

Amendment	Page	Line
SC 112	214	4

Dawn Primarolo

(Bristol South - Lab)

Amendment 112

Schedule 8, page 214, [Vol I], leave out lines 4 and 5.

EXPLANATORY NOTE

SUMMARY

1. Amendment 112 removes a power to act retrospectively.

DETAILS

2. Amendment 112 deletes sub-paragraph (a) of sub-section (3) of new section 70T Capital Allowances act 2001.
3. This amendment means that an order under section 70T cannot have retrospective effect.

BACKGROUND NOTE

4. Schedule 8 introduces the new regime for taxing long funding leases of plant or machinery. Leases of certain types of plant or machinery ("background plant or machinery") are outside the scope of the regime.
5. Section 70T allows the Treasury to make an order that helps define what is meant by background plant or machinery. As drafted, the order could have been used with retrospective effect. Whilst this could have assisted lessors it is possible that it could have had the effect of retrospectively creating a tax charge on lessees.
6. The amendment makes sure that an order under section 70T cannot have retrospective effect.

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Dawn Primarolo

(Bristol South - Lab)

Amendment 113

Schedule 8, page 216, line 6 [Vol I], after 'lease' insert '(“the new lease”)'.

Amendment 114

Schedule 8, page 217, line 11 [Vol I], after 'lease' insert '(“the new lease”)'.

EXPLANATORY NOTE

SUMMARY

1. Amendments 113 and 114 define what is meant by the term “the new lease” in new sections 70W and 70X of the Capital Allowances Act 2001.

DETAILS

2. Amendment 113 inserts the words “(“the new lease”)” into subsection 70W(1)(d) after the lease to which they refer has been described. The effect is to define the term “the new lease”.
3. Amendment 114 achieves the same effect for section 70X by inserting the same words into subsection 70X(1)(d).

BACKGROUND NOTE

4. Schedule 8 introduces the new regime for taxing long funding leases of plant or machinery. The new regime identifies whether a lease is – or is not – a long funding lease at the start of the lease.

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5. New section 70W Capital Allowances Act 2001 (CAA) is intended to ensure that the tax classification does not change when a lease is transferred from one lessor to another, as long as the lease otherwise remains essentially unchanged. New section 70X CAA applies in a similar fashion to lessees.
6. The sections work by referring to the “old lease” and the “new lease”; the old lease being the lease before transfer and the new lease being the lease after transfer. The term “old lease” is defined, but the term “new lease” is not.
7. Amendments 113 and 114 insert definitions of the new lease into each of sections 70W and 70X CAA.

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SC 115	245	38

Dawn Primarolo

(Bristol South - Lab)

Amendment 115

Schedule 8, page 245 [Vol I], leave out lines 38 and 39 and insert—

‘unless the lease was finalised (see paragraph 23) before 21st July 2005 and on 17th May 2006 the lessor was within the charge to tax.

As respects any time before 18th May 2006, this subparagraph has effect with the omission of the words “and on 17th May 2006 the lessor was within the charge to tax”.’.

EXPLANATORY NOTE

SUMMARY

1. This amendment ensures that leases that were finalised before 21 July are only excluded from the new tax regime where the lessor was within the charge to tax on 17 May 2006.

DETAILS

2. Amendment 115 replaces the full out words at the end of subparagraph 15(1). The new words ensure –
 - that where the lease was finalised before 21 July 2005 it is only excluded from the new regime where the lessor was within the charge to tax on 17 May 2006, and
 - that amendment does not affect periods before 18 May.
3. Prior to this amendment there was no requirement for the lessor to be within the charge to tax on 17 May 2006.

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BACKGROUND NOTE

4. The basic commencement date for the new regime for taxing long funding leases of plant or machinery is 1 April 2006. Detailed commencement rules are in paragraph 15 of Schedule 8.
5. As they stand, the commencement rules mean that the new regime does not apply to any lease that was finalised before 21 July 2005.
6. This means that were a lessor (or lessee) to move to the UK (or otherwise come within the charge to tax) with leases that were finalised before 21 July 2005 and use the plant or machinery for the purpose of a qualifying activity the existing regime would apply to those leases.
7. This amendment provides that where a lessor or lessee comes within the charge to tax and begins carrying on a qualifying activity on or after 18 May 2006 the new rules apply, whether or not the lease was finalised before 21 July 2005.
8. The amendment also ensures that there is no effect in respect of periods before 18 May so that where a lessor or lessee has already come within the charge to tax with a lease finalised before 21 July 2005 the lease will be taxed under the existing regime, rather than the new regime.

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*SC 116	245	39
*SC 118	246	13

Dawn Primarolo

(Bristol South - Lab)

Amendment 116

Schedule 8, page 245, line 39 [Vol I], at end insert—

‘This sub-paragraph is subject to sub-paragraphs (5) and (6).’.

Amendment 118

Schedule 8, page 246, line 13 [Vol I], at end insert—

- ‘(5) Where the amendments made by this Schedule do not have effect in relation to a lease in the case of the lessor but—
- (a) there is a transfer of plant or machinery,
 - (b) immediately before the transfer, the lessor is within the charge to tax, and
 - (c) the transfer is in circumstances such that, if the amendments made by this Schedule did apply in relation to the lease, section 70W(4)(b) of CAA 2001 (transfers, assignments etc by lessor) would have effect in relation to the new lessor to treat the new lease as a lease which is not a long funding lease,

the amendments made by this Schedule do not have effect in relation to the new lease in the case of the new lessor.

In this sub-paragraph—

“the new lease” means the lease that would be the new lease for the purposes of section 70W of CAA 2001, if that section applied;

“the new lessor” means the person who would be the new lessor for the purposes of that section, if that section applied,

and section 70W(7) of CAA 2001 (construction of references to transfer of plant or machinery) also has effect for the purposes of this sub-paragraph.

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- (6) Where the amendments made by this Schedule do not have effect in relation to a lease in the case of the lessee but—
- (a) there is a transfer of plant or machinery,
 - (b) immediately before the transfer, the lessee is within the charge to tax, and
 - (c) the transfer is in circumstances such that, if the amendments made by this Schedule did apply in relation to the lease, section 70X(4)(b) of CAA 2001 (transfers, assignments etc by lessee) would have effect in relation to the new lessee to treat the new lease as a lease which is not a long funding lease,
- the amendments made by this Schedule do not have effect in relation to the new lease in the case of the new lessee.

In this sub-paragraph—

“the new lease” means the lease that would be the new lease for the purposes of section 70X of CAA 2001, if that section applied;

“the new lessee” means the person who would be the new lessee for the purposes of that section, if that section applied,

and section 70X(7) of CAA 2001 (construction of references to transfer of plant or machinery) also has effect for the purposes of this sub-paragraph.

- (7) In the application of section 70W(4)(b) or 70X(4)(b) of CAA 2001 for the purposes of sub-paragraph (5) or (6), the lease mentioned in paragraph (a) of the sub-paragraph in question is to be regarded as a lease which is not a long funding lease.’.

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EXPLANATORY NOTE

SUMMARY

1. Amendments 116 and 118 ensure that where a lease that is not within the new regime is transferred by one lessor to another (or by one lessee to another) it remains outside the new regime.

DETAILS

2. Amendment 116 makes sub-paragraph (1) of paragraph 15 subject to two new sub-paragraphs (5) and (6).
3. Amendment 118 introduces new sub-paragraphs (5), (6) and (7).

- a. Sub-paragraph (5) applies where a lease that is not affected by Schedule 8 is transferred from one lessor to another, creating a new lease which has the same term as the remaining term of the old lease, and under which the amounts payable are the same as would have been payable under the old lease had it not been transferred. The effect is to ensure that the new lease is also outside the scope of Schedule 8.

The sub-paragraph only applies where the lessor is within the charge to tax immediately before the transfer.

- b. Sub-paragraph (6) applies to lessees but is otherwise equivalent to sub-paragraph (5).
- c. Sub-paragraph (7) ensures that, for the purposes of sub-paragraphs (5) and (6), the old lease is regarded as a lease which is not a long funding lease, thus ensuring the hypothetical applications of sections 70W(4)(b) and 70X(4)(b) work as intended.

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BACKGROUND NOTE

4. New section 70W of the Capital Allowances Act 2001 (CAA) is intended to ensure that where a lease is transferred from one person to another, without other changes, the tax classification of the new lease (long funding or otherwise) is the same as that of the old lease.
5. New section 70X CAA is intended to apply in a similar fashion to lessees.
6. However, sections 70W and 70X only apply where the original lease meets the conditions in paragraph 15(1) of Schedule 8. Therefore where the original lease does not meet those conditions sections 70W and 70X do not apply and the transfer of a lease might bring an existing arrangement within the scope of the Schedule 8, even though all that had happened was that there had been a change of lessor or lessee.
7. Amendments 116 and 118 ensure that where Schedule 8 does not apply to the old lease, sections 70W and 70X apply as if it did, thus ensuring the new lease is not a long funding lease.

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SC 117	246	6

Dawn Primarolo

(Bristol South - Lab)

Amendment 117

Schedule 8, page 246, line 6 [Vol I], leave out from beginning to first 'the' in line 8 and insert—

- '(a) the commencement of the term of the lease was before 1st April 2006, but
- (b) '.

EXPLANATORY NOTE

SUMMARY

1. Amendment 117 removes an unintended interaction between Conditions A and B in paragraph 15 of Schedule 8.

DETAILS

2. Amendment 117 redefines Condition B in paragraph 15 of Schedule 8 so that it refers to leases where the term of the lease commenced before 1 April 2006 but the plant or machinery is not brought into use for a qualifying activity until after that date.

BACKGROUND NOTE

3. As drafted in the Finance Bill, Condition B applies in any case where a lessor or a lessee enters into a lease contract before 1 April 2006 but does not begin to use leased plant or machinery for a qualifying activity until after that date.
4. Thus any lease that was finalised after 21 July 2005 and before 1 April 2006 and which does not meet Condition A will meet Condition B.
5. Conditions A and B were not intended to interact in that way as it would mean that leases that are excepted under paragraph 17 are

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brought with the scope of the Schedule by Condition B, so defeating the object of excepting the lease.

6. Amendment 117 re-drafts Condition B so that this unintended interaction is removed.

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SC 119	261	3

Dawn Primarolo

(Bristol South - Lab)

Amendment 119

Schedule 9, page 261, line 3 [Vol I], after ‘treated’ insert ‘by that person’.

EXPLANATORY NOTE

SUMMARY

1. Amendment 119 clarifies the meaning of new subsection (2B) of section 67 of the Capital Allowances Act 2001.

DETAILS

2. Amendment 119 adds the words ‘by that person’ into subsection (2B) of section 67 of the Capital Allowances Act 2001. This makes it clear that a person can only be treated as owning the plant or machinery if that person accounts for the lease in question as a finance lease (or would do so if he prepared accounts).

BACKGROUND NOTE

3. The Explanatory Note published with the Finance Bill explained that new section (2B) of section 67 of the Capital Allowances Act 2001 –

“provides that a lessee under a hire purchase contract will only be treated as the owner of the plant or machinery (so that he can claim capital allowances) if the contract falls to be treated as a finance lease, or would fall to be treated as a finance lease if the lessee did prepare accounts.”

4. This amendment makes it clear that the lessee can only be treated as owning the plant or machinery where it is the lessee that should

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account for the lease as a finance lease under generally accepted accounting practice (or would do so if he prepared accounts).