

Amendment	Page	Line
*SC173	392	34

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(Brent South - Lab)

Amendment 173

Schedule 23, page 392, line 34, at end insert—

- ‘(1) Section 228C applies subject to this paragraph where—
- (a) the existing leaseback terminates otherwise than by expiry of its term, and
 - (b) the amount calculated in accordance with section 228C(3) exceeds the relevant cap.
- (2) In determining the amount by which income or profits are to be increased under section 228C(2), the amount calculated in accordance with section 228C(3) shall be disregarded to the extent that it exceeds the relevant cap.
- (3) The relevant cap is—

$$(\text{Original Consideration} - \text{Relevant Rentals}) \times \frac{\text{Net Consideration}}{\text{Original Consideration}}$$

where—

“Original Consideration” has the same meaning as in section 228B;

“Relevant Rentals” means—

- (a) the pre-commencement rentals, minus
- (b) the total of—
 - (i) finance charges shown in the accounts for periods that end before 17 March 2004, and
 - (ii) the appropriate proportion of finance charges shown in the accounts for the transitional period of account;

“Net Consideration” has the same meaning as in section 228C.’

EXPLANATORY NOTE

SUMMARY

1. This amendment ensures that the double benefit in any pre-commencement rentals is preserved and not clawed back on termination by the section 228C charge.

DETAILS

2. Sub-paragraph (1) states that section 228C is subject to the new paragraph when the leaseback is terminated early and the section 228C amount is greater than the relevant cap. The relevant cap is defined in sub-paragraph (3).
3. Sub-paragraph (2) states that the amount by which the income or profits are to be increased can be disregarded to the extent that the charge under section 228C(3) exceeds the cap.
4. Sub-paragraph (3) sets the cap. The cap is, broadly, the amount of the original consideration less amounts repaid through pre-commencement rentals, multiplied by the fraction that represents the level of the double benefit. This has the effect of ensuring that the charge cannot exceed the double benefits attributable to rentals paid after Budget day.

BACKGROUND NOTE

5. This clause and Schedule close loopholes in the Capital Allowances legislation that some businesses have used to gain an unintended double benefit.
6. Following publication of the Finance Bill discussions with representatives of, and advisers to, business highlighted an area where the legislation might not have had the intended effect, in some circumstances.
7. This amendment will ensure that the legislation delivers the intention of the Budget announcement and is fair to business.