



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 13

#### TAX AVOIDANCE

#### [<sup>F1</sup>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.
- [<sup>F2</sup>(3) If subsection (1)(a) applies, the income is treated as income for the period of account in which there is first an obligation of the kind mentioned there.
- (4) If subsection (1)(b) applies, the income is treated as income for the period of account in which the capital payment is made.
- (5) For the meaning of “capital payment” and “relevant capital payment”, see section 809ZE.

*Status: Point in time view as at 16/12/2010.*

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

- (6) For the meaning of other expressions used in this section or section 809ZC, 809ZD or 809ZE, see section 809ZF.]

**Textual Amendments**

- F2** S. 809ZA(3)-(6) substituted for s. 809ZA(3) (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. 548** (with Sch. 2)

**<sup>F3</sup>809ZB Section 809ZA: interpretation**

**Textual Amendments**

- F3** S. 809ZB repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), Sch. 1 para. 549, **Sch. 3 Pt. 1** (with Sch. 2)

**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 [<sup>F4</sup>section 809ZF(3)]).
- (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).

**Textual Amendments**

- F4** Words in s. 809ZC(1) substituted (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. 550** (with Sch. 2)

**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.

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- (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).]

**[<sup>F5</sup>809ZE Capital payment”, “relevant capital payment” etc**

- (1) This section gives the meaning of “capital payment”, “relevant capital payment” and references to payment for the purposes of sections 809ZA to 809ZD and this section.
- (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 so fall but for section 148A of ITTOIA 2005 (rental earnings under long funding finance lease).
- (3) 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 subsections (6) and (7)).
- (4) Condition A is that the capital payment is payable (or paid), directly or indirectly, by or on behalf of the lessee to the lessor or another person on the lessor's behalf 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).
- (5) 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 it were not made.
- (6) A capital payment is not “relevant” so far as it—
  - (a) reduces the amount of expenditure incurred by the lessor for the purposes of CAA 2001 in respect of the plant or machinery in question or would reduce it but for section 536 of that Act (contributions not made by public bodies and not eligible for tax relief), or
  - (b) is compensation for loss resulting from damage to, or damage caused by, the plant or machinery in question.
- (7) If—
  - (a) a capital payment is an initial payment under a long funding lease for the purposes of Part 2 of CAA 2001 (see section 70YI of that Act), and
  - (b) under section 61 of that Act (disposal events and disposal values) the commencement of the term of the lease (as defined in section 70YI of that Act) is an event that requires the lessor to bring a disposal value into account, the capital payment is only “relevant” so far as it exceeds the amount that is the disposal value for the purposes of Part 2 of that Act.
- (8) References to payment include the provision of value by any means other than the making of a payment.
- (9) 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.

*Status: Point in time view as at 16/12/2010.*

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#### Textual Amendments

**F5** Ss. 809ZE, 809ZF inserted (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. 551** (with Sch. 2)

#### **809ZF Further interpretation of section 809ZA etc**

- (1) This section applies for the purposes of sections 809ZA to 809ZE and this section.
- (2) “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” must be read accordingly.
- (3) “Lease of plant or machinery” includes a lease of plant or machinery and other property, but does not include a lease to which subsection (4) or (5) applies.
- (4) This subsection applies to a lease if any income attributable to it and received by the lessor would be chargeable to tax under Part 3 of ITTOIA 2005 (property income).
- (5) This subsection applies to a lease of plant or machinery if the lessor has incurred on the plant or machinery what would be qualifying expenditure within the meaning of Part 2 of CAA 2001 but for section 34A of that Act (expenditure on plant or machinery for long funding leasing not qualifying expenditure).
- (6) “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.
- (7) Accordingly, “lessor” and “lessee” include prospective and former lessors and lessees.]

#### Textual Amendments

**F5** Ss. 809ZE, 809ZF inserted (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. 551** (with Sch. 2)

**Status:**

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**Changes to legislation:**

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