms relevant to them.

The respondent commented that the calculation required is now presented in clauses 5 to 7 in a substantially different way from the denser presentation in section 502E of ICTA. As clearly improved drafting, if resources permit it must be preferable to amend the structure of the equivalent income tax section 148D of ITTOIA to conform with the structure of clauses 5 to 7; but, whilst desirable, this cannot be regarded as a necessity as section 148D of ITTOIA is intelligible as it stands, albeit demanding greater mental effort.

27. *We will keep under review the availability of resource to rewrite section 148D of ITTOIA.*

Clauses 8[j6502F] to 10[j6502FFF]

Q2. We welcome comments on the revised presentation of the calculation adopted in clauses 8 to 10 and seek views on whether it is necessary or desirable to amend the structure of section 148E of ITTOIA to conform with any restructuring of the provisions of section 502F of ICTA in this Bill.

Subject to the respondent's comments on clauses 9(3) and 10(4), the respondent considered that clauses 8 to 10 are more clearly drafted than the source legislation in section 502F of ICTA. The latter is comprehensible, but the drafting of section 502F(5) and (6) tests the user with the need to refer to the various acronyms in comprehending their effect. It is helpful to clarify the source legislation by now rewriting it in three clauses, and in particular separating out in clause 10 the basis of calculation required where the lessor has previously incurred additional expenditure.

As regards any similar amendment of the equivalent income tax section 148E of ITTOIA, the respondent commented that, as with section 148D of ITTOIA, the respondent regarded this as desirable but it cannot be regarded as essential.

28. We will keep under review the availability of resource to rewrite section 148E of ITTOIA.

Clauses 8[j6502F] and 9[j6502FF]

The respondent asked whether it would be helpful to first introduce “(“RRV”)” in clause 8(4) after ‘remaining residual value’, even if it is also retained in clause 9(1) and whether if it is retained in clause 9(1), it would be preferable to relocate “(“RRV”)” to immediately following the preceding reference to ‘remaining residual value’?

29. We do not consider that it would be helpful to define the abbreviated term in clause 8(4). It would not serve any drafting function there and could distract the reader from the point of this clause. In any event the words “from the additional expenditure” form part of the definition.

30. We do not intend to adopt this suggestion.

Clause 9[j6502FF]

The respondent asked whether, in clause 9(3), RRV (resulting from the lessor’s first additional expenditure) is the whole of the excess, or whether it is the intention of the legislation to apportion RRV between the original expenditure and the first additional expenditure as at the later time when the first additional expenditure is incurred. The respondent commented that, if this complication is not intended, clause 9(3) could be truncated to refer to the excess as being RRV for the purposes of clause 9.

31. Subsection (2) requires the amount (“ARV”) which is expected to be the residual value of the plant or machinery at the time when the additional expenditure is incurred to be compared with the expected residual value at the commencement of the term of the lease (“CRV”). Even without any additional expenditure, other factors may result in expected residual value at a later date being greater than expected

residual value at the commencement of the term. Subsection (3) ensures that only the increase in expected residual value attributable to the additional expenditure is taken into account.

32. ***We will not be amending clause 9(3).***

Clause 10[j6502FFF]

The respondent raised the same query in relation to clause 10(4) as in relation clause 9(3).

33. ***For the reasons given in relation to clause 9(3), we will not be amending clause 10(4).***

Clause 11[j6502G]

Q3. We welcome comments on the revised presentation of the calculation adopted in clause 11 and seek views on whether it is necessary or desirable to amend the structure of section 148F of ITTOIA to conform with any restructuring of the provisions of section 502G of ICTA in this Bill.

The respondent commented that the revised presentation of the calculation adopted in clause 11 is certainly more user friendly than the source section 502G of ICTA where the use of acronyms and the Step drafting adopted again tests the user, albeit section 502G is intelligible applying sufficient mental effort.

As regards any amendment of the equivalent income tax section 148F of ITTOIA, the respondent commented that, as with sections 148D and 148E of ITTOIA, the respondent regarded this as desirable but it cannot be regarded as essential.

34. ***We will keep under review the availability of resource to rewrite section 148F of ITTOIA.***

Clause 21[j6502KK]

The respondent noted that the origin of clause 21(4) is incorrect and should be ICTA s.502K(4) not s.502K(5).

35. ***We will correct this error.***