

**EXPLANATORY MEMORANDUM TO**  
**THE CAPITAL ALLOWANCES (LEASES OF BACKGROUND PLANT OR**  
**MACHINERY FOR A BUILDING) ORDER 2007**

**2007 No. 303**

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.
2. **Description**

The Regulations describe a type of plant or machinery that is excluded from the scope of a new regime for the taxation of certain leases of plant or machinery that was introduced by the Finance Act 2006.
3. **Matters of Special interest to the Select Committee on Statutory Instruments**

None.
4. **Legislative Background**

The Regulations are made under section 70T, Capital Allowances Act 2001. They are the first regulations to be made under that power.
5. **Extent**

The instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy Background**
  - 7.1 A new regime for the taxation of certain leases of plant or machinery was introduced by Schedule 8 to the Finance Act 2006.
  - 7.2 This new regime reduces the difference in tax treatment of plant or machinery acquired using loan finance and lease finance. This difference in treatment, particularly the incidence of tax timing benefits that can be afforded by capital allowances, meant that in some cases commercial decisions could be affected by the tax treatment of the transaction.
  - 7.3 The objective of the new regime is that where leases function as financing transactions, and commercial decisions are affected by the tax treatment, they will be taxed in a similar way to loans. As a consequence, and in general, the new regime applies to longer leases, to which the legislation refers as 'long funding leases'.

- 7.4 The new regime was the subject of extensive consultation. One of the requests made during the consultation process was that plant or machinery that is typically leased with buildings should be outside the scope of the new rules.
- 7.5 The reason for this request is that some types of plant or machinery, such as air conditioning equipment, lifts and escalators, are often found in buildings and bringing such leases within the scope of the new regime would add to the compliance burden. Excluding such leases from the scope of the new regime is consistent with its objective as the decision on whether to lease a building is not generally influenced by the tax treatment of this type of plant or machinery.
- 7.6 Section 70R Capital Allowances Act 2001 (“CAA”) contains the primary definition of this type plant or machinery, to which the legislation refers as ‘background plant or machinery’. Section 70T CAA provides for the making of an order that describes the type of plant or machinery which is, or is not, background plant or machinery.
- 7.7 The Regulations have effect from 1 April 2006, the date on which the new regime took effect.
- 7.8 The Regulations were described in a Technical Note issued by Her Majesty’s Revenue and Customs on 31 March 2006. A draft of the Regulations was published on 1 August 2006 and comments were invited.
- 7.9 Guidance on the primary legislation is currently contained in a Technical Note published on 1 August 2006 ([www.hmrc.gov.uk/leasing/](http://www.hmrc.gov.uk/leasing/)). It will be included in a new Leasing Manual to be published in 2007. Guidance on the Regulations will be made available when they come into force and will be incorporated into a new Leasing Manual to be published in 2007.

## **8. Impact**

A Regulatory Impact Assessment on the new regime for taxing certain leases of plant or machinery was published at Budget 2006 and can be found at <http://www.hmrc.gov.uk/ria/ria-leasingreform.pdf>.

## **9. Contact**

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