

SCHEDULES

SCHEDULE 8

LONG FUNDING LEASES OF PLANT OR MACHINERY

PART 4

COMMENCEMENT AND TRANSITIONAL PROVISIONS

Commencement

- 15 (1) The amendments made by this Schedule have effect in the case of a lease if—
- (a) Condition A is met, or
 - (b) if Condition A is not met, Condition B is met,
- unless the lease was finalised (see paragraph 23) before 21st July 2005 and on 17th May 2006 the lessor was within the charge to tax.

As respects any time before 18th May 2006, this sub-paragraph has effect with the omission of the words “and on 17th May 2006 the lessor was within the charge to tax”.

This sub-paragraph is subject to sub-paragraphs (5) and (6).

- (2) Condition A is that—
- (a) the lease is finalised on or after 1st April 2006, or
 - (b) the commencement of the term of the lease is on or after that date, and the lease is not an excepted lease (see paragraph 17).
- (3) Condition B is that—
- (a) the commencement of the term of the lease was before 1st April 2006, but
 - (b) the plant or machinery is on or after that date brought into use for the purposes of a qualifying activity carried on by the person concerned.
- (4) The amendments made by this Schedule also have effect in relation to a lease, in the case of the lessor, if—
- (a) an election under paragraph 16 is in force in the case of the lease, and
 - (b) the election has effect in the case of the lessor.
- (5) Where the amendments made by this Schedule do not have effect in relation to a lease in the case of the lessor but—
- (a) there is a transfer of plant or machinery,
 - (b) immediately before the transfer, the lessor is within the charge to tax, and
 - (c) the transfer is in circumstances such that, if the amendments made by this Schedule did apply in relation to the lease, section 70W(4)(b) of CAA 2001

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(transfers, assignments etc by lessor) would have effect in relation to the new lessor to treat the new lease as a lease which is not a long funding lease, the amendments made by this Schedule do not have effect in relation to the new lease in the case of the new lessor.

In this sub-paragraph—

“the new lease” means the lease that would be the new lease for the purposes of section 70W of CAA 2001, if that section applied;

“the new lessor” means the person who would be the new lessor for the purposes of that section, if that section applied;

and section 70W(7) of CAA 2001 (construction of references to transfer of plant or machinery) also has effect for the purposes of this sub-paragraph.

- (6) Where the amendments made by this Schedule do not have effect in relation to a lease in the case of the lessee but—
- (a) there is a transfer of plant or machinery,
 - (b) immediately before the transfer, the lessee is within the charge to tax, and
 - (c) the transfer is in circumstances such that, if the amendments made by this Schedule did apply in relation to the lease, section 70X(4)(b) of CAA 2001 (transfers, assignments etc by lessee) would have effect in relation to the new lessee to treat the new lease as a lease which is not a long funding lease,
- the amendments made by this Schedule do not have effect in relation to the new lease in the case of the new lessee.

In this sub-paragraph—

“the new lease” means the lease that would be the new lease for the purposes of section 70X of CAA 2001, if that section applied;

“the new lessee” means the person who would be the new lessee for the purposes of that section, if that section applied;

and section 70X(7) of CAA 2001 (construction of references to transfer of plant or machinery) also has effect for the purposes of this sub-paragraph.

- (7) In the application of section 70W(4)(b) or 70X(4)(b) of CAA 2001 for the purposes of sub-paragraph (5) or (6), the lease mentioned in the opening words of the sub-paragraph in question is to be regarded as a lease which is not a long funding lease.

Election for lease to be treated as long funding lease for tax purposes

- 16 (1) The Treasury may by regulations make provision enabling a person of a prescribed description who is, or is to be, the lessor under a plant or machinery lease of a prescribed description to make an election for the lease to be treated in his case as a long funding lease.
- (2) The power to make regulations under this paragraph includes power to make provision for or in connection with any of the following—
- (a) any conditions that must be met if an election is, or is to be, made;
 - (b) whether an election is irrevocable;
 - (c) the date on and after which an election has effect;
 - (d) the manner in which an election is to be made.
- (3) The power to make regulations under this paragraph includes—

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- (a) power to make provision having effect in relation to times before the making of the regulations (but not before 1st April 2006),
- (b) power to make different provision for different cases,
- (c) power to make incidental, consequential, supplemental, or transitional provision or savings.

(4) In this paragraph—

“election” means an election under this paragraph;

“long funding lease” means a lease which is a long funding lease for the purposes of Part 2 of CAA 2001;

“prescribed” means specified in, or determined in accordance with, regulations under this paragraph.

Excepted leases

- 17 (1) A lease is an excepted lease if the following conditions are met.
- (2) Condition 1 is that before 21st July 2005 there was evidence in writing that there was agreement, or a common understanding, between the lessor’s side and the lessee’s side as to the principal terms of the lease (the “pre-existing heads of agreement”).
- The definitions of “the lessor’s side”, “the lessee’s side” and “the principal terms” are in paragraph 27.
- (3) Condition 2 is that the leased plant or machinery was under construction (see paragraph 24) before 1st April 2006.
- (4) Condition 3 is that the lease has been finalised before 1st April 2007 (but see sub-paragraph (8)).
- (5) Condition 4 is that the commencement of the term of the lease is before 1st April 2007 (but see sub-paragraph (8)).
- (6) Condition 5 is that the lessee is the particular person or persons identified as such in the pre-existing heads of agreement.
- (7) Condition 6 is that the principal terms of the lease are not (or, apart from section 70M of CAA 2001, would not be) materially different from those in the pre-existing heads of agreement.
- (8) Sub-paragraphs (4) and (5) have effect with the substitution of “2009” for “2007” if the additional conditions in paragraph 18 are met.

Extended time limit: the additional conditions

- 18 (1) The additional conditions mentioned in paragraph 17(8) are as follows.
- (2) Condition A is that the commencement of the term of the lease is before 1st April 2009.
- (3) Condition B is that, at the latest, the commencement of the term of the lease is as soon as is reasonably practicable after construction of the asset is substantially complete.
- (4) Condition C is that construction of the asset proceeded continuously on and after 1st April 2006.

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- (5) Condition D is that construction of the asset proceeded at the normal pace for an asset of its type.

For this purpose, “normal pace” is the pace required to construct the asset in a reasonable time without delays or interruptions and consistent with normal business practice.

- (6) This paragraph is supplemented by paragraph 19.

Events beyond the control of the parties etc

- 19 (1) Condition B, C or D in paragraph 18 is not failed by reason only of breaches due to events that meet the conditions in sub-paragraph (2).
- (2) The conditions are that—
- (a) the event is abnormal or unusual,
 - (b) the event is unforeseen, and could not reasonably have been foreseen, at the date when the main contract for the construction of the leased asset is entered into,
 - (c) the event is beyond the control of each of the principal parties,
 - (d) as respects the Condition in question, the consequences of the event could not have been avoided by the exercise of all due care, or the taking of all reasonable steps, by the principal parties or any of them.
- (3) In this paragraph “the principal parties” are—
- (a) the lessor’s side,
 - (b) the lessee’s side,
 - (c) the main constructor (see the definition in paragraph 27).

Pre-existing heads of agreement relating to two or more assets

- 20 (1) This paragraph has effect for the purposes of this Part in any case where the pre-existing heads of agreement relates to two or more assets.
- (2) The treatment of any of the assets varies according to whether the asset—
- (a) is for use individually (see sub-paragraph (3)), or
 - (b) is a constituent asset of a combined asset (see sub-paragraph (4)).
- (3) Where any of the assets is for use individually, this Part has effect in relation to that asset separately, as if it were the subject of—
- (a) its own separate pre-existing heads of agreement, and
 - (b) if there is a finalised lease, its own separate finalised lease.
- See sub-paragraph (5) for the method of determining the terms.
- (4) Where any of the assets are constituent assets of a combined asset—
- (a) the combined asset is to be regarded as a single asset, and
 - (b) the constituent assets are to be regarded as if they were instead component parts of that single asset,
- and sub-paragraph (3) applies accordingly.

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- (5) For the purposes of sub-paragraph (3), the principles in sections 70L and 70M of CAA 2001 are to be applied, with any necessary modifications, for the purpose of determining the terms of—
- (a) the deemed separate pre-existing heads of agreement, and
 - (b) the deemed separate finalised lease (if any).

Expenditure incurred before passing of this Act where lease is not an excepted lease

- 21 (1) This paragraph applies where the following conditions are met—
- (a) a person incurs expenditure on the provision of plant or machinery for leasing under a long funding lease,
 - (b) some or all of that expenditure was incurred before the day on which this Act is passed,
 - (c) the long funding lease is not an excepted lease,
 - (d) before 21st July 2005 there was a pre-existing heads of agreement in the case of the long funding lease.
- (2) In this paragraph—
- (a) “the old expenditure” means so much of the expenditure as is expenditure incurred before the day on which this Act is passed, and
 - (b) “the new expenditure” means so much of the expenditure as is expenditure incurred on or after that day.
- (3) Treat the old expenditure—
- (a) as if it had been incurred on the provision of a separate asset for leasing under a separate long funding lease, and
 - (b) as if that separate long funding lease were an excepted lease.
- (4) Treat the new expenditure as if it had been incurred on the provision of a separate asset for leasing under a separate long funding lease in relation to which the amendments made by this Schedule have effect.
- That is without prejudice to the application of any provisions of this Part which treat that deemed separate long funding lease as if it were two or more leases.
- (5) The rentals under the actual long funding lease are to be apportioned between the two deemed leases in such manner as is just and reasonable.
- (6) This paragraph has effect for the purpose of determining liability to income tax or corporation tax in the case of any person who is or has been the lessor or the lessee under the actual long funding lease.
- (7) Paragraph 22 has effect for determining when an amount of expenditure is to be treated for the purposes of this paragraph as incurred by the person mentioned in sub-paragraph (1).

When expenditure is incurred for the purposes of paragraph 21

- 22 (1) This paragraph has effect for determining, for the purposes of paragraph 21, when an amount of expenditure is to be treated as incurred by the person mentioned in sub-paragraph (1) of that paragraph.

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- (2) The general rule is that an amount of expenditure is to be treated as incurred as soon as there is an unconditional obligation to pay it.
- (3) The general rule applies even if the whole or a part of the expenditure is not required to be paid until a later date.
- (4) There are the following exceptions to the general rule.
- (5) If, under an agreement,—
- (a) an unconditional obligation to pay an amount of expenditure comes into being as a result of the giving of a certificate or any other event, and
 - (b) the giving of the certificate, or other event, occurs before the day that falls one month after the passing of this Act,
- the expenditure is to be treated as incurred on the day before the passing of this Act.
- (6) If, under an agreement,—
- (a) there is an unconditional obligation to pay an amount of expenditure on a date earlier than accords with normal commercial usage, and
 - (b) the sole or main benefit which might have been expected to be obtained thereby is that the amount would be treated, under the general rule, as incurred at an earlier time,
- the amount is to be treated as incurred on the date on or before which it is required to be paid.
- (7) If the terms of an agreement are varied on or after 22nd March 2006 with respect to the times for payment and—
- (a) apart from the variation, an unconditional obligation to pay an amount of expenditure would have come into being on or after the day on which this Act is passed, but
 - (b) as a result of the variation, the unconditional obligation to pay the amount comes into being before that day,
- the amount is to be treated as incurred on the date on which it would have been treated as incurred apart from the variation.
- (8) Sub-paragraph (7) does not apply if the long funding lease mentioned in paragraph 21 was finalised before 22nd March 2006.

When a lease is “finalised”

- 23 (1) For the purposes of this Part, a lease is “finalised” on the earliest day on which the following conditions are met.
- (2) Condition 1 is that there is a contract in writing for the lease between the lessor and the lessee.
- (3) Condition 2 is that either—
- (a) the contract is unconditional, or
 - (b) if it is conditional, the conditions have been met.
- (4) Condition 3 is that no terms remain to be agreed.

When an asset is “under construction”

- 24 (1) An asset is “under construction” at any time in the period which—
- (a) begins when construction of the asset begins, and
 - (b) ends when construction of the asset is completed.
- (2) An asset consisting of two or more component parts is to be taken to be under construction at any time after the start of construction of any of those component parts which meets the condition in subsection (3).
- (3) The condition is that the component part has been identified as a component part of the particular asset before construction of the component part begins.
- (4) Sub-paragraphs (1) and (2) are subject to sub-paragraph (5).
- (5) The leased asset is not to be regarded as under construction at any time after the commencement of the term of the lease.
- (6) This paragraph has effect for the purposes of this Part.

Combined assets and constituent assets

- 25 (1) A “combined asset” is an asset which meets the conditions in sub-paragraph (2).
- (2) The conditions are that—
- (a) the asset is for use individually,
 - (b) it consists of two or more items of plant or machinery (“constituent assets”),
 - (c) each of the constituent assets is constructed with a view to its use in conjunction with the others as a single asset (namely, the combined asset).
- (3) Plant or machinery that can be used individually is not a constituent asset just because—
- (a) it is one of a number of assets of the same or a similar description,
 - (b) each of those assets is intended for use individually, and
 - (c) the use individually of those assets is to be co-ordinated to any extent.
- (4) This paragraph has effect for the purposes of this Part.

Mixed leases

- 26 (1) This paragraph applies in any case where there is a mixed lease (see section 70L of CAA 2001).
- (2) In any such case, determine whether the mixed lease is an excepted lease.
- (3) If the mixed lease is an excepted lease, section 70L of CAA 2001 and the amendments made by this Schedule accordingly do not have effect in relation to it.
- (4) If the mixed lease is not an excepted lease, then apply sections 70L and 70M of CAA 2001 and determine separately in the case of each derived lease whether that derived lease is an excepted lease.

Interpretation of this Part

- 27 (1) In this Part—

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“combined asset” is to be construed in accordance with paragraph 25;
“constituent asset” is to be construed in accordance with paragraph 25;
“finalise”, in relation to a lease, is to be construed in accordance with paragraph 23;

“lease” includes—

- (a) a plant or machinery lease, and
- (b) a mixed lease,

and “lessor”, “lessee” and other related expressions are to be construed accordingly;

“the lessee’s side” means any of the following—

- (a) the lessee,
- (b) a person who controls (or is to control) the lessee,
- (c) any two or more persons who together control (or are to control) the lessee,

and for this purpose “control” has the meaning given by section 840 of ICTA;

“the lessor’s side” means any of the following—

- (a) the lessor,
- (b) a person who controls (or is to control) the lessor,
- (c) any two or more persons who together control (or are to control) the lessor,

and for this purpose “control” has the meaning given by section 840 of ICTA;

“the main constructor” means the contractor under the main contract for the construction of the plant or machinery;

“pre-existing heads of agreement” is to be construed in accordance with paragraph 17(2);

“the principal terms”, in relation to a lease, are the following—

- (a) the identity of the lessee;
- (b) the identity or description of the asset to be leased;
- (c) particulars, or a description, of the rentals payable under the lease;
- (d) particulars, or a description, of the term of the lease;

“qualifying activity” has the same meaning as in Part 2 of CAA 2001;

“under construction”, in the case of an asset, is to be construed in accordance with paragraph 24.

- (2) Chapter 6A of Part 2 of CAA 2001 (interpretation of that Part so far as relating to long funding leases) also applies for the purposes of this Part.