



Income Tax Act 2007

2007 CHAPTER 3

PART 13

TAX AVOIDANCE

[^{F1}CHAPTER 6

AVOIDANCE INVOLVING LEASES OF PLANT AND MACHINERY

Textual Amendments

F1 Pt. 13 Ch. 6 inserted (21.7.2008 with effect in accordance with Sch. 20 para. 2(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 2(1)** (with Sch. 20 para. 2(3))

809ZA Plant and machinery leases: capital receipts to be treated as income

- (1) This section applies if—
 - (a) there is an unconditional obligation, under a lease of plant or machinery or a relevant arrangement, to make a relevant capital payment (at any time), or
 - (b) a relevant capital payment is made under such a lease or arrangement otherwise than in pursuance of such an obligation.
- (2) The lessor is treated for income tax purposes as receiving income attributable to the lease of an amount equal to the amount of the capital payment.
- (3) The income is treated—
 - (a) if subsection (1)(a) applies, as income for the period of account in which there is first an obligation of the kind mentioned there, and
 - (b) if subsection (1)(b) applies, as income for the period of account in which the payment is made.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 6. (See end of Document for details)

809ZB Section 809ZA: interpretation

- (1) The expressions used in section 809ZA and this section are to be interpreted as follows.
- (2) “Capital payment” means any payment except one which, if made to the lessor—
 - (a) would fall to be included in a calculation of the lessor's income for income tax purposes, or
 - (b) would fall to be included in such a calculation but for section 148A of ITTOIA 2005 (rental earnings under long funding finance lease).
- (3) “Lease” includes—
 - (a) a licence, and
 - (b) the letting of a ship or aircraft on charter or the letting of any other asset on hire,
 and “lessor” and “lessee” are to be read accordingly.
- (4) “Lease of plant or machinery” includes a lease of plant or machinery and other property but does not include—
 - (a) a lease where the income attributable to the lease received by the lessor (if any) would be chargeable to tax under Part 3 of ITTOIA 2005 (property income), or
 - (b) a lease of plant or machinery where the lessor has incurred what would (but for section 34A of CAA 2001) be qualifying expenditure (within the meaning of Part 2 of that Act) on the plant or machinery.
- (5) “Relevant arrangement” means any agreement or arrangement relating to a lease of plant or machinery, including one made before the lease is entered into or after it has ended (and, accordingly, “lessor” and lessee” include prospective and former lessors and lessees).
- (6) A capital payment, in relation to a lease or relevant arrangement, is “relevant” if condition A or B is met (but this is subject to ^{F2}subsections (9) and (9A)).
- (7) Condition A is that the capital payment is payable (or paid), directly or indirectly, by (or on behalf of) the lessee to (or on behalf of) the lessor in connection with—
 - (a) the grant, assignment, novation or termination of the lease, or
 - (b) any provision of the lease or relevant arrangement (including the variation or waiver of any such provision).
- (8) Condition B is that rentals payable under the lease are less than (or payable later than) they might reasonably be expected to be if there were no obligation to make the capital payment (and the capital payment were not made).
- (9) A capital payment is not “relevant” if or to the extent that—
 - (a) the capital payment reduces (or would but for section 536 of CAA 2001 reduce) the amount of expenditure incurred by the lessor for the purposes of CAA 2001 in respect of the plant or machinery in question, ^{F3}or
 - (b) the capital payment is compensation for loss resulting from damage to, or damage caused by, the plant or machinery in question, ^{F4}...
 - ^{F4}(c)

[Where—

- ^{F5}(9A) (a) a capital payment is an initial payment under a long-funding lease, and

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 6. (See end of Document for details)

- (b) under section 61 of CAA 2001 (disposal events and disposal values), the commencement of the term of the lease is an event that requires the lessor to bring a disposal value into account, the capital payment is only “relevant” to the extent that it exceeds the disposal value.”
- (9B) “Commencement”, “disposal value”, “initial payment”, “long funding lease” and “the term” have the same meaning as in Part 2 of CAA 2001.]
- (10) References to payment include the provision of value by any means other than the making of a payment, and accordingly—
- (a) references to the making of a payment include the passing of value (by any other means), and
 - (b) references to the amount of the payment include the value passed.

Textual Amendments

- F2** Words in s. 809ZB(6) substituted (with effect in accordance with Sch. 32 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 10\(2\)](#)
- F3** Word in s. 809ZB(9)(a) inserted (with effect in accordance with Sch. 32 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 10\(3\)\(a\)](#)
- F4** S. 809ZB(9)(c) and preceding word omitted (with effect in accordance with Sch. 32 para. 11 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 10\(3\)\(b\)](#)
- F5** S. 809ZB(9A)(9B) inserted (with effect in accordance with Sch. 32 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 10\(4\)](#)

809ZC Section 809ZA: lease of plant and machinery and other property

- (1) This section applies if section 809ZA applies in relation to a lease of plant or machinery and other property (see section 809ZB(4)).
- (2) The relevant capital payment is to be apportioned, on a just and reasonable basis, between—
- (a) the plant and machinery, and
 - (b) the other property.
- (3) If the income (if any) received by the lessor that is attributable to any of the plant or machinery is chargeable to tax under Part 3 of ITTOIA 2005 (property income), treat that plant or machinery as falling within subsection (2)(b) (and not subsection (2)(a)).
- (4) Section 809ZA(2) has effect as if the reference to the amount of the capital payment were to such amount as is apportioned under subsection (2) in respect of the plant or machinery within subsection (2)(a).

809ZD Section 809ZA: expectation that relevant capital payment will not be paid

- (1) This section applies for income tax purposes if—
- (a) section 809ZA applies by virtue of subsection (1)(a) of that section, and
 - (b) at any time, the lessor reasonably expects that the relevant capital payment will not be paid (or will not be paid in full).
- (2) For the purposes of calculating the profits of the lessor, a deduction is allowed for the period of account which includes that time.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects
for the Income Tax Act 2007, Chapter 6. (See end of Document for details)

- (3) The amount of the deduction is equal to the amount reasonably expected not to be paid.
- (4) No other deduction is allowed in respect of the matters mentioned in subsection (1).]

Status:

Point in time view as at 21/07/2009.

Changes to legislation:

There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 6.