

BOARD OF INLAND REVENUE FINANCE BILL 2004
REPORT
***NEW CLAUSE**

Mr Chancellor of the Exchequer

**NEW CLAUSE : RENT FACTORING OF LEASES OF
PLANT OR MACHINERY**

To move the following Clause-

‘(1) After section 785 of the Taxes Act 1988 insert -

“785A Rent factoring of leases of plant or machinery

- (1) This section applies in any case where the following conditions are satisfied -
- (a) a person (call him “P”) is entitled to receive rentals under a lease of plant or machinery,
 - (b) the rentals, so far as receivable by him, fall to be brought into account as income for the purpose of calculating his tax liability,
 - (c) P enters into arrangements for the transfer of his right to receive some or all of the rentals to another person,
 - (d) apart from this section, some or all of the amount or value of the consideration for the transfer (“the relevant portion of the consideration”) would fall to be brought into account neither –
 - (i) as income, nor
 - (ii) as a capital allowances disposal receipt,for the purpose of calculating P’s tax liability.
- (2) In any such case, the relevant portion of the consideration-
- (a) shall be treated for tax purposes as income of P,
 - (b) shall be taxable as rentals receivable by P under the lease (apart from any transfer of his right to receive some or all of the rentals), and

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- (c) shall be brought into account in a period of account to the extent that it is receivable in that period of account.
- (3) Any reference to the transfer from P to another person of a right to receive rentals includes a reference to any arrangement under which rental ceases to form part of the receipts taken into account as income for the purposes of calculating P's tax liability.
- (4) Where P is a partnership, any reference in this section to calculating P's tax liability includes a reference to calculating the tax liability of the partners, notwithstanding that the partnership has legal personality.
- (5) A partnership has legal personality for the purposes of subsection (4) above if it is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.
- (6) In this section -
- “capital allowances disposal receipt” means a disposal receipt within the meaning of Part 2 of the Capital Allowances Act 2001 (see section 60 of that Act);
- “lease” includes an underlease, sublease, tenancy or licence and an agreement for any of those things;
- “tax liability” means liability to income tax or corporation tax.”.
- (2) The amendment made by this section has effect where arrangements for the transfer from one person to another of a right to receive rentals are entered into on or after 2nd July 2004.’.

EXPLANATORY NOTE

SUMMARY

1. The clause prevents tax avoidance based on the sale or other transfer of the right to receive rentals from the leasing of plant and machinery. It ensures that the consideration received for the transfer of the rental streams is taxed as income in cases where it would not otherwise be brought into account as income.

DETAILS OF THE CLAUSE

2. This Clause introduces a new section in the Income and Corporation Taxes Act 1988.
3. Subsection (1) inserts section 785A after section 785 Income and Corporation Taxes Act 1988.

New Section 785A

4. Subsection (1) states that the new section applies when a person transfers to another person his right to receives rentals from the leasing of plant or machinery and some or all of the consideration received for the transfer would be brought into account neither as income nor as a capital allowances disposal receipt.
5. Subsection (2) provides that where the conditions in subsection (1) are met then any consideration not otherwise brought into account as income or as a capital allowances disposal receipt will be treated as rental income and taxed in the period of account in which it is receivable.
6. Subsection (3) explains that the transfer of a right to receive rentals includes any arrangements that result in the rental income no longer being brought into account as income.
7. Subsection (4) explains where there are references to calculating a person's tax liability it shall be taken as including a reference to

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calculating the tax liabilities of the partners even if the partnership has a legal personality.

8. Subsection (5) explains what is meant by a partnership having a legal personality.
9. Subsection (6) explains the meaning of “capital allowances disposal receipt”, “lease” and “tax liability”.

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10. Subsection (2) gives the commencement date as 2 July 2004.

BACKGROUND NOTE

11. The use of sale and finance leaseback and lease and finance leaseback to generate double tax benefits is being addressed by legislation included in the Finance Bill (currently clause 134 and Schedule 23).
12. New arrangements are now being marketed which attempt to obtain similar benefits, but from the sale of lease rental streams. The benefit arises where the consideration received from the sale of a rental stream is either not taxable or covered by otherwise unusable capital losses.
13. Similar legislation was enacted in Finance Act 2000 to prevent avoidance involving the sale of rentals on land and buildings (sections 43A to 43G ICTA 1988).