



# Capital Allowances Act 1990

## 1990 CHAPTER 1

### PART II

#### MACHINERY AND PLANT

#### CHAPTER V

##### LEASED ASSETS AND INEXPENSIVE CARS

### **39**    **Meaning of “qualifying purpose”**

- (1) Machinery or plant on the provision of which a person (“the buyer”) has incurred expenditure is used for a qualifying purpose at any time if at that time any of the conditions specified in subsections (2) to (5) below are satisfied.
- (2) The machinery or plant is leased to a lessee who uses it for the purposes of a trade, otherwise than for leasing, and either—
  - (a) the buyer’s expenditure was old expenditure and, disregarding the words “to which this section applies” in subsection (1) of section 22 and subsections (2) and (3) of that section, a first-year allowance could have been made to the lessee if he had bought the machinery or plant at that time and had incurred capital expenditure in doing so, or
  - (b) the buyer’s expenditure was new expenditure and, had the lessee bought the machinery or plant at that time and had incurred new expenditure in doing so, that expenditure would have fallen to be included, in whole or in part, in the lessee’s qualifying expenditure for any chargeable period for the purposes of section 24(2) to (5).

For the purposes of paragraph (a) above, section 148(5) and (6) shall be disregarded.

- (3) The buyer uses the machinery or plant for short-term leasing.

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- (4) The machinery or plant is leased to a lessee who uses it for short-term leasing and either is resident in the United Kingdom or so uses it in the course of a trade carried on by him there.
- (5) The buyer uses the machinery or plant for the purposes of a trade otherwise than for leasing.
- (6) Without prejudice to subsections (1) to (5) above but subject to subsection (8) below, a ship is also used for a qualifying purpose at any time when it is let on charter in the course of a trade which consists of or includes operating ships if—
  - (a) the person carrying on the trade is resident in the United Kingdom or carries on the trade there, and
  - (b) that person is responsible as principal (or appoints another person to be responsible in his stead) for navigating and managing the ship throughout the period of the charter and for defraying all expenses in connection with the ship throughout that period or substantially all such expenses other than those directly incidental to a particular voyage or to the employment of the ship during that period.
- (7) Subsection (6) above shall with the necessary modifications apply also in relation to aircraft.
- (8) Subsection (6) above does not apply if the main object, or one of the main objects, of the letting of the ship or aircraft on charter, or of a series of transactions of which the letting on charter was one, or of any of the transactions in such a series was to obtain—
  - (a) if the expenditure in question is old expenditure, a first-year allowance, or
  - (b) if the expenditure in question is new expenditure, a writing-down allowance of an amount determined without regard to section 42(2),
 in respect of expenditure incurred on the provision of the ship or aircraft whether that expenditure was incurred by the person referred to in subsection (6)(a) above or some other person.
- (9) Without prejudice to subsections (1) to (5) above, a transport container is also used for a qualifying purpose at any time when it is leased in the course of a trade which is carried on by a person who is resident in the United Kingdom or who carries on the trade there if—
  - (a) the trade consists of or includes the operation of ships or aircraft and the container is at other times used by that person in connection with the operation of ships or aircraft, or
  - (b) the container is leased under a succession of leases to different persons who, or most of whom, are not connected with each other.
- (10) For any part of the requisite period for which the machinery or plant belongs to a person falling within section 40(5)(a) or (b), that person shall be treated for the purposes of subsections (3) and (5) above as the buyer.

#### **40 Meaning of “short-term leasing” and “the requisite period”**

- (1) In this Chapter “short-term leasing”, in relation to any machinery or plant, means leasing the machinery or plant in such a manner—
  - (a) that—

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- (i) the number of consecutive days for which it is leased to the same person will normally be less than 30, and
    - (ii) the total number of days for which it is leased to the same person in any period of 12 months will normally be less than 90, or
  - (b) that—
    - (i) the number of consecutive days for which it is leased to the same person will not normally exceed 365, and
    - (ii) subject to subsection (2) below, the aggregate of the periods for which it is leased in the requisite period to lessees in circumstances not falling within section 39(2) will not exceed two years.
- (2) In a case where the requisite period exceeds four years the reference in subsection (1)(b)(ii) above to that period shall be construed as a reference to any period of four consecutive years which falls within the requisite period.
- (3) For the purposes of subsection (1) above, persons who are connected with each other shall be treated as the same person and where any machinery or plant is leased as one of a number of items which form part of a pool of items of the same or a similar description and are not separately identifiable, all the items in the pool may be treated as used for short-term leasing within the meaning of that subsection if substantially the whole of the items in the pool are so used.
- (4) For the purposes of this Chapter the requisite period is—
  - (a) in the case of expenditure not falling within paragraph (b) below, the period of four years beginning with the date on which the machinery or plant is first brought into use by the person who incurred the expenditure, or
  - (b) in the case of—
    - (i) new expenditure, or
    - (ii) old expenditure as respects which section 70(3) of the Finance Act 1982 had effect,the period of ten years beginning with the date on which the machinery or plant is first brought into use by the person who incurred the expenditure;except that where the machinery or plant ceases to belong to that person at any time before the end of those four years or ten years (as the case may be), the requisite period shall end at that time.

If the circumstances are such that machinery or plant is used for a qualifying purpose, this subsection shall have effect with the substitution for each reference to ten years of a reference to four years.
- (5) For the purposes of subsection (4) above, machinery or plant shall be treated as continuing to belong to the person who incurred the expenditure so long as it belongs to—
  - (a) a person who is connected with him, or
  - (b) a person who acquired it from him as a result of one or more disposals on the occasion of which, or each of which, the trade carried on by the person making the disposal was treated as continuing by virtue of section 113(2) or 114(1) of the principal Act.

#### **41 Writing-down allowances etc. for leased assets and inexpensive cars**

- (1) Where—

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- (a) section 42 applies to expenditure on the provision of machinery or plant for leasing in the course of a trade, or
- (b) section 22(4)(c) precludes, or would but for section 75 preclude, the making of a first-year allowance in respect of expenditure incurred by a person on the provision of machinery or plant for leasing in the course of a trade, or
- (c) paragraph (a) above does not apply and expenditure is incurred on the provision for the purposes of a trade of a motor car to which section 34 does not apply,

then, subject to the following provisions of this Chapter, subsections (2) to (6) below shall have effect with respect to the allowances and charges to be made in the case of the trade (“the actual trade”) under section 24.

- (2) It shall be assumed for the purposes of sections 24, 25 and 26—
  - (a) that the person carrying on the trade incurred the expenditure on the provision of the machinery or plant wholly and exclusively for the purposes of a trade carried on by him separately from the actual trade and any other trade carried on by him; and
  - (b) that without prejudice to section 24(6)(c)(i) to (iii), the separate trade is permanently discontinued when the machinery or plant begins to be used wholly or partly for purposes other than those of the actual trade;
 and the allowance or charge under section 24 which, on those assumptions and having regard to subsections (3) and (4) below, would fall to be made for any chargeable period in the case of the separate trade shall be made for that period in the case of the actual trade.
- (3) If an allowance under section 24 falling by virtue of this section to be made for any chargeable period in the case of the actual trade is not claimed or is disclaimed under subsection (4) of that section, or is reduced in amount in accordance with a requirement under subsection (3) or under subsection (4) of that section, then in determining the allowance or charge under that section which would fall to be made for any subsequent chargeable period in the case of the separate trade, any allowance falling to be made in the case of that trade for the first-mentioned chargeable period shall be treated as not claimed or as disclaimed or, as the case may require, as proportionately reduced.
- (4) Where in the case of any person sections 24, 25 and 26 apply in accordance with this section to different items of machinery or plant—
  - (a) those sections shall apply separately in relation to expenditure falling within paragraph (a) of subsection (1) above and to expenditure falling within paragraph (b) or (c) of that subsection; and
  - (b) if there is more than one item of machinery or plant falling within subsection (1)(a) above or within subsection (1)(b) or (c) or one item of machinery or plant falling within subsection (1)(b) and one falling within subsection (1)(c), those sections shall apply as if the separate trade for which each such item is treated as used were the same trade, and accordingly that trade shall not by virtue of subsection (2)(b) above be treated as permanently discontinued until all the items falling within subsection (1)(a) or subsection (1)(b) and (c) begin to be used wholly or partly for purposes other than those of the actual trade.
- (5) Where sections 24, 25 and 26 have effect in accordance with this section in respect of expenditure incurred by a person providing machinery or plant for the purposes of a trade, then, if the machinery or plant is disposed of by him to a person who is

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connected with him and the disposal is not on an occasion on which the trade is treated as continuing by virtue of section 113(2), 114(1) or 343(2) of the principal Act or section 77(1) of this Act—

- (a) the disposal value to be brought into account under sections 24, 25 and 26 in the case of the separate trade shall be of an amount equal to the price which the machinery or plant would have fetched on a sale at the same time in the open market or, if less, the capital expenditure incurred or treated as incurred on the provision of the machinery or plant by the person disposing of it; and
  - (b) the person acquiring it shall be treated for the purposes of this Part as having incurred on its provision expenditure equal to that disposal value.
- (6) This section does not apply to machinery or plant in relation to which sections 24, 25 and 26 apply in accordance with section 34, 79 or 80.

## **42 Assets leased outside the United Kingdom**

(1) This section has effect with respect to expenditure on the provision of machinery or plant for leasing where the machinery or plant is at any time in the requisite period used for the purpose of being leased to a person who—

- (a) is not resident in the United Kingdom, and
- (b) does not use the machinery or plant for the purposes of a trade carried on there or for earning profits or gains chargeable to tax by virtue of section 830(4) of the principal Act,

and where the leasing is neither short-term leasing nor the leasing of a ship, aircraft or transport container which is used for a qualifying purpose by virtue of section 39(6) to (9).

(2) In their application to expenditure falling within subsection (1) above, sections 24, 25 and 26 as they have effect—

- (a) in accordance with section 41, or
- (b) in accordance with section 80, or
- (c) in accordance with section 34, or
- (d) with respect to any motor car to which section 35(1) applies, or
- (e) with respect to machinery or plant to which section 61 applies,

shall have effect, subject to subsection (3) below, as if the reference in section 24(2) to 25 per cent. were a reference to 10 per cent.

(3) No balancing allowances or writing-down allowances shall be available in respect of expenditure falling within subsection (1) above if the circumstances are such that the machinery or plant in question is used otherwise than for a qualifying purpose and—

- (a) there is a period of more than one year between the dates on which any two consecutive payments become due under the lease; or
- (b) any payments other than periodical payments are due under the lease or under any agreement which might reasonably be construed as being collateral to the lease; or
- (c) disregarding variations made under the terms of the lease which are attributable to—
  - (i) changes in the rate of corporation tax or income tax, or
  - (ii) changes in the rate of capital allowances, or
  - (iii) changes in any rate of interest where the changes are linked to changes in the rate of interest applicable to inter-bank loans, or

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- (iv) changes in the premiums charged for insurance of any description by a person who is not connected with the lessor or the lessee, any of the payments due under the lease or under any such agreement as is referred to in paragraph (b) above, expressed as monthly amounts over the period for which that payment is due, is not the same as any other such payment expressed in the same way; or
- (d) either the lease is expressed to be for a period which exceeds 13 years or there is, in the lease or in a separate agreement, provision for extending or renewing the lease or for the grant of a new lease so that, by virtue of that provision, the machinery or plant could be leased for a period which exceeds 13 years; or
- (e) at any time the lessor or a person connected with him will, or may in certain circumstances, become entitled to receive from the lessee or any other person a payment, other than a payment of insurance moneys, which is of an amount determined before the expiry of the lease and which is referable to a value of the machinery or plant at or after that expiry (whether or not the payment relates to a disposal of the machinery or plant).
- (4) Where a balancing allowance or a writing-down allowance has been made in respect of expenditure incurred in providing machinery or plant and, at any time in the requisite period, an event occurs such that, by virtue of subsection (3) above, there is no right to that allowance, an amount equal to any such allowance which has previously been given (less any excess reliefs previously recovered by the operation of section 46) shall, in relation to the person to whom the machinery or plant belongs immediately before the occurrence of that event, be treated as if it were a balancing charge to be made on him for the chargeable period in which, or in the basis period for which, the machinery or plant is used at the time that event occurs.
- (5) For the purposes of subsection (4) above, the allowances that have been made in respect of expenditure on any item of machinery or plant shall be determined as if that item were the only item of machinery or plant in respect of which sections 24, 25 and 26 had effect.
- (6) Subsection (7) below applies where—
- (a) by virtue of subsection (4) above any amount falls to be treated as if it were a balancing charge, and
  - (b) the person on whom the balancing charge is, by virtue of subsection (4), to be made acquired the machinery or plant in question as a result of a transaction which was, or a series of transactions each of which was, between connected persons, and
  - (c) a first-year allowance, a balancing allowance or a writing-down allowance in respect of expenditure on the provision of that machinery or plant has been made to any of those persons;
- except that it does not apply where section 113(2), 114(1) or 343(2) of the principal Act or section 77(1)(a) or (b) of this Act applied on the occasion of the transaction or transactions referred to in paragraph (b) above.
- (7) Where this subsection applies—
- (a) subsection (4) above shall have effect as if it referred to the allowances specified in subsection (6)(c) above; and
  - (b) for the purposes of subsection (4) any consideration paid or received on a disposal of the machinery or plant between connected persons shall be disregarded; and

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- (c) if a balancing allowance or balancing charge is made in respect of the machinery or plant, there shall be made such adjustments of the relief falling to be taken into account by virtue of paragraph (a) above as are just and reasonable in the circumstances.
- (8) For the purposes of the application of this section to old expenditure, this section shall have effect subject to the following modifications—
- (a) in subsection (1) for the words from “neither” to the end there shall be substituted the words “not short-term leasing”;
  - (b) subsection (4) above shall have effect as if—
    - (i) it included a reference to a first-year allowance made in respect of old expenditure, and, for this purpose, subsection (3) above shall be deemed to include a reference to first-year allowances; and
    - (ii) for the reference to section 46 there were substituted a reference to section 47; and
  - (c) subsection (5) shall be omitted.

#### **43 Joint lessees: new expenditure**

- (1) This section shall have effect in any case where machinery or plant is leased to two or more persons jointly and—
- (a) at least one of them is a person falling within section 42(1)(a) and (b); and
  - (b) the leasing is not permitted leasing; and
  - (c) the expenditure in question is new expenditure.
- (2) If at any time when the machinery or plant is leased as mentioned in subsection (1) above the lessees use the machinery or plant for the purposes of a trade or trades, otherwise than for leasing, the expenditure on the provision of the machinery or plant shall be treated as not falling within section 42(1) if and to the extent to which it appears that the profits or gains of the trade or trades arising throughout the requisite period (or the period of the lease, if shorter) will be chargeable to income tax or corporation tax.
- (3) Where, by virtue of subsection (2) above, part only of the expenditure on the provision of any machinery or plant is treated as not falling within section 42(1), then, whether or not the machinery or plant continues to be leased as mentioned in subsection (1) above, sections 24, 25, 26, 41 and 42 shall have effect as if—
- (a) that part were expenditure on the provision of a separate item of machinery or plant; and
  - (b) the remainder were expenditure (falling within section 42(1)) on the provision of another item of machinery or plant used otherwise than for a qualifying purpose;
- and there shall be made all such apportionments as are necessary in consequence of this subsection.

#### **44 Further provisions relating to joint lessees in cases involving new expenditure**

- (1) Without prejudice to the operation of section 46, this section shall have effect where new expenditure is incurred on the provision of machinery or plant which is leased as mentioned in section 43(1).

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- (2) Where, by virtue of section 43(2), the whole or part of the new expenditure has qualified for a normal writing-down allowance and, at any time in the requisite period while it is leased as mentioned in that subsection—
- (a) no lessee uses the machinery or plant for the purposes of a trade or trades the profits or gains of which are chargeable to income tax or corporation tax, and
  - (b) section 42(4) does not apply at that time and has not applied at any earlier time,
- sections 46 and 48(2) shall have effect as if the separate item of machinery or plant referred to in section 43(3)(a) had at that time begun to be used for the purpose of being leased to a non-resident, otherwise than by permitted leasing.
- (3) Where the whole or part of any new expenditure has qualified for a normal writing-down allowance and the machinery or plant is subsequently leased in the requisite period as mentioned in section 43(1), subsection (2) above shall apply as if the whole of the expenditure had qualified for a normal writing-down allowance by virtue only of section 43(2).
- (4) Where, by virtue of section 43(2), the whole or part of the new expenditure has qualified for a normal writing-down allowance and, at the end of the requisite period, the machinery or plant in question is leased as mentioned in section 43(1) but subsection (2) above has not had effect, then, if it appears that the extent to which the machinery or plant has been used for the purposes of such a trade or trades as are referred to in subsection (2) above is less than that which was taken into account in determining the amount of the new expenditure which qualified for a normal writing-down allowance—
- (a) section 46 shall have effect as if a part of the expenditure corresponding to the reduction in the extent of such use were expenditure on the provision of a separate item of machinery or plant used for the purpose of leasing to a non-resident, otherwise than by permitted leasing, on the last day of the requisite period; and
  - (b) any disposal value subsequently brought into account in respect of the machinery or plant under section 24 shall, instead of being apportioned in accordance with section 43(3), be apportioned by reference to the extent of such use as determined at the end of that period.

#### **45 Joint lessees: old expenditure**

- (1) Sections 22(4)(c), 23, 39, 40, 41 and 47 shall have effect in accordance with this section where the expenditure in question is not new expenditure and the machinery or plant is leased to two or more persons jointly.
- (2) Section 39(2)(a) shall not apply at any time when the machinery or plant is leased to two or more persons jointly but if the lessees use the machinery or plant for the purposes of a trade or trades, otherwise than for leasing, it shall be regarded as used for a qualifying purpose if and to the extent to which it appears that the profits or gains of the trade or trades arising throughout the requisite period (or the period of the lease, if shorter) will be chargeable to income tax or corporation tax.
- (3) Where, by virtue of subsection (2) above, a first-year allowance may be made in respect of part only of the expenditure on the provision of any machinery or plant, then, whether or not the machinery or plant continues to be leased to two or more persons jointly, sections 24, 25, 26, 41 and 47 shall have effect as if—



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- (a) that part were expenditure on the provision of a separate item of machinery or plant; and
- (b) the remainder were expenditure on the provision of another item of machinery or plant;

and there shall be made all such apportionments as are necessary in consequence of this subsection.

- (4) Where by virtue of subsection (2) above a first-year allowance has been made in respect of the whole or part of the expenditure on the provision of any machinery or plant and at any time in the requisite period while it is leased as mentioned in subsection (1) above no lessee uses it for the purpose of a trade or trades the profits or gains of which are chargeable to income tax or corporation tax, section 47 shall have effect as if the machinery or plant or, as the case may be, the separate item referred to in subsection (3)(a) above had at that time been used otherwise than for a qualifying purpose.
- (5) Where by virtue of subsection (2) above a first-year allowance has been made in respect of the whole or part of the expenditure on the provision of any machinery or plant and at the end of the requisite period the machinery or plant is leased as mentioned in subsection (1) above but subsection (4) has not had effect, then, if it appears that the extent to which the machinery or plant has been used for the purposes of a trade or trades the profits or gains of which are chargeable to income tax or corporation tax is less than that by reference to which the amount of the first-year allowance was determined—
  - (a) section 47 shall have effect as if a part of the expenditure corresponding to the reduction in the extent of such use were expenditure on the provision of a separate item of machinery or plant used otherwise than for a qualifying purpose on the last day of that period;
  - (b) any disposal value subsequently brought into account in respect of the machinery or plant under section 24 shall, instead of being apportioned in accordance with subsection (3) above, be apportioned by reference to the extent of such use as determined at the end of that period.
- (6) Where a first-year allowance has been made in respect of expenditure on the provision of machinery or plant otherwise than by virtue of subsection (2) above and the machinery or plant is subsequently leased in the requisite period to two or more persons jointly, subsections (4) and (5) above shall apply as if the first-year allowance had been made by virtue of subsection (2) above and had been so made in respect of the whole expenditure.
- (7) Where the machinery or plant is leased to two or more persons jointly and at least one of the joint lessees is a person falling within section 42(1)(a) and (b) (“a non-resident lessee”)—
  - (a) any reference in subsections (2) to (6) above to the requisite period shall be construed in accordance with section 40(4)(b)(ii) whether or not there is also a joint lessee who is not a non-resident lessee;
  - (b) if the circumstances are such that no first-year allowance has been or may be made in respect of any part of the expenditure on the provision of the machinery or plant in question, section 42 shall apply in relation to that expenditure as if all the joint lessees were non-resident lessees; and
  - (c) if, by virtue of subsections (3), (4) or (5) above, sections 24, 25 and 26 have effect (directly or through the operation of section 47) in relation to the whole or any part of the expenditure on the machinery or plant in question,

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those sections shall have effect, in accordance with section 42(2), as if that expenditure were expenditure falling within section 42(1).

#### **46 Recovery of excess relief: new expenditure**

- (1) Where new expenditure incurred by any person in providing machinery or plant has qualified for a normal writing-down allowance and the machinery or plant is at any time in the requisite period used for the purpose of being leased to a non-resident, otherwise than by permitted leasing—
  - (a) an amount equal to the excess relief shall, in relation to the person to whom the machinery or plant then belongs, be treated as if it were a balancing charge to be made on him for the chargeable period in which, or in the basis period for which, the machinery or plant is first so used; and
  - (b) for the purposes of sections 24, 25 and 26 (as they have effect with respect to expenditure which does not fall within section 42(1)), an amount equal to the unused expenditure shall, in relation to that person, be treated as if it were a disposal value to be brought into account for the chargeable period referred to in paragraph (a) above; and
  - (c) sections 24, 25 and 26 (as they have effect as mentioned in paragraphs (a) to (e) of section 42(2)) shall apply as if a sum equal to the aggregate of the amounts in paragraphs (a) and (b) above were qualifying expenditure of that person for the next chargeable period and, for the purpose of subsequently bringing any disposal value into account, as if the machinery or plant had always been used for the purposes of the separate trade.
- (2) The excess relief is the excess, if any, of—
  - (a) any normal writing-down allowances made in respect of the new expenditure for the chargeable period related to the incurring of the expenditure and any subsequent chargeable period up to and including that mentioned in subsection (1)(a) above, over
  - (b) the maximum writing-down allowance or allowances that could have been made in respect of the expenditure for those chargeable periods if no normal writing-down allowance had been or could have been made.
- (3) The unused expenditure is the amount by which the new expenditure incurred in providing the machinery or plant exceeds the allowances referred to in subsection (2) (a) above.
- (4) For the purposes of subsection (2) above, the normal writing-down allowances that were made in respect of new expenditure on any item of machinery or plant shall be determined as if that item were the only item of machinery or plant in relation to which sections 24, 25 and 26 had effect.
- (5) Where the person to whom any machinery or plant belongs at a time when it is first used for the purpose of being leased to a non-resident, otherwise than by permitted leasing, has acquired it as a result of a transaction which was, or a series of transactions each of which was, between connected persons and a normal writing-down allowance in respect of expenditure on the provision of the machinery or plant has been made to any of those persons—
  - (a) subsection (2) above shall have effect as if it referred to that allowance and to the expenditure in respect of which it was made;

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- (b) for the purposes of subsection (2) any consideration paid or received on a disposal of the machinery or plant between connected persons shall be disregarded; and
- (c) if a balancing allowance or balancing charge is made in respect of the machinery or plant there shall be made such adjustments of the total relief falling to be taken into account under paragraph (a) of that subsection as are just and reasonable in the circumstances;

but this subsection does not apply where section 113(2), 114(1) or 343(2) of the principal Act or section 77 of this Act applied on the occasion of the transaction or transactions in question.

- (6) Where the person to whom any machinery or plant belongs at such a time as is mentioned in subsection (5) above acquired it as there mentioned and—
  - (a) new expenditure incurred on the provision of the machinery or plant by any of the connected persons would have qualified for a normal writing-down allowance but such an allowance was not claimed or was disclaimed; and
  - (b) a balancing allowance is made to any of those persons in respect of that expenditure,

this section shall with the necessary modifications apply as it applies where a normal writing-down allowance has been made.

- (7) If at any time in the requisite period a ship is used for the purpose of being leased to a non-resident otherwise than by permitted leasing, then, without prejudice to subsections (1) to (6) above—
  - (a) no allowance shall be made in respect of it under section 31(4)(c) for the chargeable period in which it is first so used or for any subsequent chargeable period;
  - (b) nothing in section 31(7) shall affect the operation of subsection (1) above;
  - (c) sections 24, 25 and 26 (as they have effect in accordance with section 41) shall apply as if the amount of any allowance in respect of the ship which has been postponed under section 31 and not made were qualifying expenditure for the next chargeable period after that in which the ship is first so used.

#### **47 Recovery of excess relief: old expenditure**

- (1) Where a first-year allowance has been made in respect of expenditure incurred in providing machinery or plant and the machinery or plant is at any time in the requisite period used otherwise than for a qualifying purpose—
  - (a) an amount equal to the excess relief shall, in relation to the person to whom the machinery or plant then belongs, be treated as if it were a balancing charge to be made on him for the chargeable period in which, or in the basis period for which, the machinery or plant is first so used; and
  - (b) sections 24, 25 and 26 (as they have effect in accordance with section 41(1)(b)) shall apply as if that amount were qualifying expenditure of that person for the next chargeable period and, for the purpose of bringing any disposal value into account, as if the machinery or plant had always been used for the purposes of the separate trade.
- (2) The excess relief is the excess, if any, of—
  - (a) the first-year allowance made in respect of the expenditure and any writing-down allowance or allowances made in respect of it for the chargeable period

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related to the incurring of the expenditure and any subsequent chargeable period up to and including that mentioned in subsection (1)(a) above, over

- (b) the maximum writing-down allowance or allowances that could have been made in respect of the expenditure for those chargeable periods if the first-year allowance had not and could not have been made.
- (3) Where as a result of a requirement under section 22(7) an aggregate amount of first-year allowances in respect of different items of machinery or plant is reduced, there shall be treated for the purposes of subsection (2) above as having been made in respect of each item a reduction proportionate to the capital expenditure on the provision of that item.
- (4) For the purposes of subsection (2) above, the writing-down allowance or allowances that were made or would have been made in respect of any item of machinery or plant shall be determined as if that item were the only item of machinery or plant in relation to which sections 24, 25 and 26 had effect.
- (5) Where the person to whom any machinery or plant belongs at a time when it is first used otherwise than for a qualifying purpose has acquired it as a result of a transaction which was, or a series of transactions each of which was, between connected persons and a first-year allowance in respect of expenditure on the provision of the machinery or plant has been made to any of those persons—
- (a) subsection (2) above shall have effect as if it referred to that first-year allowance and to the expenditure in respect of which it was made;
  - (b) for the purposes of that subsection any consideration paid or received on a disposal of the machinery or plant between connected persons shall be disregarded; and
  - (c) if a balancing allowance or balancing charge is made in respect of the machinery or plant there shall be made such adjustments of the total relief falling to be taken into account under paragraph (a) of that subsection as are just and reasonable in the circumstances;
- but this subsection does not apply where section 113(2), 114(1) or 343(2) of the principal Act or section 77 of this Act applied on the occasion of the transaction or transactions in question.
- (6) Where the person to whom any machinery or plant belongs at such a time as is mentioned in subsection (5) above acquired it as there mentioned and—
- (a) a first-year allowance in respect of expenditure on the provision of the machinery or plant could have been made to any of the connected persons but was not claimed or was disclaimed; and
  - (b) a balancing allowance is made to any of those persons in respect of that expenditure,
- this section shall with the necessary modifications apply as it applies where a first-year allowance has been made.
- (7) If at any time in the requisite period a ship is used otherwise than for a qualifying purpose, then, without prejudice to subsections (1) to (6) above—
- (a) no allowance shall be made in respect of it under section 30(2)(c) for the chargeable period in which it is first so used or for any subsequent chargeable period;
  - (b) sections 24, 25 and 26 (as they have effect in accordance with section 41) shall apply as if the amount of any first-year allowance in respect of the ship which has been postponed under section 30 and not made were qualifying

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expenditure for the next chargeable period after that in which the ship is first so used.

- (8) In relation to old expenditure in relation to which section 42 has effect in accordance with subsection (8) of that section, this section shall have effect subject to the following modifications, that is to say—
- (a) any reference to machinery or plant, or to a ship, being used otherwise than for a qualifying purpose shall be construed as a reference to its being used for the purpose of being leased to such a person as is referred to in section 42(1) (a) and (b) and otherwise than for a qualifying purpose;
  - (b) any reference to a first-year allowance shall be construed as including a reference to a normal writing-down allowance;
  - (c) the reference in subsection (1)(b) above to sections 24, 25 and 26 as they have effect in accordance with section 41(1)(b) shall be construed as including a reference to those sections as they have effect as mentioned in section 42(2) (b) to (e);
  - (d) in determining the amount of any excess relief in a case where this section has previously applied, account shall be taken of the relief already recovered;
- and subsections (3) and (4) above shall apply in relation to the allowances mentioned in section 42(4) as they apply in relation to the allowances mentioned in subsection (2) above.
- (9) If section 66(7) of the Finance Act 1980 or subsection (7) above had already applied in relation to expenditure on a ship before section 70(1) of the Finance Act 1982 or section 42(1) of this Act applied to that expenditure, then, on the subsequent application of subsection (7) above by virtue of subsection (8)(a) above, subsection (7) (b) shall not again apply.
- (10) Subsections (7) to (9) above shall have effect in any case where the requisite period began before 27th July 1989 with the substitution for each reference to a ship of a reference to a new ship.

#### **48 Information relating to allowances made in respect of new expenditure**

- (1) Where new expenditure is incurred on the provision of machinery or plant and, before the expenditure has qualified for a normal writing-down allowance, it is used for leasing to a non-resident and that leasing is permitted leasing, a claim by a person other than a company for a writing-down allowance which takes account of that expenditure and a return by a company of profits in the computation of which a deduction is made on account of such an allowance shall be accompanied by a certificate to that effect, setting out the description of permitted leasing.
- (2) If, after any new expenditure has qualified for a normal writing-down allowance, the machinery or plant in question is at any time in the requisite period used for the purpose of being leased to a non-resident, otherwise than by permitted leasing, the person to whom it belongs at that time shall give notice of that fact to the inspector.
- (3) Subject to subsection (6) below, notice under subsection (2) above shall be given within three months after the end of the chargeable period or its basis period in which the machinery or plant is first used for leasing to a non-resident otherwise than by permitted leasing.
- (4) A certificate or notice given by any person under subsection (1) or (2) above by reference to a chargeable period or its basis period shall specify the non-resident

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to whom the machinery or plant has been leased and shall specify all the items of machinery or plant (if more than one) in respect of which the person in question is required to give a certificate or notice under this section by reference to that period.

- (5) Subject to subsection (6) below, where new expenditure is incurred on the provision of machinery or plant which is leased as mentioned in section 43(1), the lessor shall, within three months after the end of the chargeable period or its basis period in which the machinery or plant is first so leased, give notice to the inspector specifying—
- (a) the names and addresses of the persons to whom the asset is jointly leased;
  - (b) the portion of the new expenditure which is properly attributable to each of those persons; and
  - (c) so far as it is within his knowledge, which of those persons is resident in the United Kingdom.
- (6) If, at the end of the three months referred to in subsection (3) or (5) above, the person required to give a notice under that subsection does not know and cannot reasonably be expected to know that any item of machinery or plant in respect of which he is required to give such a notice has been used or leased as mentioned in the subsection in question, he shall in respect of that item give the notice within 30 days of his coming to know that it has been so used or leased.

#### **49 Information relating to allowances made in respect of old expenditure**

- (1) This section applies where a writing-down allowance (but no first-year allowance) has been made in respect of expenditure which is not new expenditure, and the amount of that allowance was determined without regard to section 42(2); and references below to an allowance are references to an allowance so determined.
- (2) Where a person other than a company has claimed an allowance in respect of any expenditure, or a deduction on account of an allowance has been made in computing profits in respect of which a return has been made by a company, and the machinery or plant in question is at any time in the requisite period used for the purpose of being leased to such a person as is referred to in section 42(1)(a) and (b) otherwise than for a qualifying purpose, the person to whom it then belongs shall give notice of that fact to the inspector, specifying the use to which the machinery or plant has been put; and, subject to subsection (3) below, any such notice shall—
- (a) be given within three months after the end of the chargeable period or its basis period in which the machinery or plant is first so used; and
  - (b) relate to all the items of machinery or plant (if more than one) in respect of which that person is required to give notice under this subsection in respect of that period.
- (3) If at the end of the three months mentioned in subsection (2)(a) above the person concerned does not know and cannot reasonably be expected to know that any item of machinery or plant in respect of which he is required to give such a notice has been used as mentioned in that subsection, he shall in respect of that item give the notice within 30 days of his coming to know that it has been so used.
- (4) Where an allowance has been made in respect of any expenditure, the inspector may by notice require—
- (a) any person to whom the machinery or plant belongs or has belonged, or who is or has been in possession of it under a lease, during the requisite period; and
  - (b) the personal representatives of any such person,

to furnish him, within such period (not being less than 30 days) as may be specified in the notice, with such information as he may require and the person to whom the notice is addressed has or can reasonably obtain about the leasing of the machinery or plant or the use to which it is being or has been put.

## **50 Interpretation of Chapter V**

- (1) In this Chapter references to a lease include references to a sub-lease and references to a lessor or lessee shall be construed accordingly.
- (2) For the purposes of this Chapter, letting a ship on charter or any other asset on hire shall be regarded as leasing if, apart from this subsection, it would not be so regarded.
- (3) In this Chapter—
  - “new expenditure” means expenditure incurred after 31st March 1986 except any such expenditure which is old expenditure or which falls within section 41(1)(c);
  - “non-resident” means such a person as is referred to in section 42(1)(a) and (b);
  - “normal writing-down allowance” means a writing-down allowance of an amount determined without regard to section 42(2);
  - “old expenditure” means any of the following expenditure, that is to say,—
    - (i) expenditure falling within section 22,
    - (ii) expenditure incurred before 1st April 1986, and
    - (iii) any other expenditure which by virtue of section 57(2) and (3) of the Finance Act 1986 was not new expenditure for the purposes of that section;
  - “permitted leasing” means short-term leasing or the leasing of a ship, aircraft or transport container which is used for a qualifying purpose by virtue of section 39(6) to (9);
  - “qualifying purpose” has the meaning given by section 39;
  - “requisite period” has the meaning given by section 40; and
  - “short-term leasing” has the meaning given by section 40.
- (4) Where new expenditure has been incurred by any person, any reference in this Chapter to the new expenditure having qualified for a normal writing-down allowance is a reference to the expenditure having fallen to be included, in whole or in part, in that person’s qualifying expenditure for any chargeable period for the purposes of subsections (2) to (5) of section 24, as that section has effect with respect to expenditure which does not fall within section 42(1).
- (5) Without prejudice to section 27, references in this Chapter to the use of machinery or plant for the purposes of a trade include references to its use for any purpose in connection with which a writing-down allowance can be given by virtue of that section.
- (6) Section 839 of the principal Act shall apply for the purposes of this Chapter.