

2007 No. 304

INCOME TAX

CORPORATION TAX

The Long Funding Leases (Elections) Regulations 2007

Made - - - - - *6th February 2007*

Laid before the House of Commons *7th February 2007*

Coming into force - - - *28th February 2007*

The Treasury make the following Regulations in exercise of the power conferred upon them by paragraph 16 of Schedule 8 to the Finance Act 2006(a).

Citation, commencement, interpretation and effect

1.—(1) These Regulations may be cited as the Long Funding Leases (Elections) Regulations 2007, shall come into force on 28th February 2007 and shall have effect in respect of leases finalised on or after 1st April 2006.

(2) In these Regulations—

“CAA” means the Capital Allowances Act 2001(b); and

“TMA” means the Taxes Management Act 1970(c).

(3) In these Regulations—

“eligible lease” has the meaning given by regulation 3;

“lessor” has the meaning given in section 70YI of CAA(d);

“qualifying incidental lease” has the meaning given by regulation 4; and

other terms defined or otherwise explained in Chapter 6A of CAA have the same meaning in these Regulations as they have there.

Election

2.—(1) A lessor may make an election (“a long funding lease election”) in respect of all his eligible leases and qualifying incidental leases.

In these Regulations “electing lessor” means a lessor who makes such an election.

(2) A long-funding lease election —

(a) must be made within the permitted time;

(a) 2006 c. 25.

(b) 2001 c. 2.

(c) 1970 c. 9.

(d) Sections 70A to 70E were inserted by paragraph 6, and Chapter 6A (containing sections 70F to 70YI) was inserted by paragraph 7, of Schedule 8 to the Finance Act 2006.

- (b) must be made in the return for the relevant chargeable period or for the year of assessment to which the election relates, either by inclusion in the return as originally made or by an amendment to that return;
- (c) must specify the date from which it is to take effect (“the effective date”); and
- (d) may be withdrawn by amending that return within the permitted time (but is otherwise irrevocable).

Sub-paragraph (c) is subject to the qualification in paragraph (4).

(3) The permitted time is—

- (a) for income tax purposes, the period beginning with the end of the year of assessment to which the election relates, and ending 12 months after the 31st January next following that year of assessment;
- (b) for corporation tax purposes, the period beginning with the time when the relevant chargeable period ends and ending with the second anniversary of that time.

(4) The effective date may not be earlier than the later of—

- (a) 1st April 2006; and
- (b) the beginning of the relevant chargeable period or the year of assessment to which the election relates (as the case requires).

(5) If a long funding lease election has been made, the electing lessor shall be treated as if all the electing lessor’s eligible and qualifying incidental leases finalised on or after the effective date (including those finalised in subsequent chargeable periods or years of assessment) had been long funding leases for the purposes of Part 2 of CAA since they were finalised.

(6) For the purposes of this regulation—

“chargeable period” has the meaning given by section 6 of CAA;

“relevant chargeable period” means the chargeable period in which the effective date falls; and

“the year of assessment to which the election relates” means the tax year in which ends the basis period in which falls the effective date.

Eligible leases

3. An eligible lease is one which meets the following conditions.

Condition A

The lease is a plant or machinery lease.

Condition B

The lease is not, apart from the provisions of these Regulations, a long funding lease.

Condition C

The lease was finalised, as defined in paragraph 23 of Schedule 8 of the Finance Act 2006, on or after 1 April 2006.

Condition D

The term of the lease is 12 months or more.

Condition E

The plant or machinery made available under the lease —

- (a) was unused and not second-hand at the commencement of the term of the lease;

- (b) if leased previously, was last leased under a long funding lease (under the provisions of Part 2 of CAA or pursuant to these Regulations) before the commencement of the term of the lease;
- (c) was the subject of a valid election under section 227 of CAA before the electing lessor made a return for the period in which the commencement of the term of the lease occurred; or
- (d) replaces (whether by one or more substitutions) plant or machinery of the same type and quantity previously made available by the electing lessor to the lessee under a lease which is an eligible lease by virtue of one of the preceding paragraphs of this condition.

Condition F

The lease is not a lease for the provision of a car as defined in section 81 of CAA.

Condition G

The lease does not provide for the leasing of any asset whose market value is more than £10 million at its commencement.

Condition H

The lease is not one to which section 70R or section 70U of CAA applies.

Condition I

If the original lessor's interest under the lease has been assigned—

- (a) the assignment, or where there is more than one assignment, both or all of them, must have occurred within 4 months of the commencement of the term of the lease; and
- (b) the original lessor, and any person later owning the leased assets and through whom the lessor making the long funding lease election derives title to them, must not claim, or have claimed, capital allowances at any time in respect of those assets.

Qualifying incidental leases

4. A qualifying incidental lease is a lease of plant or machinery which—

- (a) is wholly incidental to an eligible lease; and
- (b) disregarding Condition D in regulation 3, would have been an eligible lease.

*Frank Roy
Dave Watts*

6th February 2007

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enable a lessor to elect to join the new long funding lease regime introduced by Schedules 8 and 9 to the Finance Act 2006 (c. 25) in respect of leases of plant or machinery that would not otherwise be covered by that legislation.

Regulation 1 provides for citation, commencement, interpretation and effect.

Regulation 2 specifies how and when an election in respect of eligible leases and qualifying incidental leases (the conditions for which are set out in regulations 3 and 4 respectively) may be made and withdrawn, and explains the effect of an election.

A regulatory impact assessment in respect of the provisions of the Finance Act 2006 is available on the website of HM Revenue and Customs at www.hmrc.gov.uk/ria and may be obtained by writing to the Ministerial Correspondence Unit, 1st Floor, HM Revenue and Customs, Ferrers House, P.O. Box 38, Castle Meadow Road, Nottingham, NG2 1BB.

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