

**EXPLANATORY NOTE**

**CLAUSE 46: PLANT AND MACHINERY: LONG FUNDING LEASES**

**AMENDMENTS [1 to 3]**

**SUMMARY**

1. Clause 46 makes changes to the disposal formula for long funding leases to ensure all relevant payments for the benefit of the lessee are included. The changes are in response to disclosed avoidance schemes. Amendments [1 to 3] make provision for further exclusions of payments in particular circumstances where it would be inappropriate to include them in the disposal formula.

**DETAILS OF THE AMENDMENT**

2. Amendments [1] and [2] extend further the particular payments which are excluded from being included in the disposal formula within section 70E of Capital Allowances Act 2001 (CAA).
3. The first further exclusion is provided for in new section 70E(2FA)(c)(iii). Initial or other payments made under a relevant superior lease by the lessee under that superior lease to the lessor under that superior lease are now excluded.
4. The second further exclusion is provided for in new section 70E(2FA)(c)(iv). It excludes a payment of sale proceeds of plant and machinery to the seller where that sale meets the conditions set out in new section 70E(2FC).
5. Amendment [3] extends the definitions for the purposes of new section 70E(2FA)
6. New section 70E(2FB) is extended to include not only definition of “payment” but also of “relevant superior lease”, which is a lease to which the long funding lease in new section 70E(2FA)(1)(a) is inferior.
7. New section 70E(2FC) provides the conditions to be met for new section 70E(2FA)(c)(iv) to apply. The conditions are that a person has to have entered into a relevant transaction within section 213(1)(a) of CAA, the plant or machinery is the subject of a sale and leaseback within section 216(1)(b) of CAA and in relation to that sale and leaseback the conditions in section 227(2) of CAA are met.

**BACKGROUND NOTE**

8. Clause 46 was introduced to counter disclosed avoidance schemes which sought to obtain unwarranted tax advantages. These schemes rely on claiming that certain payments for the benefit of a long funding lease are included in the disposal formula applying at the end of the lease, or other prescribed event. The tax advantage arises because the amount of the capital allowances that the lessee can claim in relation to a long funding lease exceeds the actual net relevant expenditure of the lessee under that long funding lease.
9. Clause 46 brings within the disposal formula payments in connection with a long funding lease that are for the benefit of the lessee, or a person connected with the lessee. However, it makes exceptions for payments which have been brought into account otherwise for tax purposes as income or a capital allowances disposal receipt. It also makes two specific exceptions where it was inappropriate to include payments.
10. The Amendment extends the number of specific exceptions to four. It excludes relevant payments under a superior lease which is part of a chain of leases including connected persons. It also excludes payment to a seller of sale proceeds of plant and machinery in a sale and leaseback.



# House of Commons

## PUBLIC BILL COMMITTEE

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### FINANCE (NO. 4) BILL

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David Gauke

1

Clause 46, page 28, line 28, leave out ‘or’.

David Gauke

2

Clause 46, page 28, line 31, at end insert—

- ‘(iii) an initial payment or any other payment made under a relevant superior lease to the person who is the lessor under that lease by the person who is the lessee under that lease, or
- (iv) a payment to the seller of the proceeds of a sale of the plant or machinery to which subsection (2FC) applies,’.

David Gauke

3

Clause 46, page 28, for lines 36 to 38 substitute—

‘(2FB) For the purposes of subsection (2FA)—

“payment” includes the provision of any benefit, the assumption of any liability and any other transfer of money’s worth (and “payable” is to be construed accordingly);

“relevant superior lease” means any lease of the plant or machinery to which the long funding lease mentioned in subsection (1)(a) is inferior.

(2FC) This subsection applies to a sale of the plant or machinery if—

- (a) a person has entered into a relevant transaction with another person in respect of the plant or machinery for the purposes of Chapter 17 of this Part (see section 213) and the sale is within section 213(1)(a),
- (b) the plant or machinery is within section 216(1)(b) (sale and lease back), and
- (c) the conditions in section 227(2) are met.”’.