



# Capital Allowances Act 1990

## 1990 CHAPTER 1

### PART II

#### MACHINERY AND PLANT

#### CHAPTER VI

##### FIXTURES

### 51 Application and interpretation of Chapter VI

- (1) Subject to subsection (8) below, this Chapter shall apply to determine entitlement to an allowance under this Part in respect of expenditure on the provision of machinery or plant which is so installed or otherwise fixed in or to a building or any other description of land as to become, in law, part of that building or other land; and at any time when, by virtue of this Chapter, any machinery or plant is treated as belonging to any person, no other person shall be entitled to such an allowance in respect of it.
- (2) In this Chapter—
  - “equipment lessor”, “equipment lessee” and “equipment lease” have the meanings given by section 53;
  - “fixture” means any such machinery or plant as is referred to in subsection (1) above;
  - “interest in land” and “lease” shall be construed in accordance with subsection (3) below;
  - “relevant land”, in relation to a fixture, means the building or other description of land of which the fixture becomes part.
- (3) In this Chapter “interest in land” means—
  - (a) the fee simple estate in the land or an agreement to acquire that estate;
  - (b) in Scotland, the estate or interest of the proprietor of the *dominium utile* (or, in the case of property other than feudal property, of the owner) and any agreement to acquire such an estate or interest;

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- (c) any leasehold estate in, or in Scotland lease of, the land (whether in the nature of a head-lease, sub-lease or under-lease) and any agreement to acquire such an estate or, in Scotland, lease;
- (d) an easement or servitude or any agreement to acquire an easement or servitude; and
- (e) a licence to occupy land;

and, except in the context of leasing machinery or plant, any reference in the following provisions of this Chapter to a lease is a reference to such a leasehold estate or, in Scotland, lease as is mentioned in paragraph (c) above or to such an agreement as is mentioned in that paragraph (and, in relation to such an agreement, the expression “grant” shall be construed accordingly).

- (4) If an interest in land is conveyed or assigned by way of security and subject to a right of redemption, then, so long as such a right subsists, the interest held by the creditor shall be treated for the purpose of this Chapter as held by the person having that right.
- (5) Any reference in this Chapter to a person being entitled to an allowance in respect of any capital expenditure incurred on the provision of a fixture is a reference to a case where—
  - (a) that person is, for any chargeable period, entitled to a first-year allowance in respect of that expenditure; or
  - (b) that expenditure is taken into account in determining his qualifying expenditure for a chargeable period for the purposes of section 24(2), (3) and (5) (whether or not an allowance is made to him for that period),
 and any reference to a chargeable period for which a person is so entitled is a reference—
  - (i) to the chargeable period referred to in paragraph (a) above; or
  - (ii) to the chargeable period referred to in paragraph (b) above; or
  - (iii) to any chargeable period which is subsequent to that referred to in paragraph (b) above but is not later than the chargeable period in which he is required to bring the disposal value of the fixture concerned into account for the purposes mentioned in paragraph (b) above.
- (6) All such assessments and adjustments of assessments shall be made as may be necessary to give effect to the provisions of this Chapter.
- (7) Where any question arises as to whether any machinery or plant has become, in law, part of a building or other land and that question is material with respect to the liability to tax (for whatever period) of two or more persons, that question shall be determined, for the purposes of the tax of all those persons, by the Special Commissioners who shall determine the question in like manner as if it were an appeal, except that, for the purposes of the determination, all those persons shall be entitled to appear and be heard by, or to make representations in writing to, the Special Commissioners.
- (8) Subsection (1) above—
  - (a) shall not affect the entitlement of any person to an allowance by virtue of section 154;
  - (b) shall not apply in relation to expenditure—
    - (i) which consists of the payment of sums payable under a contract entered into before 12th July 1984; or
    - (ii) which is incurred pursuant to an obligation contained in a lease or agreement for a lease entered into before that date.

## **52 Expenditure incurred by holder of interest in land**

- (1) Subject to subsection (2) below, in any case where—
- (a) a person incurs capital expenditure on the provision of machinery or plant either for the purposes of a trade carried on by him or for leasing otherwise than in the course of a trade, and
  - (b) the machinery or plant becomes a fixture, and
  - (c) at the time the machinery or plant becomes a fixture he has an interest in the relevant land,

then, subject to sections 53 and 57, on and after that time the fixture shall be treated for the purposes of this Part as belonging to the person concerned in consequence of his incurring the expenditure.

- (2) If, in respect of the same fixture, there are two or more persons with different interests in the relevant land to whom, by virtue of subsection (1) above, the fixture would (apart from this subsection) be treated as belonging for the purposes of this Part, the only interest which shall be taken into account under that subsection is—
- (a) if one of the interests is an interest falling within section 51(3)(d), that interest;
  - (b) if paragraph (a) above does not apply but one of the interests is an interest falling within section 51(3)(e), that interest; and
  - (c) in any other case—
    - (i) except in Scotland, that interest which is not in reversion (at law or in equity and whether directly or indirectly) on any other interest in the relevant land which is held by any of the persons referred to above; and
    - (ii) in Scotland, that of whichever of those persons has, or last had, the right of use of the relevant land.

## **53 Expenditure incurred by equipment lessor**

- (1) In any case where—
- (a) a person (“the equipment lessor”) incurs capital expenditure on the provision of machinery or plant for leasing, and
  - (b) an agreement is entered into for the lease, directly or indirectly from the equipment lessor, of the machinery or plant (otherwise than as part of the relevant land) to another person (“the equipment lessee”) for the purposes of a trade carried on by the equipment lessee or for leasing otherwise than in the course of a trade, and
  - (c) the machinery or plant becomes a fixture, and
  - (d) if the expenditure referred to in paragraph (a) above had been incurred by the equipment lessee, the fixture would, by virtue of section 52 have been treated for the purposes of this Part as belonging to him in consequence of his incurring the expenditure, and
  - (e) the equipment lessor and the equipment lessee elect that this section should apply,

then, subject to section 57, on and after the time at which the expenditure is incurred the fixture shall be treated for the purposes of this Part as belonging to the equipment lessor in consequence of his incurring the expenditure.

- (2) An election under this section shall be made by notice to the inspector given before the expiry of the period of two years beginning at the end of the chargeable period

related to the incurring of the expenditure referred to in subsection (1)(a) above; but no election may be made under this section if the equipment lessor and the equipment lessee are connected with each other within the terms of section 839 of the principal Act.

- (3) Where an election has been made under this section with respect to a fixture, nothing in section 52 shall have the effect of treating the fixture for the purposes of this Part as belonging to the equipment lessee.
- (4) In this Chapter “equipment lease” means such an agreement as is mentioned in subsection (1)(b) above or a lease entered into pursuant to such an agreement.

#### **54 Expenditure included in consideration for acquisition of existing interest in land**

(1) In any case where—

- (a) after any machinery or plant has become a fixture, a person (“the purchaser”) acquires an interest in the relevant land, being an interest which was in existence prior to his acquisition of it, and
- (b) the consideration which the purchaser gives for that interest is or includes a capital sum which, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture, and
- (c) at the time of the purchaser’s acquisition of his interest in the relevant land, either no person has previously become entitled to an allowance in respect of any capital expenditure incurred on the provision of the fixture or, if any person has become so entitled, that person has been or is required to bring the disposal value of the fixture into account under section 24,

then, subject to section 57, on and after the purchaser’s acquisition of his interest in the relevant land, the fixture shall be treated for the purposes of this Part as belonging to him in consequence of his incurring expenditure as mentioned in paragraph (b) above.

(2) If, in a case where subsection (1)(a) above applies—

- (a) the machinery or plant was, prior to the purchaser’s acquisition of the interest in the relevant land, let under an equipment lease, and
- (b) in connection with the acquisition of the interest in the relevant land, the purchaser pays a capital sum to discharge the obligations of the equipment lessee under the equipment lease,

subsection (1) above shall apply as if that capital sum were such a capital sum as is referred to in paragraph (b) of that subsection.

#### **55 Expenditure incurred by incoming lessee: transfer of allowances**

(1) In any case where—

- (a) after any machinery or plant has become a fixture, a person (“the lessor”) who has an interest in the relevant land grants a lease, and
- (b) apart from section 57, the lessor would be entitled, for the chargeable period related to the grant of the lease, to an allowance in respect of expenditure incurred on the provision of the fixture, and
- (c) the consideration which the lessee gives for the lease is or includes a capital sum which, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture, and
- (d) the lessor and the lessee make an election under this section,

then, subject to section 57, on and after the grant of the lease, the fixture shall be treated for the purposes of this Part as belonging to the lessee in consequence of his incurring expenditure as mentioned in paragraph (c) above.

- (2) In any case where the lessor is not within the charge to tax, it shall be assumed that he is within that charge for the purpose of determining whether the condition in subsection (1)(b) above is fulfilled.
- (3) An election under this section shall be made by notice to the inspector given within two years after the date on which the lease takes effect.
- (4) No election may be made under this section if—
  - (a) the lessor and the lessee are connected with each other within the terms of section 839 of the principal Act; or
  - (b) it appears that the sole or main benefit which may be expected to accrue to the lessor from the grant of the lease and the making of an election is the obtaining of an allowance or deduction or a greater allowance or deduction or the avoidance or reduction of a charge under this Part.

## **56 Expenditure incurred by incoming lessee: lessor not entitled to allowances**

In any case where—

- (a) after any machinery or plant has become a fixture, a person (“the lessor”) who has an interest in the relevant land grants a lease, but section 55(1)(b) does not apply in his case, and
- (b) the consideration which the lessee gives for the lease is or includes a capital sum which, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture, and
- (c) at the time of the grant of the lease, no person has previously become entitled to an allowance in respect of any capital expenditure incurred on the provision of the fixture, and
- (d) the fixture has not before that time been used for the purposes of a trade by the lessor or any person connected with him within the terms of section 839 of the principal Act,

then, subject to section 57, on and after the grant of the lease, the fixture shall be treated for the purposes of this Part as belonging to the lessee in consequence of his incurring expenditure as mentioned in paragraph (b) above.

## **57 Fixtures treated as ceasing to belong to particular persons**

- (1) The provisions of this section and section 58 are without prejudice to any other circumstances in which the disposal value of a fixture falls to be brought into account in accordance with section 24.
- (2) Subject to subsection (4) below, if at any time the person to whom a fixture is treated for the purposes of this Part as belonging by virtue of any of sections 52, 54, 55 and 56 ceases (whether by reason of the transfer, surrender or expiry of the interest or otherwise) to have the qualifying interest, the fixture shall be treated for those purposes as ceasing to belong to him at that time.
- (3) In this section and section 59 “the qualifying interest” means—

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(a) where section 52 or 54 applies, the interest in the relevant land referred to in that section; and

(b) where section 55 or 56 applies, the lease referred to in that section;

but if the qualifying interest is an agreement to acquire an interest in land and that interest in land is subsequently transferred or granted to the person referred to in subsection (2) above, the interest so transferred or granted shall be treated as the same interest as the qualifying interest.

(4) For the purposes of subsection (2) above—

(a) if the qualifying interest ceases to exist by reason of its merger in another interest acquired by the person referred to in that subsection, that other interest shall be treated as the same interest as the qualifying interest;

(b) if the qualifying interest is a lease and, on its termination, a new lease of the relevant land (with or without other land) is granted to the lessee, the new lease shall be treated as the same interest as the qualifying interest;

(c) if the qualifying interest is a licence and, on its termination, a new licence to occupy the relevant land (with or without other land) is granted to the licensee, the new licence shall be treated as the same interest as the qualifying interest;

(d) if the qualifying interest is a lease and, with the consent of the lessor, the lessee remains in possession of the relevant land after the termination of the lease but without a new lease being granted to him, the qualifying interest shall be treated as continuing to subsist so long as the lessee remains in possession of the relevant land.

(5) At the time at which, by virtue of section 55, the fixture concerned begins to be treated for the purposes of this Part as belonging to the lessee, it shall be treated for those purposes as ceasing to belong to the lessor (as defined in that section).

(6) Where, by virtue of subsection (2) above, on the termination of a lease or licence, a fixture is treated for the purposes of this Part as ceasing to belong to the outgoing lessee or licensee, it shall, on that termination, be treated for those purposes as beginning to belong to the person who, immediately before the termination, was the lessor under the lease or, as the case may be, the licensor under the licence.

(7) If at any time a fixture is permanently severed from the relevant land (so that it ceases to be a fixture) and, immediately before that time, it was treated for the purposes of this Part as belonging to any person by virtue of any provision of sections 51 to 56, subsections (1) to (6) above or section 58(2) or (4), then, unless on its severance the fixture does in fact belong to that person, it shall be treated for those purposes as ceasing to belong to him at that time.

## **58 Equipment lessors: special provisions**

(1) If, by virtue of an election under section 53, a fixture is treated for the purposes of this Part as belonging to the equipment lessor and either—

(a) the equipment lessor at any time assigns his rights under an equipment lease, or

(b) the financial obligations of the equipment lessee under an equipment lease are at any time discharged, on the payment of a capital sum or otherwise,

then, at that time (or, as the case may be, the earliest of those times) the fixture shall be treated for the purposes of this Part as ceasing to belong to the equipment lessor by reason of a sale by him of the fixture.

- (2) If subsection (1)(a) above applies, then, on and after the time of the assignment referred to in that paragraph, the fixture to which the agreement in question relates shall be treated for the purposes of this Part as belonging to the assignee and the consideration given by him for the assignment shall be treated for those purposes—
- (a) as the price received for the sale of the fixture by the assignor; and
  - (b) as expenditure incurred by the assignee on acquiring the fixture.
- (3) On and after an assignment falling within paragraph (a) of subsection (1) above, that subsection shall have effect as if the machinery or plant (as a fixture) were treated for the purposes of this Part as belonging to the assignee by virtue of an election under section 53 and, accordingly, as if the assignee were the equipment lessor, as defined in that section.
- (4) Where a capital sum is paid as mentioned in subsection (1)(b) above, that capital sum shall be treated for the purposes of this Part—
- (a) as the price received for the sale of the fixture by the equipment lessor; and
  - (b) if that capital sum is paid by the equipment lessee, as expenditure incurred by him on the provision of the fixture;
- and where paragraph (b) above applies, on and after the time of that payment, the fixture shall be treated for the purposes of this Part as belonging to the equipment lessee.
- (5) Where the financial obligations of the equipment lessee under an equipment lease have become vested in any other person (by assignment, operation of law or otherwise) any reference in subsection (1)(b) or (4) above to the equipment lessee shall be construed as a reference to the person in whom those obligations are for the time being vested when the capital sum is paid.

## **59 Disposal value of fixtures in certain cases**

- (1) In any case where—
- (a) by virtue of section 57, a fixture is at any time treated for the purposes of this Part as ceasing to belong to any person (“the former owner”), and
  - (b) the qualifying interest continues in existence after that time (whether in the hands of the former owner or any other person) or would so continue but for its becoming merged in another interest, and
  - (c) the occasion of the fixture ceasing to belong to the former owner is not its permanent severance from the relevant land (whether on disposal, demolition, destruction or otherwise),
- the fixture shall be treated for the purposes of this Part as sold at that time by the former owner for a price determined in accordance with subsections (2) to (6) below.
- (2) Subject to subsection (6) below, if the occasion of the fixture ceasing to belong to the former owner is the sale of the qualifying interest, the price referred to in subsection (1) above is that portion of the sale price of the qualifying interest which falls (or, if the purchaser were entitled to an allowance, would fall) to be treated for the purposes of this Part as expenditure incurred by the purchaser on the provision of the fixture.
- (3) If the fixture ceases to belong to the former owner by virtue of section 57(5), the price referred to in subsection (1) above is so much of the capital sum referred to in section 55(1)(c) as falls to be treated for the purposes of this Part as expenditure by the lessee on the provision of the fixture.

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- (4) If neither subsection (2) nor subsection (3) above applies, the price referred to in subsection (1) above is that portion of the price which, on a sale of the qualifying interest in the open market, would fall to be treated for the purposes of this Part as expenditure by the purchaser on the provision of the fixture.
- (5) The sale referred to in subsection (4) above shall be assumed to take place immediately before the event which causes the fixture to be treated for the purposes of this Part as ceasing to belong to the former owner; but that event shall be disregarded in determining the open market price on that sale.
- (6) If the sale referred to in subsection (2) above is at a price lower than that which the qualifying interest would have fetched if sold in the open market, that subsection shall not apply unless the purchaser's expenditure on the acquisition of the fixture can be taken into account as mentioned in section 26(1)(b)(i).
- (7) If the occasion of the fixture ceasing to belong to the former owner is the expiry of the qualifying interest, then, except in so far as the former owner receives any capital sum, by way of compensation or otherwise, by reference to the fixture, the disposal value of the fixture which falls to be brought into account under section 24 shall be nil.
- (8) In any case where—
- (a) the disposal value of a fixture falls to be brought into account in accordance with section 24 on the permanent discontinuance of the trade in circumstances where that value falls to be determined under paragraph (e) of subsection (1) of section 26; and
  - (b) before the occurrence of the later event referred to in that paragraph, the fixture is not permanently severed from the relevant land,
- that paragraph shall apply as if the reference therein to paragraphs (a) and (b) of that subsection were omitted; but if the event which follows the discontinuance of the trade is the sale of the qualifying interest, the disposal value of the fixture to be brought into account under those sections shall be that portion of the sale price referred to in subsection (2) above.
- (9) If the disposal value of the fixture falls to be brought into account in accordance with section 24 on its beginning to be used wholly or partly for purposes which are other than those of the trade, section 26(1)(f) shall apply as if the reference to the price which the machinery or plant would have fetched if sold on the open market were a reference to that portion of the price referred to in subsection (4) above.
- (10) If, on the occasion of the fixture being treated by virtue of section 57 as ceasing to belong to the former owner—
- (a) another person incurs expenditure on the provision of the fixture, and
  - (b) the former owner brings a disposal value into account in accordance with section 24,
- there shall be disregarded for the purposes of this Part so much (if any) of that expenditure as exceeds that disposal value.
- (11) In relation to expenditure incurred before 27th July 1989, subsection (10) above shall have effect with the substitution for the words following “to the former owner” of the words “another person incurs expenditure on the provision of the fixture, there shall be disregarded so much (if any) of that expenditure as exceeds the disposal value which the former owner is required to bring into account in accordance with section 24”.