



Capital Allowances Act 2001

2001 CHAPTER 2

PART 2

PLANT AND MACHINERY ALLOWANCES

[^{F1}CHAPTER 6A

INTERPRETATION OF PROVISIONS ABOUT LONG FUNDING LEASES

[^{F1}Meaning of “long funding lease” etc

Textual Amendments

- F1** Pt. 2 Ch. 6A inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 8 para. 7](#)

70G “Long funding lease”

- (1) A “long funding lease” is a funding lease (see section 70J) which meets the following conditions—
- (a) it is not a short lease (see section 70I),
 - (b) it is not an excluded lease of background plant or machinery for a building (see section 70R),
 - (c) it not excluded by section 70U (plant or machinery leased with land: low percentage value).
- (2) Where, at the commencement of the term of a plant or machinery lease, the plant or machinery—
- (a) is not being used for the purposes of a qualifying activity carried on by the person concerned, but

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- (b) subsequently begins to be used for the purposes of a qualifying activity carried on by that person,
- the plant or machinery lease is a long funding lease if the condition in subsection (3) is met.
- (3) The condition is that (apart from section 70H) the plant or machinery lease would have been a long funding lease at its inception had the plant or machinery been used at that time for the purposes of a qualifying activity carried on by the person concerned.
- (4) This section is subject, in the case of the lessee, to—
- (a) section 70H (requirement for tax return treating lease as long funding lease);
 - (b) section 70Q (leases excluded by right of lessor etc to claim capital allowances).
- (5) See also paragraph 91A of Schedule 22 to [F²FA] 2000 (tonnage tax: certain leases to be treated as not being long funding leases).

Textual Amendments

F2 Word in s. 70G(5) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\), s. 126\(5\)\(a\)](#)

70H Lessee: requirement for tax return treating lease as long funding lease

- (1) A lease is not a long funding lease in the case of the lessee unless he makes a tax return for the initial period on the basis that he falls to be taxed in respect of the lease in accordance with the provisions of—
- ^{F3}(a)
 - (b) Chapter 10A of Part 2 of ITTOIA 2005 (long funding leases: income tax) [^{F4}or
 - (c) Chapter 2 of Part 9 of CTA 2010 (long funding leases of plant or machinery)].
- [Subsection (1) does not apply in respect of a lease of plant or machinery (“lease A”)
^{F5}(1A) if, at any time in the relevant period—
- (a) the lessee is the lessor of a lease of any of that plant or machinery (“lease B”), and
 - (b) lease B is a long funding lease.
- (1B) In subsection (1A) “the relevant period” means the period—
- (a) beginning with the inception of lease A, and
 - (b) ending with the making of the tax return for the initial period (or, if that return is amended, the making of the last amendment).]

[In a case in which paragraphs (a) and (b) of subsection (1) of section 70DA (leaseback
^{F6}(1C) of plant or machinery) are satisfied, subsection (1) of this section does not apply to the lease referred to in section 70DA(1)(b).]

(2) Where, in the case of a lease, a person has made a tax return for the initial period—

 - (a) on the basis that he falls to be taxed in respect of the lease in accordance with those provisions, or
 - (b) on the basis that he does not fall to be so taxed,

he may not make a claim [^{F7}under the recovery provisions for relief in respect of an amount paid or liable to be paid that is excessive by reason of] the tax return having been made on that basis.

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(3) In this section—

[^{F8}“the recovery provisions”] means—

- (a) [^{F9}Schedule 1AB to] the Taxes Management Act 1970; or
- (b) paragraph 51 of Schedule 18 to [^{F10}FA] 1998;

“the initial period” is the first accounting period or, as the case may be, tax year in which there is a difference in the amount of the profits or losses falling to be shown in the return, according to whether the lease is a long funding lease or not;

“tax return” means—

- (a) a company tax return under paragraph 3 of Schedule 18 to [^{F10}FA] 1998, or
- (b) a return under section 8 of the Taxes Management Act 1970 (income tax: personal return).

Textual Amendments

- F3** S. 70H(1)(a) repealed (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 330\(a\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F4** S. 70H(1)(c) and preceding word inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 330\(b\)](#) (with [Sch. 2](#))
- F5** S. 70H(1A)(1B) inserted (with effect in accordance with Sch. 20 para. 8(2) of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 20 para. 8\(1\)](#)
- F6** S. 70H(1C) inserted (with effect in accordance with Sch. 32 para. 17 to the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 32 para. 16](#)
- F7** Words in s. 70H(2) substituted (with effect in accordance with s. 100(2) of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 52 para. 9\(2\)](#)
- F8** Words in s. 70H(3) substituted (with effect in accordance with s. 100(2) of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 52 para. 9\(3\)\(a\)](#)
- F9** Words in s. 70H(3) substituted (with effect in accordance with s. 100(2) of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 52 para. 9\(3\)\(b\)](#)
- F10** Word in s. 70H(3) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\), s. 126\(5\)\(a\)](#)

70I “Short lease”

- (1) Construe “short lease” in accordance with this section.
- (2) A lease whose term is 5 years or less is a short lease.
- (3) Where the term of a lease is—
 - (a) longer than 5 years, but
 - (b) not longer than 7 years,the lease is a short lease if Conditions A, B and C are met.
- (4) Condition A is that the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a finance lease.
- (5) Condition B is that—
 - (a) the residual value of the plant or machinery which is implied in the terms of the lease,is not more than

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- (b) 5% of the market value of the plant or machinery at the commencement of the term of the lease, as estimated at the inception of the lease.
- (6) Condition C is that under the terms of the lease—
- (a) the total rentals falling due in the first reference year, if less than the total rentals falling due in the second reference year, are no more than 10% less than those rentals, and
 - (b) the total rentals falling due in the final year or in any reference year after the second reference year, if greater than the total rentals falling due in the second reference year, are no more than 10% greater than those rentals.
- (7) For the purposes of Condition C—
- (a) the first reference year is the period of 12 months beginning with the day next after the commencement of the term of the lease;
 - (b) the other reference years are successive periods of 12 months each beginning on an anniversary of that day and ending before the last day of the term of the lease;
 - (c) the final year is the period of 12 months ending with the last day of the term of the lease;
 - (d) any part of the final year, other than the last day, may accordingly also be part of a reference year.
- (8) In determining whether Condition C is met, exclude any variation in the rentals that results from changes in a standard published base rate for interest.
- (9) Where—
- (a) a person leases an asset to another (“S”) under a lease that would, apart from this subsection, be a short lease,
 - (b) the inception of that lease is on or after 7th April 2006,
 - (c) at or about the time of the inception of that lease, arrangements are entered into for the asset to be leased to one or more other persons under one or more other leases, and
 - (d) in the aggregate, the term of the lease to S and the terms of the leases to such of those other persons as are connected with S exceed 5 years,
- the lease to S is not a short lease.

[Where plant or machinery is the subject of a lease and finance leaseback (as defined ^{F11}(9A) in section 228A)—

- (a) the finance lease mentioned in section 228A(2)(c), and
- (b) any other finance lease forming part of the arrangements for the lease and finance leaseback (except the lease referred to in section 228A(2)(a)),

is not a short lease (if it otherwise would be).]

[Where plant or machinery is the subject of a sale and finance leaseback (as defined in ^{F12}(10) section 221), any finance lease of a kind mentioned in section 221(1)(c) is not a short lease (if it otherwise would be).

- (11) But, if the conditions set out in section 227(2) are met, B and S (within the meaning of section 221) may make an election the effect of which is that—
- (a) subsection (10) above does not apply,
 - (b) section 228(2) and (3) apply in relation to B (but this does not prevent section 225 from applying), and

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- (c) section 228(5) applies in relation to S.
- (12) Subsections (4) to (6) of section 227 apply in relation to elections under this section as they apply in relation to elections under that section.]

Textual Amendments

- F11** S. 70I(9A) inserted (with effect in accordance with Sch. 20 para. 7(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 7\(1\)](#)
- F12** Ss. 70I(10)-(12) inserted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 6\(6\)](#) (with [Sch. 20 para. 6\(20\)](#))

70J “Funding lease”

- (1) A “funding lease” is a plant or machinery lease (see section 70K) which at its inception meets one or more of the following tests—
- the finance lease test (see section 70N),
 - the lease payments test (see section 70O),
 - the useful economic life test (see section 70P).

[A plant or machinery lease is also a “funding lease” if the plant or machinery is cushion^{F13}(1A) gas.]

- (2) [^{F14}Subsections (1) and (1A) are] subject to the following provisions of this section.
- (3) A plant or machinery lease is not a funding lease if—
- section 67 applies (plant or machinery treated as owned by person entitled to benefit of contract, etc), and
 - the lease is the contract mentioned in that section.
- (4) A plant or machinery lease is not a funding lease if—
- before the commencement of the term of the lease, the lessor has leased the plant or machinery under one or more other plant or machinery leases,
 - in the aggregate, the terms of those other leases exceed 65% of the remaining useful economic life of the plant or machinery at the commencement of the term of the earliest of them, and
 - none of those earlier leases was a funding lease.
- (5) For the purposes of subsection (4), all persons who were lessors of the plant or machinery before 1st April 2006 are to be treated as if they were the same person as the first lessor of the plant or machinery on or after that date.
- (6) A plant or machinery lease is not a funding lease in the case of the lessor if—
- before 1st April 2006, the plant or machinery had, for a period or periods totalling at least 10 years, been the subject of one or more leases, and
 - the lessor under the plant or machinery lease was also lessor of the plant or machinery on the last day before 1st April 2006 on which the plant or machinery was the subject of a lease.

[In this section “cushion gas” means gas that functions or is intended to function as^{F15}(7) plant in a particular gas storage facility.]]

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Textual Amendments

- F13** S. 70J(1A) inserted (with effect in accordance with [s. 28\(8\)](#) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 28\(3\)](#)
- F14** Words in s. 70J(2) substituted (with effect in accordance with [s. 28\(8\)](#) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 28\(4\)](#)
- F15** S. 70J(7) inserted (with effect in accordance with [s. 28\(8\)](#) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 28\(5\)](#)

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