Capital Allowances Act 2001

2001 CHAPTER 2

PART 2

PLANT AND MACHINERY ALLOWANCES

Modifications etc. (not altering text)

C2 Pt. 2 modified (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 10 para. 12** (with Sch. 10 para. 17(1)); S.I. 2003/120, art. 2, Sch. (with arts. 34) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

C3 Pt. 2 restricted (5.10.2004) by Energy Act 2004 (c. 20) , s. 198(2) , Sch. 9 paras. 10, 22 (with s. 38(2)); S.I. 2004/2575 , art. 2(1) , Sch. 1

C4 Pt. 2 modified (5.10.2004) by Energy Act 2004 (c. 20) , s. 198(2) , Sch. 9 paras. 9(2), 21(2) (with s. 38(2)); S.I. 2004/2575, art. 2(1) , **Sch. 1**

C5 Pt. 2 modified (5.10.2004) by Energy Act 2004 (c. 20) , s. 198(2) , **Sch. 9 para. 21(2)** (with s. 38(2)); S.I. 2004/2575 , art. 2(1) , Sch. 1

C6 Pt. 2 restricted (5.10.2004) by Energy Act 2004 (c. 20) , s. 198(2) , **Sch. 9 para. 10** (with s. 38(2)); S.I. 2004/2575 , art. 2(1) , Sch. 1

C7 Pt. 2 restricted (5.10.2004) by Energy Act 2004 (c. 20) , s. 198(2) , **Sch. 4 para. 4** ; S.I. 2004/2575 , art. 2(1) , Sch. 1

CHAPTER 1

INTRODUCTION

11 General conditions as to availability of plant and machinery allowances

(1) Allowances are available under this Part if a person carries on a qualifying activity and incurs qualifying expenditure.

(2) "Qualifying activity" has the meaning given by Chapter 2.

(3) Allowances under this Part must be calculated separately for each qualifying activity which a person carries on.

(4) The general rule is that expenditure is qualifying expenditure if—

(a) it is capital expenditure on the provision of plant or machinery wholly or partly for the purposes of the qualifying activity carried on by the person incurring the expenditure, and

(b) the person incurring the expenditure owns the plant or machinery as a result of incurring it.

(5) But the general rule is affected by other provisions of this Act, and in particular by Chapter 3.

12 Expenditure incurred before qualifying activity carried on

For the purposes of this Part, expenditure incurred for the purposes of a qualifying activity by a person about to carry on the activity is to be treated as if it had been incurred by him on the first day on which he carries on the activity.

13 Use for qualifying activity of plant or machinery provided for other purposes

(1) This section applies if a person—

(a) brings plant or machinery into use for the purposes of a qualifying activity carried on by him, and

(b) on the date when he does so, owns the plant or machinery as a result of having incurred capital expenditure ("actual expenditure") on its provision for purposes other than those of that qualifying activity.

(2) The person is to be treated—

(a) as having incurred capital expenditure ("notional expenditure") on the provision of the plant or machinery for the purposes of the qualifying activity on the date on which it is brought into use for those purposes, and

(b) as owning the plant or machinery as a result as having incurred that expenditure.

(3) Subject to subsection (4), the amount of the notional expenditure is the market value of the plant or machinery on the date when it is brought into use for the purposes of the qualifying activity.

(4) If the market value is greater than the actual expenditure, the amount of the notional expenditure is the amount of the actual expenditure, less any amount required to be deducted under subsection (5).

(5) The amount to be deducted is any amount that under section 218 or 224 would have been left out of account in determining the person's available qualifying expenditure if the actual expenditure had been incurred on the provision of the plant or machinery for the purposes of the qualifying activity.

(6) The question whether the provision of the plant or machinery is to be treated as wholly or only partly for the purposes of the qualifying activity is to be determined according to whether the use referred to in subsection (1)(a) is wholly or only partly for those purposes.

(7) This section is subject to section 161 (pre-trading expenditure on mineral exploration and access).

Modifications etc. (not altering text)

C8 S. 13 applied (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 827**, (with s. 828(2), Sch. 2)

[F1 13A Use for other purposes of plant or machinery previously used for long funding leasing

(1) This section applies if a person who has been using plant or machinery for the purpose of leasing it under a long funding lease (see Chapter 6A)—

(a) ceases to use the plant or machinery for that purpose without ceasing to use it for the purposes of a qualifying activity carried on by him, and

(b) on the date of the cessation, owns the plant or machinery as a result of having incurred capital expenditure on its provision for the purposes of the qualifying activity.

(2) The person is to be treated—

(a) as having incurred capital expenditure ("notional expenditure") on the provision of the plant or machinery for the purposes of the qualifying activity on the day after the cessation,

(b) as owning the plant or machinery as a result of having incurred that expenditure, and

(c) as if the plant or machinery on and after that day were different plant or machinery from the plant or machinery before that day.

(3) The amount of the notional expenditure is an amount equal to the termination amount, determined in accordance with section 70YG, in the case of the long funding lease under which the plant or machinery was last leased before the cessation.**]**

Textual Amendments

F1 S. 13A inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 2**

14 Use for qualifying activity of plant or machinery which is a gift

(1) This section applies if a person—

(a) is the owner of plant or machinery as a result of a gift, and

(b) brings the plant or machinery into use for the purposes of a qualifying activity carried on by him.

(2) The person is to be treated—

(a) as having incurred capital expenditure on the provision of the plant or machinery for the purposes of the qualifying activity on the date on which it is brought into use for those purposes, and

(b) as owning the plant or machinery as a result of having incurred that expenditure.

(3) The amount of that capital expenditure is to be treated as being the market value of the plant or machinery on the date when it was brought into use for the purposes of the qualifying activity.

(4) The question whether the provision of the plant or machinery is to be treated as wholly or only partly for the purposes of the qualifying activity is to be determined according to whether the use referred to in subsection (1)(b) is wholly or only partly for those purposes.

(5) This section is subject to section 161 (pre-trading expenditure on mineral exploration and access).

CHAPTER 2

QUALIFYING ACTIVITIES

15 Qualifying activities

(1) Each of the following is a qualifying activity for the purposes of this Part—

(a) a trade,

(b) an ordinary **[**[F2]property**]** business,

(c) a furnished holiday lettings business,

(d) an overseas property business,

(e) a profession or vocation,

(f) a concern listed in **[**[F3]section 12(4) of ITTOIA 2005 or**]** section 55(2) of ICTA (mines, transport undertakings etc.),

[[F4](g) managing the investments of a company with investment business,**]**

(h) special leasing of plant or machinery, and

(i) an employment or office,

but to the extent only that the profits or gains from the activity are, or (if there were any) would be, chargeable to tax.

(2) Subsection (1) is subject to the following provisions of this Part.

(3) This section, in so far as it provides for—

(a) an ordinary **[**[F5]property**]** business,

(b) an overseas property business, or

(c) special leasing of plant or machinery,

to be a qualifying activity, needs to be read with section 35 (expenditure on plant or machinery for use in a dwelling-house not qualifying expenditure in certain cases).

(4) Also, subsection (1)(i) needs to be read with sections 36 (restriction on qualifying expenditure in case of employment or office) and 80 (vehicles provided for purposes of employment or office).

Textual Amendments

F2 Word in s. 15(1)(b) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 526(2)(a)** (with Sch. 2)

F3 Words in s. 15(1)(f) inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 526(2)(b)** (with Sch. 2)
F4 S. 15(1)(g) substituted (with effect in accordance with art. 1(2) of the commencing S.I.) by Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendments of Enactments) Order 2004 (S.I. 2004/2310) , art. 1(2) , **Sch. para. 52(2)**
F5 Word in s. 15(3)(a) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 526(3)** (with Sch. 2)

16 Ordinary [F6property] businesses

In this Part "[F7ordinary property] business" [F8means a UK property business, or a Schedule A business,] except in so far as it is a furnished holiday lettings business.

Textual Amendments
F6 Word in s. 16 substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 527(4)** (with Sch. 2)
F7 Words in s. 16 substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1), **Sch. 1 para. 527(2)** (with Sch. 2)
F8 Words in s. 16 substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1), **Sch. 1 para. 527(3)** (with Sch. 2)

17 Furnished holiday lettings businesses

(1) In this Part "furnished holiday lettings business" means [F9a UK property business, or a Schedule A business, which consists in, or so far as it consists in, the commercial letting of furnished holiday accommodation] as it consists of the commercial letting of furnished holiday accommodation in the United Kingdom.

(2) All commercial lettings of furnished holiday accommodation made by a particular person or partnership or body of persons are to be treated as one qualifying activity.

[F10(3) For the purposes of income tax the " commercial letting of furnished holiday accommodation " has the same meaning as it has for the purposes of Chapter 6 of Part 3 of ITTOIA 2005.

For the purposes of corporation tax the " commercial letting of furnished holiday accommodation " has the meaning given by section 504 of ICTA.]

(4) If there is a letting of accommodation only part of which is holiday accommodation, such apportionments are to be made for the purposes of this section as are just and reasonable.

Textual Amendments
F9 Words in s. 17(1) substituted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 528(2)** (with Sch. 2)
F10 S. 17(3) substituted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 528(3)** (with Sch. 2)

[F11 18. Managing the investments of a company with investment business

(1) For the purposes of this Part, managing the investments of a company with investment business consists of pursuing those purposes expenditure on which would be treated as expenses of management within section 75 of ICTA .

(2) In this Part "company with investment business" has the meaning given by section 130 of ICTA . **]**

Textual Amendments

F11 S. 18 substituted (with effect in accordance with art. 1(2) of the amending S.I.) by Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendments of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 53**

19 Special leasing of plant or machinery

(1) In this Part "special leasing", in relation to plant or machinery, means hiring out the plant or machinery otherwise than in the course of any other qualifying activity (and references to a lessor or lessee in the context of special leasing are to be read accordingly).

(2) A qualifying activity consisting of special leasing of plant or machinery begins when the plant or machinery is first hired out in the circumstances given in subsection (1).

(3) A qualifying activity consisting of special leasing of plant or machinery is permanently discontinued if the lessor permanently ceases to hire out the plant or machinery otherwise than in the course of any other qualifying activity.

(4) A person who has more than one item of plant or machinery that is the subject of special leasing has a separate qualifying activity in relation to each item.

(5) If a company carrying on any life assurance business—

(a) hires out plant or machinery which is an investment asset (as defined by section 545(2)), and

(b) does not do so in the course of a property business,

the company is to be treated for the purposes of subsection (1) as hiring out the plant or machinery otherwise than in the course of a qualifying activity.

20 Employments and offices

(1) In section 15(1)(i) "employment" does not include an employment the performance of the duties of which is treated as the carrying on of a trade under **[**F12section 15 of ITTOIA 2005**]** (divers and diving supervisors in the North Sea etc.).

(2) Subsection (3) applies if the **[**F13earnings**]** for any duties of an employment or office **[**F14fall within section 22 or 26 of ITEPA 2003**]**.

(3) This Part applies in relation to—

(a) **[**F15those earnings**]** , or

(b) any **[**F16other taxable earnings (as defined by section 10 of ITEPA 2003)**]** of the employment or office,

as if the performance of the duties did not belong to that employment or office.

Textual Amendments

F12 Words in s. 20(1) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 529** (with Sch. 2)

F13 Word in s. 20(2) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1) , s. 723 , **Sch. 6 para. 248(2)(a)** (with Sch. 7)

F14 Words in s. 20(2) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1) , s. 723 , **Sch. 6 para. 248(2)(b)** (with Sch. 7)

F15 Words in s. 20(3) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1) , s. 723 , **Sch. 6 para. 248(3)(a)** (with Sch. 7)

F16 Words in s. 20(3) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1) , s. 723 , **Sch. 6 para. 248(3)(b)** (with Sch. 7)

CHAPTER 3

QUALIFYING EXPENDITURE

Buildings, structures and land

21 Buildings

(1) For the purposes of this Act, expenditure on the provision of plant or machinery does not include expenditure on the provision of a building.

(2) The provision of a building includes its construction or acquisition.

(3) In this section, "building" includes an asset which—
- (a) is incorporated in the building,
- (b) although not incorporated in the building (whether because the asset is moveable or for any other reason), is in the building and is of a kind normally incorporated in a building, or
- (c) is in, or connected with, the building and is in list A.

List A

Assets treated as buildings	
1.	Walls, floors, ceilings, doors, gates, shutters, windows and stairs.
2.	Mains services, and systems, for water, electricity and gas.
3.	Waste disposal systems.
4.	Sewerage and drainage systems.
5.	Shafts or other structures in which lifts, hoists, escalators and moving walkways are installed.
6.	Fire safety systems.

(4) This section is subject to section 23.

22 Structures, assets and works

(1) For the purposes of this Act, expenditure on the provision of plant or machinery does not include expenditure on—

(a) the provision of a structure or other asset in list B, or

(b) any works involving the alteration of land.

List B

Excluded structures and other assets	
1.	A tunnel, bridge, viaduct, aqueduct, embankment or cutting.
2.	A way, hard standing (such as a pavement), road, railway, tramway, a park for vehicles or containers, or an airstrip or runway.
3.	An inland navigation, including a canal or basin or a navigable river.
4.	A dam, reservoir or barrage, including any sluices, gates, generators and other equipment associated with the dam, reservoir or barrage.
5.	A dock, harbour, wharf, pier, marina or jetty or any other structure in or at which vessels may be kept, or merchandise or passengers may be shipped or unshipped.
6.	A dike, sea wall, weir or drainage ditch.
7.	Any structure not within items 1 to 6 other than— (a) a structure (but not a building) within Chapter 2 of Part 3 (meaning of "industrial building"), (b) a structure in use for the purposes of an undertaking for the extraction, production, processing or distribution of gas, and (c) a structure in use for the purposes of a trade which consists in the provision of telecommunication, television or radio services.

(2) The provision of a structure or other asset includes its construction or acquisition.

(3) In this section—

(a) "structure" means a fixed structure of any kind, other than a building (as defined by section 21(3)), and

(b) "land" does not include buildings or other structures, but otherwise has the meaning given in Schedule 1 to the Interpretation Act 1978 (c. 30).

(4) This section is subject to section 23.

23 Expenditure unaffected by sections 21 and 22

(1) Sections 21 and 22 do not apply to any expenditure to which any of the provisions listed in subsection (2) applies.

(2) The provisions are—

section 28 (thermal insulation of industrial buildings);
section 29 (fire safety);
section 30 (safety at designated sports grounds);
section 31 (safety at regulated stands at sports grounds);
section 32 (safety at other sports grounds);
section 33 (personal security);
section 71 (software and rights to software);
section [F17 143 of ITTOIA 2005 or section] 40D of F(No.2)A 1992 (election relating to tax treatment of films expenditure).

(3) Sections 21 and 22 also do not affect the question whether expenditure on any item described in list C is, for the purposes of this Act, expenditure on the provision of plant or machinery.

(4) But items 1 to 16 of list C do not include any asset whose principal purpose is to insulate or enclose the interior of a building or to provide an interior wall, floor or ceiling which (in each case) is intended to remain permanently in place.

List C

Expenditure unaffected by sections 21 and 22

1.	Machinery (including devices for providing motive power) not within any other item in this list.
2.	Electrical systems (including lighting systems) and cold water, gas and sewerage systems provided mainly— (a) to meet the particular requirements of the qualifying activity, or (b) to serve particular plant or machinery used for the purposes of the qualifying activity.
3.	Space or water heating systems; powered systems of ventilation, air cooling or air purification; and any floor or ceiling comprised in such systems.
4.	Manufacturing or processing equipment; storage equipment (including cold rooms); display equipment; and

	counters, checkouts and similar equipment.
5.	Cookers, washing machines, dishwashers, refrigerators and similar equipment; washbasins, sinks, baths, showers, sanitary ware and similar equipment; and furniture and furnishings.
6.	Lifts, hoists, escalators and moving walkways.
7.	Sound insulation provided mainly to meet the particular requirements of the qualifying activity.
8.	Computer, telecommunication and surveillance systems (including their wiring or other links).
9.	Refrigeration or cooling equipment.
10.	Fire alarm systems; sprinkler and other equipment for extinguishing or containing fires.
11.	Burglar alarm systems.
12.	Strong rooms in bank or building society premises; safes.
13.	Partition walls, where moveable and intended to be moved in the course of the qualifying activity.
14.	Decorative assets provided for the enjoyment of the public in hotel, restaurant or similar trades.
15.	Advertising hoardings; signs, displays and similar assets.
16.	Swimming pools (including diving boards, slides and structures on which such boards or slides are mounted).
17.	Any glasshouse constructed so that the required environment (namely, air, heat, light, irrigation and temperature) for the growing of plants is provided automatically by means of devices forming an integral part of its structure.
18.	Cold stores.
19.	Caravans provided mainly for holiday lettings.
20.	Buildings provided for testing aircraft engines run within the buildings.

21.	Moveable buildings intended to be moved in the course of the qualifying activity.
22.	The alteration of land for the purpose only of installing plant or machinery.
23.	The provision of dry docks.
24.	The provision of any jetty or similar structure provided mainly to carry plant or machinery.
25.	The provision of pipelines or underground ducts or tunnels with a primary purpose of carrying utility conduits.
26.	The provision of towers to support floodlights.
27.	The provision of— (a) any reservoir incorporated into a water treatment works, or (b) any service reservoir of treated water for supply within any housing estate or other particular locality.
28.	The provision of— (a) silos provided for temporary storage, or (b) storage tanks.
29.	The provision of slurry pits or silage clamps.
30.	The provision of fish tanks or fish ponds.
31.	The provision of rails, sleepers and ballast for a railway or tramway.
32.	The provision of structures and other assets for providing the setting for any ride at an amusement park or exhibition.
33.	The provision of fixed zoo cages.

(5) In item 19 of list C, "caravan" includes, in relation to a holiday caravan site, anything that is treated as a caravan for the purposes of—
- (a) the Caravan Sites and Control of Development Act 1960 (c. 62), or
- (b) the Caravans Act (Northern Ireland) 1963 (c. 17 (N.I.)).

Textual Amendments

F17 Words in s. 23(2) inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 530** (with Sch. 2)

24 Interests in land

(1) For the purposes of this Act, expenditure on the provision of plant or machinery does not include expenditure on the acquisition of an interest in land.

(2) In this section "land" does not include—

(a) buildings or other structures, or

(b) any asset which is so installed or otherwise fixed to any description of land as to become, in law, part of the land,

but otherwise has the meaning given in Schedule 1 to the Interpretation Act 1978 (c. 30).

(3) Subject to subsection (2), "interest in land" has the meaning given by section 175 (definitions in connection with provisions about fixtures).

25 Building alterations connected with installation of plant or machinery

If a person carrying on a qualifying activity incurs capital expenditure on alterations to an existing building incidental to the installation of plant or machinery for the purposes of the qualifying activity, this Part applies as if—

(a) the expenditure were expenditure on the provision of the plant or machinery, and

(b) the works representing the expenditure formed part of the plant or machinery.

Demolition costs

26 Demolition costs

(1) This section applies if—

(a) plant or machinery is demolished, and

(b) the last use of the plant or machinery was for the purposes of a qualifying activity.

(2) If the person carrying on the qualifying activity replaces the plant or machinery with other plant or machinery then, for the purposes of this Part, the net cost of the demolition to that person is treated as expenditure incurred on the provision of the other plant or machinery.

(3) If the person carrying on the qualifying activity does not replace the plant or machinery, the net cost of the demolition to that person is allocated to the appropriate pool for the chargeable period in which the demolition takes place.

(4) In subsection (3)—

"the appropriate pool" means the pool to which the expenditure on the demolished plant or machinery has been or would be allocated in accordance with this Part, and

"the net cost of the demolition" means the amount, if any, by which the cost of the demolition exceeds any money received for the remains of the plant or machinery.

(5) Subsection (3) is subject to section 164(4) (abandonment expenditure before cessation of ring fence trade: election for special allowance).

Expenditure on thermal insulation, safety measures, etc.

27 Application of Part to thermal insulation, safety measures, etc.

(1) Subsection (2) has effect in relation to expenditure if—

(a) it is expenditure to which any of sections 28 to 33 applies, and

(b) an allowance under Part 2 or a deduction in respect of the expenditure could not, in the absence of this section, be made in calculating the income from the qualifying activity in question.

(2) This Part (including in particular section 11(4)) applies as if—

(a) the expenditure were capital expenditure on the provision of plant or machinery for the purposes of the qualifying activity in question, and

(b) the person who incurred the expenditure owned plant or machinery as a result of incurring it.

28 Thermal insulation of industrial buildings

(1) This section applies to expenditure if a person carrying on a qualifying activity consisting of a trade has incurred it in adding insulation against loss of heat to an industrial building occupied by him for the purposes of the trade.

(2) This section also applies to expenditure if a person carrying on a qualifying activity consisting of an ordinary [F18property] business [F19or an overseas property business] has incurred it in adding insulation against loss of heat to an industrial building let by him in the course of the business.

(3) "Industrial building" means a building or structure which is in use for the purposes of a qualifying trade (within the meaning of Chapter 2 of Part 3).

Textual Amendments

F18 Word in s. 28(2) substituted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), , **Sch. 1 para. 531** (with Sch. 2)

F19 Words in s. 28(2) inserted (with effect as mentioned in s. 69(2) of the amending Act) by Finance Act 2001 (c. 9), s. 69(1), **Sch. 21 para. 1**

29 Fire safety

(1) This section applies to expenditure if a person carrying on a qualifying activity has incurred it in taking required fire precautions in respect of premises which he uses for the purposes of the qualifying activity.

[F20(2) A person takes required fire precautions in respect of premises if—

(a) he has been served with a notice under section 5(4) of the Fire Precautions Act 1971 (c. 40) specifying steps to be taken in respect of the premises, and

(b) he takes the steps specified in the notice.

(3) A person also takes required fire precautions in respect of premises if—

(a) he has not been served with a notice by the fire authority under section 5(4) of the 1971 Act, but has been sent or given a document by or on behalf of the fire authority that specifies steps that might have been specified in respect of the premises in such a notice, and

(b) he takes the steps specified in the document.

(4) A person also takes required fire precautions in respect of premises if—

(a) he has been served with a prohibition notice under section 10 of the 1971 Act in respect of the premises specifying matters giving rise to a risk of a kind mentioned in subsection (2) of that section, and

(b) he takes steps to remedy the matters specified in the prohibition notice.**]**

[[F21](4A) A person takes required fire precautions in respect of premises if—

(a) he has been served with a notice under article 31 of the Regulatory Reform (Fire Safety) Order 2005 (prohibition notices) in respect of the premises specifying matters giving rise to a risk of a kind mentioned in paragraph (1) of that article, and

(b) he takes steps to remedy the matters specified in the prohibition notice.**]**

[[F22](4A) A person takes required fire precautions in respect of premises if–

(a) he has been served with a notice under section 63 of the Fire (Scotland) Act 2005 (asp 5) (prohibition notices) in respect of the premises specifying matters giving rise to a risk of a kind mentioned in subsection (2) of that section, and

(b) he takes steps to remedy the matters specified in the prohibition notice.**]**

(5) This section has effect in relation to Northern Ireland subject to the modifications in subsection (6).

(6) The modifications are—

(a) for the references to section 5(4) of the 1971 Act substitute references to Article 26(4) of the Fire Services (Northern Ireland) Order 1984 (S.I.1984/1821 (N.I.11)),

(b) for the reference to section 10 of the 1971 Act substitute a reference to Article 33 of the 1984 Order, and

(c) for the references to a fire authority substitute references to the Fire Authority for Northern Ireland.

Textual Amendments

F20 S. 29(2)-(4) repealed (E.W.) (1.10.2006) by The Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541), art. 1(3), Sch. 2 para. 49(a), **Sch. 4** (with art. 49) (as amended by The Regulatory Reform (Fire Safety) Subordinate Provisions Order 2006 (S.I. 2006/484), **arts. 1(1)**, 2); and repealed (S.) (1.10.2006) by The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 (S.S.I. 2006/475), art. 1, **Sch. 2**

F21 S. 29(4A) inserted (E.W.) (1.10.2006) by The Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541), art. 1(3), **Sch. 2 para. 49(b)** (with art. 49) (as amended by The Regulatory Reform (Fire Safety) Subordinate Provisions Order 2006 (S.I. 2006/484), **arts. 1(1)**, 2)

F22 S. 29(4A) inserted (S.) (1.10.2006) by The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 (S.S.I. 2006/475), art. 1, **Sch. 1 para. 15**

30 Safety at designated sports grounds

(1) This section applies to expenditure if a person carrying on a qualifying activity has incurred it in taking required safety precautions in respect of a sports ground which is—

(a) designated under section 1 of the Safety of Sports Grounds Act 1975 (c. 52) as requiring a safety certificate, and

(b) used by him for the purposes of the qualifying activity.

(2) A person takes required safety precautions in respect of the sports ground if—

(a) a safety certificate has been issued under the 1975 Act for the sports ground, and

(b) he takes steps necessary for compliance with the terms and conditions of the safety certificate.

(3) A person also takes required safety precautions in respect of the sports ground if—

(a) he has been sent or given a document by or on behalf of the local authority for the area in which the sports ground is situated,

(b) the document specifies steps which, if taken, would—

(i) be taken into account by the local authority in deciding what terms and conditions to include in a safety certificate to be issued under the 1975 Act for the sports ground, or

(ii) lead to the amendment or replacement of a safety certificate issued or to be issued under the 1975 Act for the sports ground, and

(c) he takes the steps specified in the document.

31 Safety at regulated stands at sports grounds

(1) This section applies to expenditure if a person carrying on a qualifying activity has incurred it in taking required safety precautions in respect of a stand at a sports ground—

(a) the use of which requires a safety certificate under Part III of the Fire Safety and Safety of Places of Sport Act 1987 (c. 27), and

(b) which he uses for the purposes of the qualifying activity.

(2) A person takes required safety precautions in respect of the stand at the sports ground if—

(a) a safety certificate has been issued under the 1987 Act for the stand, and

(b) he takes steps necessary for compliance with the terms and conditions of the safety certificate.

(3) A person also takes required safety precautions in respect of the stand at the sports ground if—

(a) he has been sent or given a document by or on behalf of the local authority for the area in which the sports ground is situated,

(b) the document specifies steps which, if taken, would—

(i) be taken into account by the local authority in deciding what terms and conditions to include in a safety certificate to be issued under the 1987 Act for the stand, or

(ii) lead to the amendment or replacement of a safety certificate issued or to be issued under the 1987 Act for the stand, and

(c) he takes the steps specified in the document.

32 Safety at other sports grounds

(1) This section applies to expenditure if a person carrying on a qualifying activity has incurred it in taking required safety precautions in respect of a sports ground—

(a) which is of a kind described in section 1(1) of the Safety of Sports Grounds Act 1975 (c. 52) but in respect of which no designation order under that section is in force at the time when he takes those precautions, and

(b) which he uses for the purposes of the qualifying activity,

and the expenditure is not incurred in respect of a sports ground stand which is within section 31(1)(a).

(2) A person takes required safety precautions in respect of the sports ground if he takes steps which the relevant local authority certify would have fallen within section 30(2) or (3) if—

(a) a designation order under section 1 of the 1975 Act had then been in force, and

(b) a safety certificate had then been issued or applied for under the 1975 Act.

(3) Any provision of regulations made under section 6(1)(b) of the 1975 Act (power of local authorities to charge fees) applies, with the necessary modifications, to the issue of a certificate for the purposes of subsection (2) as it applies to the issue of a safety certificate.

(4) In subsection (2)—

(a) "the relevant local authority" means the local authority for the area in which the sports ground is situated, and

(b) "local authority" has the same meaning as in the 1975 Act.

33 Personal security

(1) This section applies to expenditure if—

(a) it is incurred by an individual or partnership of individuals in connection with the provision for, or for use by, the individual, or any of the individuals, of a security asset,

(b) the individual or partnership is carrying on a relevant qualifying activity, and

(c) the special threat conditions are met.

(2) The special threat conditions are that—

(a) the asset is provided or used to meet a threat which—

(i) is a special threat to the individual's personal physical security, and

(ii) arises wholly or mainly because of the relevant qualifying activity, and

(b) the person incurring the expenditure—

(i) has the sole object of meeting that threat in incurring that expenditure, and

(ii) intends the asset to be used solely to improve personal physical security.

(3) If—

(a) the person incurring the expenditure intends the asset to be used solely to improve personal physical security, but
(b) there is another use which is incidental to improving personal physical security,

that other use is ignored for the purposes of this section.

(4) The fact that an asset improves the personal physical security of any member of the family or household of the individual concerned, as well as that of the individual, does not prevent this section from applying.

(5) If—
(a) the asset is not intended to be used solely to improve personal physical security, but the expenditure incurred on it would otherwise be expenditure to which this section applies, and
(b) the person incurring the expenditure intends the asset to be used partly to improve personal physical security,

this section applies only to the proportion of the expenditure attributable to the intended use to improve personal physical security.

(6) In this section "security asset" means an asset which improves personal security; and here "asset"—
(a) does not include—
(i) a car, ship or aircraft, or
(ii) a dwelling or grounds appurtenant to a dwelling, but
(b) subject to paragraph (a), includes equipment, a structure (such as a wall) and an asset which becomes fixed to land.

(7) Section 81 (extended meaning of "car") does not apply in relation to subsection (6)(a).

(8) In this section "relevant qualifying activity" means a qualifying activity consisting of—
(a) a trade,
(b) an ordinary [F23property] business,
(c) a furnished holiday lettings business,
(d) an overseas property business, or
(e) a profession or vocation.

Textual Amendments
F23 Word in s. 33(8)(b) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 532** (with Sch. 2)

Exclusion of certain types of expenditure

34 Expenditure by MPs and others on accommodation

(1) Expenditure is not qualifying expenditure if it is incurred by—
(a) a member of the House of Commons,
(b) a member of the Scottish Parliament,
(c) a member of the National Assembly for Wales, or

(d) a member of the Northern Ireland Assembly,

in or in connection with the provision or use of residential or overnight accommodation for the purpose given in subsection (2).

(2) The purpose is enabling the member to perform the duties of a member of the body in or about—

(a) the place where the body sits, or

(b) the constituency or region for which the member has been returned.

[F24 34A Expenditure on plant or machinery for long funding leasing not qualifying expenditure

Expenditure is not qualifying expenditure if it is incurred on the provision of plant or machinery for leasing under a long funding lease (see Chapter 6A).]

Textual Amendments

F24 S. 34A inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 3**

35 Expenditure on plant or machinery for use in dwelling-house not qualifying expenditure in certain cases

(1) This section applies if a person is carrying on a qualifying activity consisting of—

(a) an ordinary [F25 property] business,

(b) an overseas property business, or

(c) special leasing of plant or machinery.

(2) The person's expenditure is not qualifying expenditure if it is incurred in providing plant or machinery for use in a dwelling-house.

(3) If plant or machinery is provided partly for use in a dwelling-house and partly for other purposes, such apportionment of the expenditure incurred in providing that plant or machinery is to be made for the purposes of subsection (2) as is just and reasonable.

Textual Amendments

F25 Word in s. 35(1)(a) substituted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), , **Sch. 1 para. 533** (with Sch. 2)

[F26 36 Restriction on qualifying expenditure in case of employment or office

(1) Where the qualifying activity consists of an employment or office—

(a) expenditure on the provision of a mechanically propelled road vehicle, or a cycle, is not qualifying expenditure, and

(b) other expenditure is qualifying expenditure only if the plant or machinery is necessarily provided for use in the performance of the duties of the employment or office.

(2) In this section " cycle " has the meaning given by section 192(1) of the Road Traffic Act 1988. **]**

Textual Amendments

F26 S. 36 substituted (with effect as mentioned in s. 59(3)(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 59(1)(3)(4)**

37 Exclusion where sums payable in respect of depreciation

(1) Expenditure incurred by a person in providing plant or machinery for the purposes of a qualifying activity is not qualifying expenditure if it appears—

(a) that during the period during which the plant or machinery will be used for the purposes of the qualifying activity sums are, or are to be, payable to that person directly or indirectly, and

(b) that those sums are in respect of, or take account of, the whole of the depreciation of the plant or machinery resulting from its use for those purposes.

(2) Subsection (1) does not apply if the sums fall to be taken into account as income of the person or in calculating the profits of a qualifying activity carried on by him.

38 Production animals etc.

Expenditure is not qualifying expenditure if it is incurred on—

(a) animals or other creatures to which **[**[F27]section 30 or Chapter 8 of Part 2 of ITTOIA 2005 or**]** Schedule 5 to ICTA (treatment of farm animals etc. for purposes of **[**[F28]Part 2 of ITTOIA 2005 or**]** Case I of Schedule D) applies, or

(b) shares in such animals or creatures.

Textual Amendments

F27 Words in s. 38(a) inserted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), , **Sch. 1 para. 534(a)** (with Sch. 2)

F28 Words in s. 38(a) inserted (with effect in accordance with s. 883(1) of the amending Act)) by Income Tax (Trading and Other Income) Act 2005 (c. 5), , **Sch. 1 para. 534(b)** (with Sch. 2)

CHAPTER 4

FIRST-YEAR QUALIFYING EXPENDITURE

General

39 First-year allowances available for certain types of qualifying expenditure only

A first-year allowance is not available unless the qualifying expenditure is first-year qualifying expenditure under **[**[F29]any of the following provisions**]**—

Status: *Point in time view as at 06/04/2008.*
Changes to legislation: *There are currently no known outstanding effects for the Capital Allowances Act 2001, Part 2. (See end of Document for details)*

section 40	expenditure incurred for Northern Ireland purposes by small or medium-sized enterprises,
section 44	expenditure incurred by small or medium-sized enterprises, F30 ...
section 45	ICT expenditure incurred by small enterprises , F31 ...
[F32 section 45A	expenditure on energy-saving plant or machinery]
[F33 section 45D	expenditure on cars with low CO_2 emissions,]
[F34 section 45E	expenditure on plant or machinery for gas refuelling station] F35 ...
[F36 section 45F	expenditure on plant and machinery for use wholly in a ring fence trade.]
[F37 section 45H	expenditure on environmentally beneficial plant or machinery.]

Textual Amendments

F29 Words in s. 39 inserted (with effect in accordance with s. 167 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 30 para. 2(a)**

F30 Word in s. 39 repealed (with effect in accordance with s. 65 of the amending Act) by Finance Act 2001 (c. 9), s. 110, **Sch. 33 Pt. 2(4)** Note

F31 Word in s. 39 repealed (with effect as mentioned in s. 59 of the amending Act) by Finance Act 2002 (c. 23), **s. 141**, (Sch. 40 Pt. 3(7) Note)

F32 Words in s. 39 inserted (with effect as mentioned in s. 65 of the amending Act) by Finance Act 2001 (c. 9), s. 65, **Sch. 17 para. 1**

F33 Words in s. 39 inserted (with effect as mentioned in s. 59 of the amending Act) by Finance Act 2002 (c. 23), s. 59, **Sch. 19 para. 2**

F34 Words in s. 39 inserted (with effect as mentioned in s. 61 of the amending Act) by Finance Act 2002 (c. 23), s. 61, **Sch. 20 para. 2**

F35 Word in s. 39 repealed (with effect in accordance with s. 167 of the amending Act) by Finance Act 2003 (c. 14), Sch. 30 para. 2(b), **Sch. 43 Pt. 3(9)**

F36 Words in s. 39 inserted (with effect as mentioned in s. 63 of the amending Act) by Finance Act 2002 (c. 23), s. 63, **Sch. 21 para. 2**

F37 Words in s. 39 added (with effect in accordance with s. 167 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 30 para. 2(c)**

Types of expenditure which may qualify for first-year allowances

40 Expenditure incurred for Northern Ireland purposes by small or medium-sized enterprises

(1) Expenditure is first-year qualifying expenditure if—

(a) it is incurred on or before 11th May 2002,

(b) it is incurred by a small or medium-sized enterprise,

(c) it is incurred on the provision of plant or machinery for use primarily in Northern Ireland, and

(d) it is not excluded by—

(i) section 41 (miscellaneous exclusions from this section),

(ii) section 42 (plant or machinery partly for use outside Northern Ireland), or

(iii) section 46 (general exclusions).

(2) This section is subject to section 43 (effect of plant or machinery subsequently being primarily for use outside Northern Ireland).

41 Miscellaneous exclusions from section 40 (expenditure for Northern Ireland purposes etc.)

(1) Expenditure is not first-year qualifying expenditure under section 40 if—

(a) it is long-life asset expenditure,

(b) it is expenditure on the provision of an aircraft or hovercraft, or

(c) it is expenditure on the provision of a goods vehicle for the purposes of a trade which consists primarily of the conveyance of goods.

(2) Expenditure is not first-year qualifying expenditure under section 40 if it is incurred on the provision of plant or machinery for use primarily in—

(a) agriculture, fishing or fish farming, or

(b) any relevant activity carried out in relation to agricultural produce, fish or any fish product for the purpose of bringing it to market,

unless it is authorised for the purposes of this section by the Department of Agriculture and Rural Development in Northern Ireland.

(3) An authorisation given by the Department—

(a) may be given either generally or specially, and

(b) may in any case be absolute or conditional;

and, if the authorisation is given generally, it may be modified by the Department.

(4) An authorisation is given specially if it is given so as to apply only to a specified item of expenditure or a specified person; otherwise, it is given generally.

(5) In this section—

[[F38] " agricultural produce " has the same meaning as in section 6 of the European Communities Act 1972 (c. 68),

" agriculture " has the same meaning as in the Agriculture Act 1947 (c. 48),
]

"fish" includes shellfish,

"fish farming" means the intensive rearing, on a commercial basis, of fish intended for human consumption,

"fishing" means a trade, or part of a trade, which consists of the catching or taking of fish,

"goods vehicle" has the same meaning as in the Road Traffic (Northern Ireland) Order 1995 (S.I.1995/2994 (N.I.18)),

"hovercraft" has the same meaning as in the Hovercraft Act 1968 (c. 59), and

"relevant activity" means transportation, storage, preparation, processing or packaging.

Textual Amendments

F38 Words in s. 41(5) substituted (15.11.2001) by The Intervention Board for Agricultural Produce (Abolition) Regulations 2001 (S.I. 2001/3686) , **reg. 6(20)**

42 Exclusion of plant or machinery partly for use outside Northern Ireland

(1) Expenditure on plant or machinery is not first-year qualifying expenditure under section 40 if—

(a) at the time when it is incurred, the person incurring it intends the plant or machinery to be used partly outside Northern Ireland, and

(b) the main benefit, or one of the main benefits, which could reasonably be expected to arise from the relevant arrangements is the obtaining of a first-year allowance, or a greater first-year allowance, in respect of the part of the expenditure that is attributable to that intended use outside Northern Ireland.

(2) For the purposes of subsection (1)—

(a) "the relevant arrangements" means—

(i) the transaction under which the expenditure is incurred, and

(ii) any scheme or arrangements of which that transaction forms part, and

(b) the part of the expenditure that is attributable under subsection (1)(b) is to be determined on a just and reasonable basis.

43 Effect of plant or machinery subsequently being primarily for use outside Northern Ireland

(1) Expenditure on the provision of plant or machinery is to be treated as never having been first-year qualifying expenditure under section 40 if, at any relevant time—

(a) the primary use to which the plant or machinery is put is a use outside Northern Ireland, or

(b) the plant or machinery is held for use otherwise than primarily in Northern Ireland.

(2) In subsection (1) "relevant time" means a time which—

(a) falls within the relevant period, and

(b) is a time when the plant or machinery is owned by—

(i) the person who incurred the expenditure, or

(ii) a person who is, or at any time in that period has been, connected with that person.

(3) "The relevant period" means—

(a) if the expenditure concerned exceeds £3.5 million, the period of 5 years beginning with the date of the incurring of that expenditure;

(b) in any other case, the period of 2 years beginning with that date.

(4) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (1).

(5) If a person who has made a return becomes aware that, after making it, anything in it has become incorrect because of the operation of this section, he must give notice to the **[**F39an officer of Revenue and Customs**]** specifying how the return needs to be amended.

(6) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

Modifications etc. (not altering text)

C9 S. 43(3) modified by 1993 c. 34, s. 93A(6) (as inserted (with effect as mentioned in s. 80(2) of the inserting Act) by Finance Act 2002 (c. 23), s. 80, **Sch. 24 para. 4** (with Sch. 23 para. 25))

44 Expenditure incurred by small or medium-sized enterprises

(1) Expenditure is first-year qualifying expenditure if—

(a) it is incurred by a small or medium-sized enterprise, and

(b) it is not excluded by subsection (2) or section 46 (general exclusions).

(2) Long-life asset expenditure is not first-year qualifying expenditure under subsection (1).

Modifications etc. (not altering text)

C10 S. 44 modified (22.7.2004) by Finance Act 2004 (c. 12) , **s. 142(1)**(2)

C11 S. 44 modified (19.7.2007) by Finance Act 2007 (c. 11), **s. 37(1)** (with s. 37(2))

45 ICT expenditure incurred by small enterprises

(1) Expenditure is first-year qualifying expenditure if—

(a) it is incurred on or before **[**F4031st March 2004**]**,

(b) it is incurred by a small enterprise,

(c) it is expenditure on information and communications technology, and

(d) it is not excluded by section 46 (general exclusions) **[**F41or subsection (4) below**]**.

(2) "Expenditure on information and communications technology" means expenditure on items within any of the following classes.

Class A. Computers and associated equipment

This class covers—

(a) computers,

(b) peripheral devices designed to be used by being connected to or inserted in a computer,

(c) equipment (including cabling) for use primarily to provide a data connection between—

(i) one computer and another, or

(ii) a computer and a data communications network, and

(d) dedicated electrical systems for computers.

For this purpose "computer" does not include computerised control or management systems or other systems that are part of a larger system whose principal function is not processing or storing information.

Class B. Other qualifying equipment

This class covers—

(a) wireless application protocol telephones,

(b) third generation mobile telephones,

(c) devices designed to be used by being connected to a television set and capable of receiving and transmitting information from and to data networks, and

(d) other devices—

(i) substantially similar to those within paragraphs (a), (b) and (c), and

(ii) capable of receiving and transmitting information from and to data networks.

This is subject to any order under subsection (3).

Class C. Software

This class covers the right to use or otherwise deal with software for the purposes of any equipment within Class A or B.

(3) The Treasury may make provision by order—

(a) further defining the kinds of equipment within Class B, or

(b) adding further kinds of equipment to that class.

[[F42](4) Expenditure on an item within Class C is not first-year qualifying expenditure under this section if the person incurring it does so with a view to granting to another person a right to use or otherwise deal with any of the software in question.**]**

Textual Amendments

F40 Words in s. 45(1)(a) substituted (10.7.2003) by Finance Act 2003 (c. 14) , **s. 165**

F41 Words in s. 45(1)(d) inserted (10.7.2003) by Finance Act 2003 (c. 14) , **s. 166(2)** (with s. 166(4))

F42 S. 45(4) inserted (10.7.2003) by Finance Act 2003 (c. 14) , **s. 166(3)** (with s. 166(4))

[F43 45A Expenditure on energy-saving plant or machinery

(1) Expenditure is first-year qualifying expenditure if—

(a) it is expenditure on energy-saving plant or machinery that is unused and not second-hand,

(b) it is incurred on or after 1st April 2001, and

(c) it is not excluded by section 46 (general exclusions).

(2) Energy-saving plant or machinery means plant or machinery in relation to which the following conditions are met—

(a) when the expenditure is incurred, or

(b) when the contract for the provision of the plant or machinery is entered into.

(3) The conditions are that the plant or machinery—

(a) is of a description specified by Treasury order, and

(b) meets the energy-saving criteria specified by Treasury order for plant or machinery of that description.

(4) Any such order may make provision by reference to any technology list, or product list, issued by the Secretary of State (whether before or after the coming into force of this section).

Textual Amendments

F43 Ss. 45A-45C inserted (with effect as mentioned in s. 65 of the amending Act) by Finance Act 2001 (c. 9), s. 65, **Sch. 17 para. 2** (with Sch. 17 para. 6)

45B Certification of energy-saving plant and machinery

(1) The Treasury may by order provide that, in such cases as may be specified in the order, no section 45A allowance may be made unless a relevant certificate of energy efficiency is in force.

A " section 45A allowance " means a first-year allowance in respect of expenditure that is first-year qualifying expenditure under section 45A.

(2) A certificate of energy efficiency is one certifying that—

(a) particular plant or machinery, or

(b) plant or machinery constructed to a particular design,

meets the energy-saving criteria specified in relation to that description of plant or machinery by order under section 45A.

(3) A relevant certificate of energy efficiency means one issued—

(a) by the Secretary of State or a person authorised by the Secretary of State;

(b) in the case of plant or machinery used or for use in Scotland, by the Scottish Ministers or a person authorised by them;

(c) in the case of plant or machinery used or for use in Wales, by the National Assembly for Wales or a person authorised by it;

(d) in the case of plant or machinery used or for use in Northern Ireland, by the Department of Enterprise, Trade and Investment in Northern Ireland or a person authorised by it.

(4) If a certificate of energy efficiency is revoked—

(a) the certificate is to be treated for the purposes of this section as if it had never been issued, and

(b) all such assessments and adjustments of assessments are to be made as are necessary as a result of the revocation.

(5) If a person who has made a tax return becomes aware that, as a result of the revocation of a certificate of energy efficiency after the return was made, the return has become incorrect, he must give notice to **[**[F39]an officer of Revenue and Customs**]** specifying how the return needs to be amended.

(6) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the tax return had become incorrect because of the revocation of the certificate.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

F43 Ss. 45A-45C inserted (with effect as mentioned in s. 65 of the amending Act) by Finance Act 2001 (c. 9), s. 65, **Sch. 17 para. 2** (with Sch. 17 para. 6)

45C Energy-saving components of plant or machinery

(1) This section applies for the purpose of apportioning expenditure incurred on plant or machinery if one or more components of the plant or machinery (but not all of it) is of a description specified by Treasury order under section 45A(3).

(2) If—

(a) only one of the components is of such a description, and

(b) an amount is specified by the order in respect of that component,

the part of the expenditure that is section 45A expenditure must not exceed that amount.

(3) If—

(a) more than one of the components are of such a description, and

(b) an amount is specified by the order in respect of each of those components,

the part of the expenditure that is section 45A expenditure must not exceed the total of those amounts.

(4) If the expenditure is treated under this Act as incurred in instalments, the proportion of each instalment that is section 45A expenditure is the same as the proportion of the whole of the expenditure that is section 45A expenditure.

(5) If this section applies, the expenditure is not apportioned under section 562(3) (apportionment where property sold with other property).

(6) In this section " section 45A expenditure " means expenditure that is first-year qualifying expenditure under section 45A. **]**

Textual Amendments

F43 Ss. 45A-45C inserted (with effect as mentioned in s. 65 of the amending Act) by Finance Act 2001 (c. 9), s. 65, **Sch. 17 para. 2** (with Sch. 17 para. 6)

[F44 45D Expenditure on cars with low carbon dioxide emissions

(1) Expenditure is first-year qualifying expenditure if—

(a) it is incurred in the period beginning with 17th April 2002 and ending with 31st March 2008,

(b) it is expenditure on a car which is first registered on or after 17th April 2002 and which is unused and not second-hand,

(c) the car—

(i) is an electrically-propelled car, or

(ii) is a car with low CO_2 emissions, and

(d) the expenditure is not excluded by section 46 (general exclusions).

(2) For the purposes of this section a car with low CO_2 emissions is a car which satisfies the conditions in subsections (3) and (4).

(3) The first condition is that, when the car is first registered, it is so registered on the basis of an EC certificate of conformity, or a UK approval certificate, that specifies—

(a) in the case of a car other than a bi-fuel car, a CO_2 emissions figure in terms of grams per kilometre driven, or

(b) in the case of a bi-fuel car, separate CO_2 emissions figures in terms of grams per kilometre driven for different fuels.

(4) The second condition is that the applicable CO_2 emissions figure in the case of the car does not exceed 120 grams per kilometre driven.

(5) For the purposes of subsection (4) the applicable CO_2 emissions figure in the case of a car other than a bi-fuel car is—

(a) where the EC certificate of conformity or UK approval certificate specifies only one CO_2 emissions figure, that figure, and

(b) where the certificate specifies more than one CO_2 emissions figure, the figure specified as the CO_2 emissions (combined) figure.

(6) For the purposes of subsection (4) the applicable CO_2 emissions figure in the case of a bi-fuel car is—

(a) where the EC certificate of conformity or UK approval certificate specifies more than one CO_2 emissions figure in relation to each fuel, the lowest CO_2 emissions (combined) figure specified, and

(b) in any other case, the lowest CO_2 figure specified by the certificate.

(7) The Treasury may by order amend the amount from time to time specified in subsection (4).

(8) In this section any reference to a car—

(a) includes a reference to a mechanically propelled road vehicle of a type commonly used as a hackney carriage, but

(b) does not include a reference to a motorcycle.

(9) For the purposes of this section, a car is an electrically-propelled car only if—

(a) it is propelled solely by electrical power, and

(b) that power is derived from—

(i) a source external to the vehicle, or

(ii) an electrical storage battery which is not connected to any source of power when the vehicle is in motion.

(10) In this section—

" bi-fuel car " means a car which is capable of being propelled by—

(a) petrol and road fuel gas, or

(b) diesel and road fuel gas;

" car " has the meaning given by section 81 (extended meaning of "car");

" diesel " means any diesel fuel within the definition in Article 2 of Directive 98/70/ EC of the European Parliament and of the Council;

" EC certificate of conformity " means a certificate of conformity issued by a manufacturer under any provision of the law of a member State implementing Article 6 of Council Directive 70/156/ EEC , as amended;

" petrol " has the meaning given by Article 2 of Directive 98/70/ EC of the European Parliament and of the Council;

" road fuel gas " has the same meaning as in section 168AB of ICTA ;

" UK approval certificate " means a certificate issued under—

(a) section 58(1) or (4) of the Road Traffic Act 1988, or

(b) Article 31A(4) or (5) of the Road Traffic (Northern Ireland) Order 1981.**]**

Textual Amendments

F44 S. 45D inserted (with effect as mentioned in s. 59 of the amending Act) by Finance Act 2002 (c. 23), s. 59, **Sch. 19 para. 3**

[F45 45E Expenditure on plant or machinery for gas refuelling station

(1) Expenditure is first-year qualifying expenditure if—

(a) it is incurred in the period beginning with 17th April 2002 and ending with 31st March 2008,

(b) it is expenditure on plant or machinery for a gas refuelling station where the plant or machinery is unused and not second-hand, and

(c) it is not excluded by section 46 (general exclusions).

(2) For the purposes of this section expenditure on plant or machinery for a gas refuelling station is expenditure on plant or machinery installed at a gas refuelling station for use solely for or in connection with refuelling vehicles with natural gas or hydrogen fuel.

(3) For the purposes of subsection (2) the plant or machinery which is for use for or in connection with refuelling vehicles with natural gas or hydrogen fuel includes—

(a) any storage tank for natural gas or hydrogen fuel,

(b) any compressor, pump, control or meter used for or in connection with refuelling vehicles with natural gas or hydrogen fuel, and

(c) any equipment for dispensing natural gas or hydrogen fuel to the fuel tank of a vehicle.

(4) For the purposes of this section—

" gas refuelling station " means any premises, or that part of any premises, where vehicles are refuelled with natural gas or hydrogen fuel;

" hydrogen fuel " means a fuel consisting of gaseous or cryogenic liquid hydrogen which is used for propelling vehicles;

" vehicle " means a mechanically propelled road vehicle. **]**

Textual Amendments

F45 S. 45E inserted (with effect as mentioned in s. 61 of the amending Act) by Finance Act 2002 (c. 23), s. 61, **Sch. 20 para. 3**

[F46 45F Expenditure on plant and machinery for use wholly in a ring fence trade

(1) Expenditure is first-year qualifying expenditure if—

(a) it is incurred on or after 17th April 2002,

(b) it is incurred by a company,

(c) it is incurred on the provision of plant or machinery for use wholly for the purposes of a ring fence trade, and

(d) it is not excluded by section 46 (general exclusions).

(2) This section is subject to section 45G (plant or machinery used for less than five years in a ring fence trade).

(3) In this section " ring fence trade " means a ring fence trade in respect of which tax is chargeable under section 501A of the Taxes Act 1988 (supplementary charge in respect of ring fence trades). **]**

Textual Amendments

F46 S. 45F inserted (with effect as mentioned in s. 63 of the amending Act) by Finance Act 2002 (c. 23), s. 63, **Sch. 21 para. 3**

[F47 45G Plant or machinery used for less than five years in a ring fence trade

(1) Expenditure incurred by a company on the provision of plant or machinery is to be treated as never having been first-year qualifying expenditure under section 45F if the plant or machinery—

(a) is at no time in the relevant period used in a ring fence trade carried on by the company or a company connected with it, or

(b) is at any time in the relevant period used for a purpose other than that of a ring fence trade carried on by the company or a company connected with it.

(2) For the purposes of this section " the relevant period " means whichever of the following periods, beginning with the incurring of the expenditure, first ends, namely —

(a) the period ending with the fifth anniversary of the incurring of the expenditure, or

(b) the period ending with the day preceding the first occasion on which the plant or machinery, after becoming owned by the company which incurred the expenditure, is not owned by a company which is either that company or a company connected with it.

(3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (1).

(4) If a person who has made a return becomes aware that, after making it, anything in it has become incorrect because of the operation of this section, he must give notice to [F39 an officer of Revenue and Customs] specifying how the return needs to be amended.

(5) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section.

(6) In this section " ring fence trade " has the same meaning as in section 45F.]

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

F47 S. 45G inserted (with effect as mentioned in s. 63 of the amending Act) by Finance Act 2002 (c. 23), s. 63, **Sch. 21 para. 4**

[F48 Expenditure on environmentally beneficial plant or machinery

Textual Amendments

F48 S. 45H-45J inserted (with effect in accordance with s. 167 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 30 para. 3**

45H (1) Expenditure is first-year qualifying expenditure if—

(a) it is expenditure on environmentally beneficial plant or machinery that is unused and not second-hand,

(b) it is incurred on or after 1st April 2003,

(c) it is not long-life asset expenditure, and

(d) it is not excluded by section 46 (general exclusions).

(2) Environmentally beneficial plant or machinery means plant or machinery in relation to which the following conditions are met—

(a) when the expenditure is incurred, or

(b) when the contract for the provision of the plant or machinery is entered into.

(3) The conditions are that the plant or machinery—

(a) is of a description specified by Treasury order, and

(b) meets the environmental criteria specified by Treasury order for plant or machinery of that description.

(4) The Treasury may make such orders under subsection (3) as appear to them appropriate to promote the use of technologies, or products, designed to remedy or prevent damage to the physical environment or natural resources.

(5) Any such order may make provision by reference to any technology list, or product list, issued by the Secretary of State (whether before or after the coming into force of this section).

Certification of environmentally beneficial plant and machinery

45I (1) The Treasury may by order provide that, in such cases as may be specified in the order, no section 45H allowance may be made unless a relevant certificate of environmental benefit is in force.

A " section 45H allowance " means a first-year allowance in respect of expenditure that is first-year qualifying expenditure under section 45H.

(2) A certificate of environmental benefit is one certifying that—

(a) particular plant or machinery, or

(b) plant or machinery constructed to a particular design,

meets the environmental criteria specified in relation to that description of plant or machinery by order under section 45H.

(3) A relevant certification of environmental benefit means one issued—

(a) by the Secretary of State or a person authorised by the Secretary of State;

(b) in the case of plant or machinery used or for use in Scotland, by the Scottish Ministers or a person authorised by them;

(c) in the case of plant or machinery used or for use in Wales, by the National Assembly for Wales or a person authorised by it;

(d) in the case of plant or machinery used or for use in Northern Ireland, by the Department of Enterprise, Trade and Investment in Northern Ireland or a person authorised by it.

(4) If a certification of environmental benefit is revoked—

(a) the certificate is treated for the purposes of this section as if it had never been issued, and

(b) all such assessments and adjustments shall be made as are necessary as a result of the revocation.

(5) If a person who has made a tax return becomes aware that, as a result of the revocation of a certificate of environmental benefit after the return was made, the return has become incorrect, he must give notice to **[**[F39]an officer of Revenue and Customs **]** specifying how the return needs to be amended.

(6) The notice must be given within three months beginning with the day on which the person first became aware that anything in the tax return had become incorrect because of the revocation of the certificate.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

Environmentally beneficial components of plant or machinery

45J (1) This section applies for the purpose of apportioning expenditure incurred on plant or machinery where one or more of the components of the plant or machinery (but not all of it) is of a description specified by Treasury order under section 45H(3).

(2) If—

(a) only one of the components is of such a description, and

(b) an amount is specified by the order in respect of that component,

the part of the expenditure that is section 45H expenditure must not exceed that amount.

(3) If—

(a) more than one of the components is of such a description, and

(b) an amount is specified by the order in respect of each of those components,

the part of the expenditure that is section 45H expenditure must not exceed the total of those amounts.

(4) If the expenditure is treated under this Act as incurred in instalments, the proportion of each instalment that is section 45H expenditure is the same as the proportion of the whole expenditure that is section 45H expenditure.

(5) Where this section applies, the expenditure is not apportioned under section 562(3) (apportionment where property sold with other property).

(6) In this section " section 45H expenditure " means expenditure that is first-year qualifying expenditure under section 45H. **]**

46 General exclusions applying to sections 40, 44 and 45

(1) Expenditure within any of the general exclusions in subsection (2) is not first-year qualifying expenditure under **[**[F49]any of the following provisions**]**—

section 40 (expenditure incurred for Northern Ireland purposes by small or medium-sized enterprises),

section 44 (expenditure incurred by small or medium-sized enterprises), [F50]...

section 45 (ICT expenditure incurred by small enterprises)**[**[F51], [F52]...

section 45A (expenditure on energy-saving plant or machinery)**][**[F53],

section 45D (expenditure on cars with low CO_2 emissions),**]**

[[F54]section 45E (expenditure on plant or machinery for gas refuelling station)**]** , [F55]...

[[F56]section 45F (expenditure on plant and machinery for use wholly in a ring fence trade)**]**

[[F57]section 45H expenditure on environmentally beneficial plant or machinery.**]**

(2) The general exclusions are—

General exclusion 1

The expenditure is incurred in the chargeable period in which the qualifying activity is permanently discontinued.

General exclusion 2

The expenditure is incurred on the provision of a car (as defined by section 81).

General exclusion 3

The expenditure is of the kind described in section 94 (ships).

General exclusion 4

The expenditure is of the kind described in section 95 (railway assets).

General exclusion 5

The expenditure would be long-life asset expenditure but for paragraph 20 of Schedule 3 (transitional provisions).

General exclusion 6

The expenditure is on the provision of plant or machinery for leasing (whether in the course of a trade or otherwise).

For this purpose, the letting of a ship on charter, or of any other asset on hire, is to be regarded as leasing (whether or not it would otherwise be so regarded).

General exclusion 7

The circumstances of the incurring of the expenditure are that—

(a) the provision of the plant or machinery on which the expenditure is incurred is connected with a change in the nature or conduct of a trade or business carried on by a person other than the person incurring the expenditure, and

(b) the obtaining of a first-year allowance is the main benefit, or one of the main benefits, which could reasonably be expected to arise from the making of the change.

General exclusion 8

[[F58]Any**]** of the following sections applies—

section 13 (use for qualifying activity of plant or machinery provided for other purposes);

[[F59]section 13A (use for other purposes of plant or machinery provided for long funding leasing);**]**

section 14 (use for qualifying activity of plant or machinery which is a gift).

This is subject to section 161 (pre-trading expenditure on mineral exploration and access).

[[F60](3) Subsection (1) is subject to the following provisions of this section.

(4) General exclusion 2 does not prevent expenditure being first-year qualifying expenditure under section 45D.**]**

[[F61](5) General exclusion 6 does not prevent expenditure being first-year qualifying expenditure under any of the following provisions—

section 45A, if the condition in subsection (6) is met,

section 45D,

section 45H, if the condition in subsection (6) is met.

(6) The condition is that the plant or machinery is provided for leasing under an excluded lease of background plant or machinery for a building, within the meaning given by section 70R.**]**

Textual Amendments

F49 Words in s. 46(1) inserted (with effect in accordance with s. 167 of the amending Act) by Finance Act 2003 (c. 14) , **Sch. 30 para. 4(1)(a)**

F50 Word in s. 46(1) repealed (with effect in accordance with s. 65 of the amending Act) by Finance Act 2001 (c. 9), s. 110, **Sch. 33 Pt. 2(4)** Note

F51 Words in s. 46(1) inserted (with effect as mentioned in s. 65 of the amending Act) by Finance Act 2001 (c. 9), s. 65, **Sch. 17 para. 3**

F52 Word in s. 46(1) repealed (with effect as mentioned in s. 59 of the amending Act) by Finance Act 2002 (c. 23), **s. 141**, (Sch. 40 Pt. 3(7) note)

F53 Entry in s. 46(1) relating to s. 45D inserted (with effect as mentioned in s. 59 of the amending Act) by Finance Act 2002 (c. 23), s. 59, **Sch. 19 para. 4(2)**

F54 Entry in s. 46(1) relating to s. 45E inserted (with effect as mentioned in s. 61of the amending Act) by Finance Act 2002 (c. 23), s. 61, **Sch. 20 para. 4**

F55 Word in s. 46(1) repealed (with effect in accordance with s. 167 of the amending Act) by Finance Act 2003 (c. 14) , Sch. 30 para. 4(1)(b) , **43 Pt. 3(9)**

F56 Entry in s. 46(1) relating to s. 45F inserted (with effect as mentioned in s. 63 of the amending Act) by Finance Act 2002 (c. 23), s. 63, **Sch. 21 para. 5**

F57 Words in s. 46(1) added (with effect in accordance with s. 167 of the amending Act) by Finance Act 2003 (c. 14) , **Sch. 30 para. 4(1)(c)**

F58 Word in s. 46(2) substituted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 4(2)(a)**

F59 Words in s. 46(2) inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 4(2)(b)**

F60 Entry relating to s. 46(3)(4) inserted (with effect as mentioned in s. 59 of the amending Act) by Finance Act 2002 (c. 23), s. 59, **Sch. 19 para. 4(3)**

F61 S. 46(5)(6) substituted for s. 46(5) (with effect in accordance with Sch. 9 para. 11(3) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 11(2)**

Expenditure of small or medium-sized enterprises

47 Expenditure of small or medium-sized enterprises: companies

(1) Use this section to decide whether expenditure incurred by a company is, for the purposes of this Chapter, incurred by—
- (a) a small or medium-sized enterprise, or
- (b) a small enterprise.

(2) The expenditure is incurred by a small or medium-sized enterprise if the company—
- (a) qualifies (or is treated as qualifying) as small or medium-sized under the relevant companies legislation in relation to the financial year of the company in which the expenditure is incurred, and
- (b) is not a member of a large group at the time when the expenditure is incurred.

(3) The expenditure is incurred by a small enterprise if the company—
- (a) qualifies (or is treated as qualifying) as small under the relevant companies legislation in relation to the financial year of the company in which the expenditure is incurred, and
- (b) is not a member of a large or medium-sized group at the time when the expenditure is incurred.

(4) **[**[F62]In this section**]** —

(a) "the relevant companies legislation" means **[**[F63]sections 382 and 465 of the Companies Act 2006**]**, and

(b) "financial year" has the same meaning as in **[**[F64]section 390 of the Companies Act 2006**]**.

[F65](5) . . . .

(6) "Company" means—

(a) a company, or an oversea company, within the meaning of **[**[F66]the Companies Act 1985**]**, or

(b) a company, or a Part XXIII company, within the meaning of **[**[F67]the Companies (Northern Ireland) Order 1986**]**.

Textual Amendments

F62 Words in s. 47(4) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), **28(2)(a)** (with art. 4)

F63 Words in s. 47(4)(a) substituted (6.4.2008) by virtue ofThe Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), **28(2)(b)** (with art. 4)

F64 Words in s. 47(4)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), **28(2)(c)** (with art. 4)

F65 S. 47(5) repealed (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), 28(3), **Sch.** (with art. 4)

F66 Words in s. 47(6)(a) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), **28(4)(a)** (with art. 4)

F67 Words in s. 47(6)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), **28(4)(b)** (with art. 4)

48 Expenditure of small or medium-sized enterprises: businesses

(1) Use this section to decide whether expenditure incurred by a business is, for the purposes of this Chapter, incurred by—

(a) a small or medium-sized enterprise, or

(b) a small enterprise.

(2) In this section "business" means—

(a) an individual,

(b) a partnership of which all the members are individuals,

(c) a registered friendly society within the meaning of Chapter II of Part XII of ICTA, or

(d) a body corporate which is not a company but is within the charge to corporation tax.

(3) The expenditure is incurred by a small or medium-sized enterprise if—

(a) the expenditure is incurred for the purposes of a qualifying activity carried on by the business, and

(b) the business passes the hypothetical company test, in relation to that expenditure, as a small or medium-sized company.

(4) The expenditure is incurred by a small enterprise if—

(a) the expenditure is incurred for the purposes of a qualifying activity carried on by the business, and

(b) the business passes the hypothetical company test, in relation to that expenditure, as a small company.

(5) To apply the hypothetical company test, assume that—

(a) the qualifying activity is carried on by a company ("the hypothetical company"),

(b) every trade, business, profession or vocation carried on by the business is carried on by the business as part of that activity,

(c) the financial years of the hypothetical company coincide with the chargeable periods of the business, and

(d) accounts of the hypothetical company for any relevant chargeable period have been duly drawn up as if that period were a financial year of the company.

(6) The business passes the hypothetical company test as a small or medium-sized company in relation to the expenditure in question if, on the assumptions in subsection (5), the company would qualify (or be treated as qualifying) as small or medium-sized under the relevant companies legislation in relation to the financial year in which the expenditure is assumed to be incurred.

(7) The business passes the hypothetical company test as a small company in relation to the expenditure in question if, on the assumptions in subsection (5), the company would qualify (or be treated as qualifying) as small under the relevant companies legislation in relation to the financial year in which the expenditure is assumed to be incurred.

(8) **[**[F68]In this section**]** —

(a) "the relevant companies legislation" means **[**[F69]sections 382 and 465 of the Companies Act 2006**]**, and

(b) "financial year" has the same meaning as in **[**[F70]section 390 of the Companies Act 2006**]**;

and the reference in subsection (5)(d) to accounts being duly drawn up is to their being drawn up in accordance with that Act.

[F71](9) . . . .

Textual Amendments

F68 Words in s. 48(8) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), **29(2)(a)** (with art. 4)

F69 Words in s. 48(8)(a) substituted (6.4.2008) by virtue of The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), **29(2)(b)** (with art. 4)

F70 Words in s. 48(8)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), **29(2)(c)** (with art. 4)

F71 S. 48(9) repealed (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), 29(3), **Sch.** (with art. 4)

49 Whether company is a member of a large or medium-sized group

(1) Use this section to decide whether, for the purposes of section 47, a company is—

(a) a member of a large group, or

(b) a member of a large or medium-sized group.

(2) Subject to subsection (4), a company is a member of a large group at the time when any expenditure is incurred if—

(a) it is at that time the parent undertaking of a group which does not qualify as small or medium-sized in relation to the financial year of the parent undertaking in which that time falls, or

(b) it is at that time a subsidiary undertaking in relation to the parent undertaking of such a group.

(3) Subject to subsection (4), a company is a member of a large or medium-sized group at the time when any expenditure is incurred if—

(a) it is at that time the parent undertaking of a group which does not qualify as small in relation to the financial year of the parent undertaking in which that time falls, or

(b) it is at that time a subsidiary undertaking in relation to the parent undertaking of such a group.

(4) If, at the time when any expenditure is incurred by a company, any arrangements exist which are such that, had effect been given to them immediately before that time, the company or a successor of the company—

(a) would, at that time, have been a member of a large group, or

(b) would, at that time, have been a member of a large or medium-sized group,

the company incurring the expenditure is to be treated as a member of a large group or (as the case may be) a large or medium-sized group at that time.

(5) For the purposes of subsections (2) and (3), the question whether—

(a) a group qualifies as small or medium-sized, or

(b) a group qualifies as small,

is to be decided by reference to the relevant companies legislation (but reading references in that legislation to a parent company as references to a parent undertaking).

(6) In subsection (5) "the relevant companies legislation" means **[**[F72]sections 383 and 466 of the Companies Act 2006.**]**

(7) For the purposes of subsection (4) a company is the successor of another if—

(a) it carries on a trade which, in whole or in part, the other company has ceased to carry on, and

(b) the circumstances are such that section 343 of ICTA (company reconstructions without a change of ownership) applies in relation to the two companies as the predecessor and the successor within the meaning of that section,

and "arrangements" means arrangements of any kind (whether or not in writing or legally enforceable).

[[F73](8) In this section—

"financial year" and "group" have the same meaning as in Part 15 of the Companies Act 2006;

"parent undertaking" and "subsidiary undertaking" have the same meaning as in section 1162 of that Act.**]**

Textual Amendments

F72 Words in s. 49(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), **30(2)** (with art. 4)

F73 S. 49(8) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), **30(3)** (with art. 4)

Supplementary

50 Time when expenditure is incurred

In determining whether expenditure is first-year qualifying expenditure under this Chapter, any effect of section 12 on the time at which it is to be treated as incurred is to be disregarded.

51 Disclosure of information between UK tax authorities

(1) No obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise prevents—

(a) **[**[F74]Her Majesty's Revenue and Customs **]** from disclosing information, for the purpose given in subsection (2), to the Department of Agriculture and Rural Development in Northern Ireland ("the Department") or an authorised officer of the Department, or

(b) the Department or an authorised officer of the Department from disclosing information for that purpose to **[**[F74]Her Majesty's Revenue and Customs **]**.

(2) The purpose is assisting—

(a) **[**[F75]the Commissioners for Her Majesty's Revenue and Customs**]**, in carrying out **[**[F76]their**]** functions relating to allowances made because of section 40 (expenditure incurred for Northern Ireland purposes by small or medium-sized enterprises), or

(b) the Department, in carrying out its functions under this Chapter.

(3) Information obtained as a result of a disclosure authorised by this section must not be disclosed except—

(a) to **[**[F77]Her Majesty's Revenue and Customs**]**, the Department or an authorised officer of the Department, or

(b) for the purposes of any proceedings connected with a matter in relation to which **[**[F75]the Commissioners for Her Majesty's Revenue and Customs**]** or the Department carry out the functions mentioned in subsection (2)(a) or (b).

Textual Amendments

F74 Words in s. 51(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 84(a)**; S.I. 2005/1126, art. 2(2)(h)

F75 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(2)**; S.I. 2005/1126, art. 2(2)(h)

F76 Word in s. 51(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 84(b)**; S.I. 2005/1126, art. 2(2)(h)
F77 Words in s. 51(3)(a) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 84(c)**; S.I. 2005/1126, art. 2(2)(h)

CHAPTER 5

ALLOWANCES AND CHARGES

First-year allowances

52 First-year allowances

(1) A person is entitled to a first-year allowance in respect of first-year qualifying expenditure if—
- (a) the expenditure is incurred in a chargeable period to which this Act applies, and
- (b) the person owns the plant or machinery at some time during that chargeable period.

(2) Any first-year allowance is made for the chargeable period in which the first-year qualifying expenditure is incurred.

(3) The amount of the allowance is a percentage of the first-year qualifying expenditure in respect of which the allowance is made, as shown in the Table—

Table

Amount of first-year allowances

Type of first-year qualifying expenditure	***Amount***
Expenditure qualifying under section 40 (expenditure incurred for Northern Ireland purposes by small or medium-sized enterprises)	100%
Expenditure qualifying under section 44 (expenditure incurred by small or medium-sized enterprises)	40%
Expenditure qualifying under section 45 (ICT expenditure incurred by small enterprises)	100%
[[F78]Expenditure qualifying under section 45A (expenditure on energy-saving plant or machinery	100%**]**
[[F79]Expenditure qualifying under section 45D (expenditure on cars with low CO_2 emissions)	100%**]**

[F80Expenditure qualifying under section 45E (expenditure on plant or machinery for gas refuelling station)	100%**]**
[F81Expenditure qualifying under section 45F (expenditure on plant and machinery for use wholly in a ring fence trade) which is long-life asset expenditure	24%
Expenditure qualifying under section 45F (expenditure on plant and machinery for use wholly in a ring fence trade) other than long-life asset expenditure	100%**]**
[F82Expenditure qualifying under section 45H (expenditure on environmentally beneficial plant or machinery)	100%**]**

[F83In the case of expenditure qualifying under section 44, see also—

(a) section 142 of the Finance Act 2004 (substitution of 50% in the case of expenditure incurred by a small enterprise in 2004-05 or financial year 2004);

(b) section 30 of the Finance Act 2006 (substitution of 50% in the case of expenditure incurred by a small enterprise in 2006-07 or financial year 2006).**]**

[F84(c) section 37 of the Finance Act 2007 (substitution of 50% in the case of expenditure incurred by a small enterprise in 2007-08 or financial year 2007).**]**

(4) A person who is entitled to a first-year allowance may claim the allowance in respect of the whole or a part of the first-year qualifying expenditure.

(5) Subsection (1) needs to be read with section 236 (first-year allowances in respect of additional VAT liabilities) and is subject to—

section 205 (reduction of first-year allowance if plant or machinery provided partly for purposes other than those of qualifying activity),

section 210 (reduction of first-year allowance if it appears that a partial depreciation subsidy is or will be payable), and

sections 217, 223 and 241 (anti-avoidance: no first-year allowance in certain cases).

Textual Amendments

F78 S. 52(3): words in Table added (with effect as mentioned in s. 65 of the amending Act) by Finance Act 2001 (c. 9), s. 65, **Sch. 17 para. 4**

F79 S. 52(3): words in Table added (with effect as mentioned in s. 59 of the amending Act) by Finance Act 2002 (c. 23), s. 59, **Sch. 19 para. 5**

F80 S. 52(3): words in Table added (with effect as mentioned in s. 61 of the amending Act) by Finance Act 2002 (c. 23), s. 61, **Sch. 20 para. 5**

F81 S. 52(3): words in Table added (with effect as mentioned in s. 63 of the amending Act) by Finance Act 2002 (c. 23), s. 63, **Sch. 21 para. 6**

F82 Words in s. 52(3) added (with effect in accordance with s. 167 of the amending Act) by Finance Act 2003 (c. 14) , **Sch. 30 para. 5**

F83 Words in s. 52(3) substituted (19.7.2006) by Finance Act 2006 (c. 25), **s. 30(3)**
F84 S. 52(3)(c) inserted (19.7.2007) by Finance Act 2007 (c. 11), **s. 37(3)**

Modifications etc. (not altering text)
C12 S. 52(3) modified (temp.) (with effect in accordance with s. 30(2) of the amending Act) by Finance Act 2006 (c. 25), **s. 30(1)**

Pooling

53 Pooling of qualifying expenditure

(1) Qualifying expenditure has to be pooled for the purpose of determining a person's entitlement to writing-down allowances and balancing allowances and liability to balancing charges.

(2) If a person carries on more than one qualifying activity, expenditure relating to the different activities must not be allocated to the same pool.

54 The different kinds of pools

(1) There are single asset pools, class pools and the main pool.

(2) A single asset pool may not contain expenditure relating to more than one asset.

(3) The following provide for qualifying expenditure to be allocated to a single asset pool—

section 74 (car above the cost threshold);
section 86 (short-life asset);
section 127 (ship);
section 206 (plant or machinery provided or used partly for purposes other than those of qualifying activity);
section 211 (payment of partial depreciation subsidy);
section 538 (contribution allowances: plant and machinery).

(4) A class pool is a pool which may contain expenditure relating to more than one asset.

(5) The following provide for qualifying expenditure to be allocated to a class pool—

section 101 (long-life assets);
section 107 (overseas leasing).

(6) Qualifying expenditure may be allocated to the main pool only if it does not fall to be allocated to a single asset pool or a class pool.

Writing-down and balancing allowances and balancing charges

55 Determination of entitlement or liability

(1) Whether a person is entitled to a writing-down allowance or a balancing allowance, or liable to a balancing charge, for a chargeable period is determined separately for each pool of qualifying expenditure and depends on—

(a) the available qualifying expenditure in that pool for that period ("AQE"), and

(b) the total of any disposal receipts to be brought into account in that pool for that period ("TDR").

(2) If AQE exceeds TDR, the person is entitled to a writing-down allowance or a balancing allowance for the period.

(3) If TDR exceeds AQE, the person is liable to a balancing charge for the period.

(4) The entitlement under subsection (2) is to a writing-down allowance except for the final chargeable period when it is to a balancing allowance.

(5) The final chargeable period is given by section 65.

(6) Subsection (2) is subject to section 110(1) (overseas leasing: allowances prohibited in certain cases).

56 Amount of allowances and charges

(1) The amount of the writing-down allowance to which a person is entitled for a chargeable period is 25% of the amount by which AQE exceeds TDR.

(2) Subsection (1) is subject to—
(a) section 102 (long-life asset expenditure: 6%), and
(b) section 109 (overseas leasing: 10%).

(3) If the chargeable period is more or less than a year, the amount is proportionately increased or reduced.

(4) If the qualifying activity has been carried on for part only of the chargeable period, the amount is proportionately reduced.

(5) A person claiming a writing-down allowance may require the allowance to be reduced to a specified amount.

(6) The amount of the balancing charge to which a person is liable for a chargeable period is the amount by which TDR exceeds AQE.

(7) The amount of the balancing allowance to which a person is entitled for the final chargeable period is the amount by which AQE exceeds TDR.

Available qualifying expenditure

57 Available qualifying expenditure

(1) The general rule is that a person's available qualifying expenditure in a pool for a chargeable period consists of—
(a) any qualifying expenditure allocated to the pool for that period in accordance with section 58, and
(b) any unrelieved qualifying expenditure carried forward in the pool from the previous chargeable period under section 59.

(2) A person's available qualifying expenditure in a pool for a chargeable period also includes any amount allocated to the pool for that period under—
section 26(3) (net costs of demolition);
section 86(2) or 87(2) (allocation of expenditure in short-life asset pool);

section 111(3) (overseas leasing: standard recovery mechanism);

section 129(1), 132(2), 133(3) or 137 (provisions relating to operation of single ship pool and deferment of balancing charges in respect of ships);

[[F85]section 161C(2)(decommissioning expenditure incurred by person carrying on trade of oil extraction);**]**

section 165(3) (abandonment expenditure incurred after cessation of ring fence trade);

section 206(3) (plant or machinery used partly for purposes other than those of the qualifying activity);

section 211(4) (partial depreciation subsidy paid).

(3) A person's available qualifying expenditure does not include any expenditure excluded by—

section 8(4) or 9(1) (rules against double relief);

section 166(2) (transfers of interests in oil fields: anti-avoidance);

section 185(2), 186(2) or 187(2) (restrictions where other claims made in respect of fixture);

section 218(1), 224(1), 228(2), 242(2), or 243(2) (general anti-avoidance provisions).

(4) Subsection (1) is also subject to section 220 (allocation to chargeable periods of expenditure incurred on plant or machinery for leasing under finance lease).

Textual Amendments

F85 Words in s. 57(2) inserted (with effect as mentioned in Sch. 20 para. 9(1)-(4)(8) of the amending Act) by Finance Act 2001 (c. 9), s. 68, **Sch. 20 para. 5(2)**

58 Initial allocation of qualifying expenditure to pools

(1) The following rules apply to the allocation of a person's qualifying expenditure to the appropriate pool.

(2) An amount of qualifying expenditure is not to be allocated to a pool for a chargeable period if that amount has been taken into account in determining the person's available qualifying expenditure for an earlier chargeable period.

(3) Qualifying expenditure is not to be allocated to a pool for a chargeable period before that in which the expenditure is incurred.

(4) Qualifying expenditure is not to be allocated to a pool for a chargeable period unless the person owns the plant or machinery at some time in that period.

(5) If a first-year allowance is made in respect of an amount of first-year qualifying expenditure—

(a) subject to subsection (6), none of that amount is to be allocated to a pool for the chargeable period in which the expenditure is incurred, and

(b) the amount that may be allocated to a pool for any chargeable period is limited to the balance left after deducting the first-year allowance.

(6) If—

(a) a first-year allowance is made in respect of an amount of first-year qualifying expenditure,
(b) a disposal event occurs in respect of the plant or machinery in any chargeable period, and
(c) none of the balance left after deducting the first-year allowance has been allocated to a pool for an earlier chargeable period,

the balance (or some of it) must be allocated to a pool for the chargeable period in which the disposal event occurs.

(7) Subsection (6) applies even if the balance is nil (because of a 100% first-year allowance).

(8) "The appropriate pool" means whichever pool is applicable under the provisions of this Part apart from this section.

59 Unrelieved qualifying expenditure

(1) A person has unrelieved qualifying expenditure to carry forward from a chargeable period if for that period AQE exceeds TDR.

(2) The amount of the unrelieved qualifying expenditure is—
(a) the excess less the writing-down allowance made for the period, or
(b) if no writing-down allowance is claimed for the period, the excess.

(3) No amount may be carried forward as unrelieved qualifying expenditure from the final chargeable period.

Disposal events and disposal values: general

60 Meaning of "disposal receipt" and "disposal event"

(1) In this Part "disposal receipt" means a disposal value that a person is required to bring into account in accordance with—
(a) sections 61, 62 and 63 (disposal events, disposal values and the general limit on the amount of a disposal value),
(b) any of the provisions of this Part listed in section 66, or
(c) paragraph 11 of Schedule 12 to FA 1997 (finance lease or loan: receipt of major lump sum) or any other enactment,

when read with sections 64 and 264(3) (cases in which no disposal value need be brought into account).

(2) In this Part "disposal event" means any event of a kind that requires a disposal value to be brought into account under this Part (whether under section 61(1) or otherwise).

(3) If—
(a) qualifying expenditure has been allocated to a pool, and
(b) more than one disposal event occurs in respect of the plant or machinery,

a disposal value is required to be brought into account in the pool in connection with the first event only.

(4) In subsection (3) "disposal event" does not include a disposal event arising under—
section 72 (computer software),

sections 140 and 143 (attribution of deferred balancing charge), or
section 238(2) (additional VAT rebates).

61 Disposal events and disposal values

(1) A person who has incurred qualifying expenditure is required to bring the disposal value of the plant or machinery into account for the chargeable period in which—

(a) the person ceases to own the plant or machinery;

(b) the person loses possession of the plant or machinery in circumstances where it is reasonable to assume that the loss is permanent;

(c) the plant or machinery has been in use for mineral exploration and access and the person abandons it at the site where it was in use for that purpose;

(d) the plant or machinery ceases to exist as such (as a result of destruction, dismantling or otherwise);

(e) the plant or machinery begins to be used wholly or partly for purposes other than those of the qualifying activity;

[[F86](ee) the plant or machinery begins to be leased under a long funding lease (see Chapter 6A);**]**

(f) the qualifying activity is permanently discontinued.

(2) The disposal value to be brought into account depends on the disposal event, as shown in the Table—

Table

Disposal values: general

1. Disposal event	***2. Disposal value***
1. Sale of the plant or machinery, except in a case where item 2 applies.	The net proceeds of the sale, together with— (a) any insurance money received in respect of the plant or machinery as a result of an event affecting the price obtainable on the sale, and (b) any other compensation of any description so received, so far as it consists of capital sums.
2. Sale of the plant or machinery where— (a) the sale is at less than market value, (b) there is no charge to tax under **[**[F87]ITEPA 2003**]**, and (c) the condition in subsection (4) is met by the buyer.	The market value of the plant or machinery at the time of the sale.
3. Demolition or destruction of the plant or machinery.	The net amount received for the remains of the plant or machinery, together with— (a) any insurance money received in respect of the demolition or destruction, and

	(b) any other compensation of any description so received, so far as it consists of capital sums.
4. Permanent loss of the plant or machinery otherwise than as a result of its demolition or destruction.	Any insurance money received in respect of the loss and, so far as it consists of capital sums, any other compensation of any description so received.
5. Abandonment of the plant or machinery which has been in use for mineral exploration and access at the site where it was in use for that purpose.	Any insurance money received in respect of the abandonment and, so far as it consists of capital sums, any other compensation of any description so received.
[F88 5A. Commencement of the term of a long funding finance lease of the plant or machinery.	An amount equal to that which would fall to be recognised as the lessor's net investment in the lease if accounts were prepared in accordance with generally accepted accounting practice on the date on which the lessor's net investment in the lease is first recognised in the books or other financial records of the lessor.
5B. Commencement of the term of a long funding operating lease of the plant or machinery.	An amount equal to the market value of the plant or machinery at the commencement of the term of the lease.**]**
6. Permanent discontinuance of the qualifying activity followed by the occurrence of an event within any of items 1 to **[**F89 5B**]**.	The disposal value for the item in question.
7. Any event not falling within any of items 1 to 6.	The market value of the plant or machinery at the time of the event.

(3) The amounts referred to in column 2 of the Table are those received by the person required to bring the disposal value into account.

(4) The condition referred to in item 2 of the Table is met by the buyer if—
   (a) the buyer's expenditure on the acquisition of the plant or machinery cannot be qualifying expenditure under this Part or Part 6 (research and development allowances), or
   (b) the buyer is a dual resident investing company which is connected with the seller.

(5) In this section "mineral exploration and access" has the same meaning as in Chapter 13 (provisions affecting the mining and oil industries) and Part 5 (mineral extraction allowances).

Textual Amendments

F86 S. 61(1)(ee) inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 5(2)**

F87 Words in s. 61(2) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 249** (with Sch. 7)
F88 S. 61(2) Table Item 5A 5B inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 5(3)**
F89 Word in s. 61(2) substituted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 5(4)**

Modifications etc. (not altering text)
C13 S. 61 modified (5.10.2004) by Energy Act 2004 (c. 20) , s. 198(2) , **Sch. 9 para. 9(4)** (with s. 38(2)); S.I. 2004/2575 , art. 2(1) , Sch. 1
C14 S. 61 modified (E.W.S.) (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 2**; S.I. 2005/1444, art. 2(1), Sch. 1
C15 S. 61 modified (E.W.S.) (24.7.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 22**; S.I. 2005/1909, art. 2, Sch.
C16 S. 61(2)-(4) excluded (E.W.S.) (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 14(2)(a)**; S.I. 2005/1444, art. 2(1), Sch. 1

62 General limit on amount of disposal value

(1) The amount of any disposal value required to be brought into account by a person in respect of any plant or machinery is limited to the qualifying expenditure incurred by the person on its provision.

(2) Subsection (3) applies if a person who is required to bring a disposal value into account has acquired the plant or machinery as a result of a transaction which was, or a series of transactions each of which was, between connected persons.

(3) The amount of the disposal value is limited to the amount of the qualifying expenditure on the provision of the plant or machinery incurred by whichever party to the transaction, or to any of the transactions, incurred the greatest such expenditure.

(4) This section is subject to section 239 (limit on disposal value where additional VAT rebate or rebates has or have been made in respect of original expenditure).

63 Cases in which disposal value is nil

(1) If a person disposes of plant or machinery by way of gift in circumstances such that there is a charge to tax under **[**[F90]ITEPA 2003**]**, the disposal value of the plant or machinery is nil.

(2) If a person carrying on a relevant qualifying activity makes a gift of plant or machinery used in the course of the activity—
   (a) to a charity within the meaning of section 506 of ICTA (charities: qualifying and non-qualifying expenditure),
   (b) to a body listed in section 507(1) of ICTA (various heritage bodies and museums), or
   (c) for the purposes of a designated educational establishment within the meaning of **[**[F91]section 110 of ITTOIA 2005 or**]** section 84 of ICTA (gifts to educational establishments),

the disposal value of the plant or machinery is nil.

(3) In subsection (2) "relevant qualifying activity" means a qualifying activity consisting of—

(a) a trade,
(b) an ordinary [F92property] business,
(c) a furnished holiday lettings business,
(d) an overseas property business, or
(e) a profession or vocation.

(4) Subsection (2) needs to be read with [F93section 109 of ITTOIA 2005 and] sections 83A(4) and 84(4) of ICTA (which provide for a charge to tax if subsection (2) applies in circumstances in which the donor or a connected person receives a benefit attributable to the gift).

(5) If expenditure is treated under section 27(2) (expenditure on thermal insulation, safety measures, etc.) as having been incurred on plant or machinery, the disposal value of the plant or machinery is nil.

Textual Amendments

F90 Words in s. 63(1) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1) , s. 723 , **Sch. 6 para. 250** (with Sch. 7)

F91 Words in s. 63(2)(c) inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 535(2)** (with Sch. 2)

F92 Word in s. 63(3)(b) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 535(3)** (with Sch. 2)

F93 Words in s. 63(4) inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 535(4)** (with Sch. 2)

Modifications etc. (not altering text)

C17 S. 63(2) modifed (with effect as mentioned in s. 58(4) of the amending Act) by Finance Act 2002 (c. 23), s. 58, **Sch. 18 para. 9(3)(c)**

64 Case in which no disposal value need be brought into account

(1) A person is not required to bring a disposal value into account in a pool for a chargeable period in respect of plant or machinery if none of the qualifying expenditure is or has been taken into account in a claim in determining the person's available qualifying expenditure in the pool for that or any previous chargeable period.

(2) Subsection (3) applies if—

(a) a person ("C") has incurred qualifying expenditure on plant or machinery,
(b) C acquired the plant or machinery as a result of a transaction which was, or a series of transactions each of which was, between connected persons,
(c) any connected person (apart from C) who was a party to the transaction, or one of the series of transactions, is or has been required to bring a disposal value into account as a result of the transaction,
(d) a disposal event ("the relevant disposal event") occurs in respect of the plant or machinery at a time when it is owned by C, and
(e) none of C's qualifying expenditure is or has been taken into account in a claim in determining C's available qualifying expenditure for the chargeable period in which the relevant disposal event occurs or any previous chargeable period.

(3) If this subsection applies—

(a) subsection (1) does not apply in relation to the relevant disposal event, and
(b) C's qualifying expenditure is to be treated as allocated to the appropriate pool for the chargeable period in which the relevant disposal event occurs.

(4) In subsection (3)—
(a) "qualifying expenditure" means, if a first-year allowance has been made to C, the amount (including a nil amount) remaining after deducting the allowance, and
(b) "the appropriate pool" means whichever pool is applicable in relation to C under the provisions of this Part.

(5) A person takes expenditure into account in a claim if he takes it into account—
(a) in a tax return;
(b) by giving notice of an amendment of a tax return;
(c) in any other claim under this Part.

The final chargeable period

65 The final chargeable period

(1) The final chargeable period for—
(a) the main pool, or
(b) a long-life asset pool,

is the chargeable period in which the qualifying activity is permanently discontinued.

(2) The final chargeable period for a single asset pool is the first chargeable period in which any disposal event given in section 61(1) occurs.

(3) Subsection (2) is subject to—

sections 77(1) and 206(4) (no final chargeable period merely because plant or machinery begins to be used partly for purposes other than those of qualifying activity);

sections 86(2) and 87(2) (ending of short-life asset pool at four-year cut-off without final chargeable period);

section 132(2) (no final chargeable period for single ship pool).

(4) The final chargeable period for a class pool under section 107 (overseas leasing) is the chargeable period at the end of which the circumstances are such that there can be no more disposal receipts in any subsequent chargeable period.

List of provisions outside this Chapter about disposal values

66 List of provisions outside this Chapter about disposal values

The provisions of this Part referred to in section 60(1)(b) are—

section 68	hire-purchase etc.: disposal value on cessation of notional ownership
sections 72 and 73	grant of new software right: disposal value

section 79	cars: disposal value in avoidance cases
sections 88 and 89	short-life assets: disposal at under-value or to connected person
section 104	long-life assets: avoidance cases
sections 108, 111 and 114	overseas leasing: disposal values in various cases
sections 132 and 143	ships: ship used for overseas leasing etc.; attribution of amount where balancing charge deferred
section 171	oil production sharing contracts: disposal values on cessation of ownership
sections 196 and 197	fixtures: disposal values on cessation of notional ownership and in avoidance cases
section 208	effect of significant reduction in use of plant or machinery for purposes of qualifying activity
section 211	effect of payment of partial depreciation subsidy
section 222	anti-avoidance: limit on disposal value
[[F94]sections 228K to 228M	Disposal of plant or machinery subject to lease where income retained**]**
section 229	hire-purchase: disposal values in finance leasing and anti-avoidance cases
sections 238 and 239	additional VAT rebates

Textual Amendments

F94 Words in s. 66 inserted (with effect in accordance with s. 84(5)(6) of the amending Act) by Finance Act 2006 (c. 25), **s. 84(2)**

CHAPTER 6

HIRE-PURCHASE ETC. AND PLANT OR MACHINERY PROVIDED BY LESSEE

Hire-purchase and similar contracts

67 Plant or machinery treated as owned by person entitled to benefit of contract, etc.

(1) This section applies if—

(a) a person carrying on a qualifying activity **[**[F95]or corresponding overseas activity**]** incurs capital expenditure on the provision of plant or machinery for the purposes of the qualifying activity [F95 or corresponding overseas activity], and

(b) the expenditure is incurred under a contract providing that the person shall or may become the owner of the plant or machinery on the performance of the contract.

(2) The plant or machinery is to be treated for the purposes of this Part as owned by the person (and not by any other person) at any time when he is entitled to the benefit of the contract so far as it relates to the plant or machinery.

[F96 This subsection has effect subject to, and in accordance with, subsections (2A) to (2C).]

[F97 (2A) If the contract is one which, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as a lease, subsection (2B) applies.

(2B) Where that is the case, the plant or machinery is to be treated under subsection (2) as owned by the person at any time only if the contract falls (or would fall) to be treated by that person in accordance with generally accepted accounting practice as a finance lease.

(2C) Where at any time the plant or machinery—

(a) is not treated under subsection (2) as owned by the person, but

(b) would be treated under that subsection as owned by the person, but for subsection (2B),

the plant or machinery is nevertheless to be treated under subsection (2) as not owned by any other person at that time.]

(3) At the time when the plant or machinery is brought into use for the purposes of the qualifying activity [F95 or corresponding overseas activity], the person is to be treated for the purposes of this Part as having incurred all capital expenditure in respect of the plant or machinery to be incurred by him under the contract after that time.

(4) If a person—

(a) is treated under subsection (2) as owning plant or machinery,

(b) ceases to be entitled to the benefit of the contract in question so far as it relates to that plant or machinery, and

(c) does not then in fact become the owner of the plant or machinery,

the person is to be treated as ceasing to own the plant or machinery at the time when he ceases to be entitled to the benefit of the contract.

[F98 (6) If—

(a) a person enters into two or more agreements, and

(b) those agreements are such that, if they together constituted a single contract, the condition in subsection (1)(b) would be met in relation to that person and that contract,

the agreements are to be treated for the purposes of this section as parts of a single contract.

In this subsection, any reference to an agreement includes a reference to an undertaking, whether or not legally enforceable.]

[F99 (7)] This section is subject to section 69 (hire-purchase and fixtures) and subsection (3) is subject to section 229 (anti-avoidance).

[F100(8) In this section "corresponding overseas activity" means an activity that would be a qualifying activity if the person carrying it on were resident in the United Kingdom.]

Textual Amendments

F95 Words in s. 67 inserted (with effect in accordance with Sch. 9 para. 12(8) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 12(2)**

F96 Words in s. 67(2) inserted (with effect in accordance with Sch. 9 para. 12(8) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 12(3)**

F97 S. 67(2A)-(2C) inserted (with effect in accordance with Sch. 9 para. 12(8) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 12(4)**

F98 S. 67(6) inserted (with effect in accordance with Sch. 9 para. 12(8) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 12(6)**

F99 S. 67(7) renumbered (with effect in accordance with Sch. 9 para. 12(8) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 12(5)**

F100 S. 67(8) inserted (with effect in accordance with Sch. 9 para. 12(8) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 12(7)**

68 Disposal value on cessation of notional ownership

(1) This section applies if a person—

(a) is treated under section 67(4) as ceasing to own plant or machinery, and

(b) is required to bring a disposal value into account as a result.

(2) If the plant or machinery has been brought into use for the purposes of the qualifying activity before the person ceases to own the plant or machinery, the disposal value is the total of—

(a) any relevant capital sums, and

(b) any capital expenditure treated under section 67(3) as having been incurred when the plant or machinery was brought into use but which has not in fact been incurred.

(3) If the plant or machinery has not been brought into use for the purposes of the qualifying activity before the person ceases to own the plant or machinery, the disposal value is the total of any relevant capital sums.

(4) "Relevant capital sums" means capital sums that the person receives or is entitled to receive by way of consideration, compensation, damages or insurance money in respect of—

(a) his rights under the contract, or

(b) the plant or machinery.

(5) This section is subject to section 229 (anti-avoidance).

69 Hire-purchase etc. and fixtures

(1) Section 67 does not—

(a) apply to expenditure incurred on plant or machinery which is a fixture, or

(b) prevent Chapter 14 (fixtures) applying in relation to expenditure on plant or machinery incurred under such a contract as is mentioned in section 67(1)(b).

(2) If—

(a) a person is treated under section 67(2) as owning plant or machinery,

(b) the plant or machinery becomes a fixture, and

(c) the person is not treated under Chapter 14 as being the owner of the plant or machinery,

the person is to be treated for the purposes of this Part as ceasing to own the plant or machinery at the time when it becomes a fixture.

(3) In this section "fixture" has the meaning given by section 173(1).

Plant or machinery provided by lessee

70 Plant or machinery provided by lessee

(1) This section applies if—

(a) under the terms of a lease, a lessee is required to provide plant or machinery,

(b) the lessee incurs capital expenditure on the provision of that plant or machinery for the purposes of a qualifying activity which the lessee carries on,

(c) the plant or machinery is not 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

(d) the lessee does not own the plant or machinery.

(2) The lessee—

(a) is to be treated as being the owner of the plant or machinery, as a result of incurring the capital expenditure, for so long as it continues to be used for the purposes of the qualifying activity, but

(b) is not required to bring a disposal value into account because the lease ends.

(3) Subsection (4) applies if—

(a) the plant or machinery continues to be used for the purposes of the lessee's qualifying activity until the lease ends,

(b) the lessor holds the lease in the course of a qualifying activity, and

(c) on or after the ending of the lease, a disposal event occurs in respect of the plant or machinery at a time when the lessor owns the plant or machinery as a result of the requirement under the terms of the lease.

(4) The lessor is required to bring a disposal value into account in the appropriate pool for the chargeable period in which the disposal event occurs.

(5) "The appropriate pool" means the pool which would be applicable under this Part in relation to the lessor's qualifying activity if—

(a) the expenditure incurred by the lessee had been qualifying expenditure incurred by the lessor, and

(b) that qualifying expenditure were being allocated to a pool for the chargeable period in which the disposal event occurs.

(6) In this section "lease" includes—

(a) an agreement for a lease if the term to be covered by the lease has begun, and

(b) any tenancy,

but does not include a mortgage (and "lessee" and "lessor" are to be read accordingly).

[F101 Lessees under long funding leases

Textual Amendments

F101 Ss. 70A-70E and cross-heading inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 6**

70A Entitlement to capital allowances

(1) This section applies if a person carrying on a qualifying activity incurs expenditure (whether or not of a capital nature) on the provision of plant or machinery for the purposes of the qualifying activity under a long funding lease.

(2) In the application of this Part in the case of that person, the plant or machinery is to be treated as owned by him at any time when he is the lessee under the long funding lease.

That is so whether or not the lease also falls to be regarded as a long funding lease in the application of this Part in the case of the lessor.

(3) The person is to be treated for the purposes of this Part as having incurred capital expenditure on the provision of the plant or machinery as follows.

(4) The capital expenditure is to be treated as incurred at the commencement of the term of the long funding lease.

(5) The amount of the capital expenditure varies, according to whether the long funding lease is—

(a) a long funding operating lease (subsection (6)), or

(b) a long funding finance lease (subsection (7)).

(6) If the long funding lease is a long funding operating lease, the amount of the capital expenditure is to be found in accordance with section 70B.

(7) If the long funding lease is a long funding finance lease, the amount of the capital expenditure is to be found in accordance with section 70C.

(8) See Chapter 6A for interpretation of this section.

70B Long funding operating lease: amount of capital expenditure

(1) This section applies by virtue of section 70A(6).

(2) If the long funding lease is a long funding operating lease, the amount of the capital expenditure is the market value of the plant or machinery at the later of—

(a) the commencement of the term of the lease;

(b) the date on which the plant or machinery is first brought into use for the purposes of the qualifying activity.

(3) This section is to be construed as one with section 70A.

70C Long funding finance lease: amount of capital expenditure

(1) This section has effect by virtue of section 70A(7) for the purpose of determining the amount of the capital expenditure in the case of a long funding finance lease.

(2) If the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a loan, this section applies as if the lease were one which, under generally accepted accounting practice, fell to be treated as a finance lease.

(3) The amount of the capital expenditure is the total of—

- (a) commencement PVMLP (see subsection (4)), and
- (b) if subsection (6) applies, the unrelievable pre-commencement rentals ("UPR"),

but subject, in a case falling within subsection (7), to the restriction imposed by subsection (8).

(4) Commencement PVMLP is the amount that would fall to be recognised as the present value, at the appropriate date, of the minimum lease payments (see section 70YE) if appropriate accounts were prepared by the person.

(5) For the purposes of subsection (4)—

"appropriate accounts" are accounts prepared in accordance with generally accepted accounting practice on the date on which that amount is first recognised in the books or other financial records of the person;

"the appropriate date" is the later of—

- (a) the commencement of the term of the lease;
- (b) the date on which the plant or machinery is first brought into use for the purposes of the qualifying activity.

(6) This subsection applies if—

- (a) the person has paid rentals under the lease before the commencement of the term of the lease, and
- (b) in the case of some or all of those rentals, relief otherwise than by virtue of this subsection—
  - (i) is not available, and
  - (ii) if the case is one where the plant or machinery was not used for the purposes of a qualifying activity in the period before the commencement of the term of the lease, would not have been available had the plant or machinery been used in that period for the purposes of a qualifying activity,

and in any such case UPR is the amount of the rentals for which relief is not, and (in a case falling within paragraph (b)(ii)) would not have been, so available.

(7) Subsection (8) applies if the main purpose, or one of the main purposes, of entering into—

- (a) the lease,
- (b) a series of transactions of which the lease is one, or
- (c) any of the transactions in such a series,

is to obtain allowances under this Part in respect of an amount of capital expenditure that materially exceeds the market value of the leased asset at the commencement of the term of the lease.

(8) In any such case, the amount of the capital expenditure described in subsection (3) is to be restricted to an amount equal to the market value of the asset at the commencement of the term of the lease.

(9) In this section "relief" means relief by way of—
 (a) an allowance under this Act,
 (b) a deduction in computing profits for the purposes of income tax or corporation tax,
 (c) a deduction from total profits or total income for the purposes of either of those taxes.

(10) This section is to be construed as one with section 70A.

70D Long funding finance lease: additional expenditure: allowances for lessee

(1) This section applies where the following conditions are met—
 (a) a person is the lessee of plant or machinery under a long funding finance lease,
 (b) as a result of section 70A, the person falls to be regarded as having incurred qualifying expenditure on the provision of the plant or machinery, and
 (c) the lessor incurs expenditure in relation to the plant or machinery,
 (d) as a result of the lessor incurring the expenditure, there is in the case of the lessee an increase (the "relevant increase") in the present value of the minimum lease payments.

(2) If the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a loan, this section applies as if the lease were one which, under generally accepted accounting practice, fell to be treated as a finance lease.

(3) The person is to be treated for the purposes of this Part as having incurred further capital expenditure on the provision of the plant or machinery as follows.

(4) The person is to be treated as having incurred the expenditure on the date of first recognition.

(5) The amount of the expenditure is the amount that would fall to be recognised as the amount of the relevant increase if appropriate accounts were prepared by the person.

(6) For that purpose, "appropriate accounts" are accounts prepared in accordance with generally accepted accounting practice on the date of first recognition.

(7) For the purposes of this section, the "date of first recognition" is the date on which the relevant increase is first recognised in the books or other financial records of the person.

(8) This section is to be construed as one with section 70A.

70E Disposal events and disposal values

(1) This section applies where—
 (a) a person is the lessee of plant or machinery under a long funding lease,
 (b) as a result of section 70A, the person falls to be regarded as having incurred qualifying expenditure on the provision of the plant or machinery, and
 (c) the lease terminates.

(2) In the case of that person—
 (a) the termination of the lease is a disposal event, and
 (b) the person is required to bring into account a disposal value for the chargeable period in which that disposal event occurs.

(3) The amount of the disposal value varies according to whether the lease is—
 (a) a long funding operating lease (see subsections (4) to (6)), or
 (b) a long funding finance lease (see subsections (7) and (8)).

(4) If the lease is a long funding operating lease, the disposal value is the sum of—
 (a) element A (see subsection (5)), and
 (b) element B (see subsection (6)).

(5) Element A is the amount (if any) by which—
 (a) the market value of the plant or machinery at the later of—
  (i) the commencement of the term of the lease,
  (ii) the date on which the plant or machinery is first brought into use for the purposes of the qualifying activity,

 exceeds
 (b) the aggregate amount of the reductions that fell to be made under section 502K of ICTA or 148I of ITTOIA 2005 for periods of account in which the person was the lessee.

(6) Element B is the sum of any amounts payable to the person which are calculated by reference to the termination value.

(7) If, in the case of the person, the lease is a long funding finance lease, the amount of the disposal value is found by first finding the sum of—
 (a) any amounts payable to the person which are calculated by reference to the termination value, and
 (b) if the lease terminates before the end of the term, the amount that would fall to be recognised as the present value, immediately before the termination, of the balance of the minimum lease payments (see subsection (8)) if appropriate accounts were prepared by the person,

and then reducing that sum (but not below nil) by subtracting from it any amount payable by the person to the lessor for or in consequence of the termination.

(8) For the purposes of subsection (7)(b)—
 (a) the balance of the minimum lease payments is the amount by which MLP exceeds TMLP, where—

  MLP is the amount of the minimum lease payments, and

  TMLP is the amount that would have been the minimum lease payments if the term of the lease had been such as to expire on the day of the termination, and
 (b) "appropriate accounts" are accounts prepared in accordance with generally accepted accounting practice immediately before the termination of the lease.

(9) If the termination of the lease gives rise to a disposal event in the case of the person apart from this section, that disposal event is to be ignored.

(10) This section is to be construed as one with section 70A.**]**

[F102 CHAPTER 6A

INTERPRETATION OF PROVISIONS ABOUT LONG FUNDING LEASES

Textual Amendments

F102 Pt. 2 Ch. 6A inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 7**

Introductory

70F Introductory

This Chapter makes provision for the interpretation of this Part so far as relating to long funding leases.

Meaning of "long funding lease" etc

70G "Long funding lease"

(1) A "long funding lease" is a funding lease (see section 70J) which meets the following conditions—

(a) it is not a short lease (see section 70I),

(b) it is not an excluded lease of background plant or machinery for a building (see section 70R),

(c) it not excluded by section 70U (plant or machinery leased with land: low percentage value).

(2) Where, at the commencement of the term of a plant or machinery lease, the plant or machinery—

(a) is not being used for the purposes of a qualifying activity carried on by the person concerned, but

(b) subsequently begins to be used for the purposes of a qualifying activity carried on by that person,

the plant or machinery lease is a long funding lease if the condition in subsection (3) is met.

(3) The condition is that (apart from section 70H) the plant or machinery lease would have been a long funding lease at its inception had the plant or machinery been used at that time for the purposes of a qualifying activity carried on by the person concerned.

(4) This section is subject, in the case of the lessee, to—

(a) section 70H (requirement for tax return treating lease as long funding lease);

(b) section 70Q (leases excluded by right of lessor etc to claim capital allowances).

(5) See also paragraph 91A of Schedule 22 to the Finance Act 2000 (tonnage tax: certain leases to be treated as not being long funding leases).

70H Lessee: requirement for tax return treating lease as long funding lease

(1) A lease is not a long funding lease in the case of the lessee unless he makes a tax return for the initial period on the basis that he falls to be taxed in respect of the lease in accordance with the provisions of—

(a) Chapter 5A of Part 12 of ICTA (long funding leases: corporation tax), or

(b) Chapter 10A of Part 2 of ITTOIA 2005 (long funding leases: income tax).

(2) Where, in the case of a lease, a person has made a tax return for the initial period—

(a) on the basis that he falls to be taxed in respect of the lease in accordance with those provisions, or

(b) on the basis that he does not fall to be so taxed,

he may not make a claim for relief under the error or mistake provisions in respect of the tax return having been made on that basis.

(3) In this section—

"the error or mistake provisions" means—

(a) section 33 of the Taxes Management Act 1970; or

(b) paragraph 51 of Schedule 18 to the Finance Act 1998;

"the initial period" is the first accounting period or, as the case may be, tax year in which there is a difference in the amount of the profits or losses falling to be shown in the return, according to whether the lease is a long funding lease or not;

"tax return" means—

(a) a company tax return under paragraph 3 of Schedule 18 to the Finance Act 1998, or

(b) a return under section 8 of the Taxes Management Act 1970 (income tax: personal return).

70I "Short lease"

(1) Construe "short lease" in accordance with this section.

(2) A lease whose term is 5 years or less is a short lease.

(3) Where the term of a lease is—

(a) longer than 5 years, but

(b) not longer than 7 years,

the lease is a short lease if Conditions A, B and C are met.

(4) Condition A is that the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a finance lease.

(5) Condition B is that—

(a) the residual value of the plant or machinery which is implied in the terms of the lease,

is not more than

(b) 5% of the market value of the plant or machinery at the commencement of the term of the lease, as estimated at the inception of the lease.

(6) Condition C is that under the terms of the lease—

(a) the total rentals falling due in the first reference year, if less than the total rentals falling due in the second reference year, are no more than 10% less than those rentals, and
(b) the total rentals falling due in the final year or in any reference year after the second reference year, if greater than the total rentals falling due in the second reference year, are no more than 10% greater than those rentals.

(7) For the purposes of Condition C—
(a) the first reference year is the period of 12 months beginning with the day next after the commencement of the term of the lease;
(b) the other reference years are successive periods of 12 months each beginning on an anniversary of that day and ending before the last day of the term of the lease;
(c) the final year is the period of 12 months ending with the last day of the term of the lease;
(d) any part of the final year, other than the last day, may accordingly also be part of a reference year.

(8) In determining whether Condition C is met, exclude any variation in the rentals that results from changes in a standard published base rate for interest.

(9) Where—
(a) a person leases an asset to another ("S") under a lease that would, apart from this subsection, be a short lease,
(b) the inception of that lease is on or after 7th April 2006,
(c) at or about the time of the inception of that lease, arrangements are entered into for the asset to be leased to one or more other persons under one or more other leases, and
(d) in the aggregate, the term of the lease to S and the terms of the leases to such of those other persons as are connected with S exceed 5 years,

the lease to S is not a short lease.

70J "Funding lease"

(1) A "funding lease" is a plant or machinery lease (see section 70K) which at its inception meets one or more of the following tests—
(a) the finance lease test (see section 70N),
(b) the lease payments test (see section 70O),
(c) the useful economic life test (see section 70P).

(2) Subsection (1) is subject to the following provisions of this section.

(3) A plant or machinery lease is not a funding lease if—
(a) section 67 applies (plant or machinery treated as owned by person entitled to benefit of contract, etc), and
(b) the lease is the contract mentioned in that section.

(4) A plant or machinery lease is not a funding lease if—
(a) before the commencement of the term of the lease, the lessor has leased the plant or machinery under one or more other plant or machinery leases,

(b) in the aggregate, the terms of those other leases exceed 65% of the remaining useful economic life of the plant or machinery at the commencement of the term of the earliest of them, and

(c) none of those earlier leases was a funding lease.

(5) For the purposes of subsection (4), all persons who were lessors of the plant or machinery before 1st April 2006 are to be treated as if they were the same person as the first lessor of the plant or machinery on or after that date.

(6) A plant or machinery lease is not a funding lease in the case of the lessor if—

(a) before 1st April 2006, the plant or machinery had, for a period or periods totalling at least 10 years, been the subject of one or more leases, and

(b) the lessor under the plant or machinery lease was also lessor of the plant or machinery on the last day before 1st April 2006 on which the plant or machinery was the subject of a lease.

Meaning of "plant or machinery lease"

70K "Plant or machinery lease"

(1) A "plant or machinery lease" is any of the following—

(a) any agreement or arrangement to which subsection (2) applies,

(b) any other agreement or arrangement, to the extent that subsection (3) applies to it,

(c) where plant or machinery is the subject of a sale and finance leaseback, as defined in section 221, the finance lease mentioned in subsection (1)(c) of that section,

and "lease", "lessor", "lessee" and other related expressions are to be construed accordingly.

(2) This subsection applies to an agreement or arrangement—

(a) under which a person grants to another person the right to use plant or machinery for a period, and

(b) which, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as a lease.

(3) This subsection applies to an agreement or arrangement to the extent that—

(a) in accordance with generally accepted accounting practice, it falls (or would fall) to be treated as a lease, and

(b) it meets the conditions in subsection (4).

(4) The conditions are that, for the purposes of generally accepted accounting practice,—

(a) the agreement or arrangement conveys, or falls (or would fall) to be regarded as conveying, the right to use an asset, and

(b) the asset is plant or machinery.

(5) In the case of an agreement or arrangement that falls (or would fall) within subsection (2) or (3) immediately after the commencement of the term of the lease, the condition in subsection (2)(b) or (3)(a) (as the case may be) is to be taken to be met as respects any time in the pre-commencement period.

(6) For the purposes of subsection (5), the "pre-commencement period" is the period that—

(a) begins with the inception of the lease, and

(b) ends with the commencement of the term of the lease.

70L Plant or machinery leased with other assets: separate derived leases

(1) This section applies in any case where an agreement or arrangement (the "mixed lease") at any time relates, or is to relate, or has come to relate, to both—

(a) plant or machinery of any particular description (the "relevant plant or machinery"), and

(b) other assets (whether or not also plant or machinery).

(2) A mixed lease is an "eligible mixed lease" if—

(a) under generally accepted accounting practice, it falls (or would fall) to be treated as a lease, or

(b) the relevant plant or machinery is the subject of a sale and finance leaseback, as defined in section 221, and the mixed lease is or includes the finance lease mentioned in subsection (1)(c) of that section.

(3) In the case of an agreement or arrangement that falls (or would fall) within paragraph (a) of subsection (2) immediately after the commencement of the term of the lease, the condition in that paragraph is to be taken to be met as respects any time in the pre-commencement period.

(4) For the purposes of subsection (3), the "pre-commencement period" is the period that—

(a) begins with the inception of the lease, and

(b) ends with the commencement of the term of the lease.

(5) Where this section applies—

(a) the eligible mixed lease, so far as relating to the relevant plant or machinery, and

(b) the eligible mixed lease, so far as relating to other assets,

shall be treated for the purposes of this Part (other than this section) as if they were separate agreements or arrangements.

(6) Any such notional separate agreement or arrangement is referred to in this Part as a "derived lease".

(7) Section 70M makes further provision with respect to derived leases of plant or machinery.

70M Derived leases of plant or machinery: term and rentals

(1) This section has effect in any case where, as a result of applying section 70L, there is a derived lease of the relevant plant or machinery.

(2) This section makes provision with respect to—

(a) determining whether the derived lease is a plant or machinery lease (see subsection (3)),

(b) the term of the derived lease (see subsection (4)),

(c) the rentals to be regarded as payable under the derived lease (see subsections (5) to (7)).

(3) Any question whether the derived lease—

(a) is a plant or machinery lease, or

(b) if it is such a lease, whether it is also a long funding lease,

is to be determined in accordance with the provisions of this Part.

(4) The term of the derived lease—

(a) is limited to the remaining useful economic life of the relevant plant or machinery at the commencement of the term of the derived lease, but

(b) subject to that, is to be determined in accordance with section 70YF (the "term" of a lease).

(5) The rentals that are to be regarded as payable under the derived lease shall be such rentals (the "deemed rentals") as are just and reasonable in all the circumstances of the case.

(6) It shall be assumed that rentals under the derived lease are payable in equal instalments throughout the term of the lease, unless it is reasonable to draw a different conclusion from all the circumstances of the case.

(7) In determining the amount of any deemed rentals, regard shall be had to—

(a) all the provisions of the eligible mixed lease,

(b) the nature of the relevant plant or machinery,

(c) the value of the relevant plant or machinery at the commencement of the term of the derived lease,

(d) the amount which, at the commencement of the term of the derived lease, is expected to be the market value of the relevant plant or machinery at the end of the term of the derived lease,

(e) the remaining useful economic life of the relevant plant or machinery at the commencement of the term of the derived lease;

(f) the term of the derived lease.

(8) Expressions used in section 70L have the same meaning in this section.

The tests for being a funding lease

70N The finance lease test

(1) A lease meets the finance lease test in the case of any person if the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a finance lease or a loan in the accounts—

(a) of that person, or

(b) where that person is the lessor, of any person connected with him.

(2) In this section "accounts", in relation to a company, includes any accounts which—

(a) relate to two or more companies of which that company is one, and

(b) are drawn up in accordance with generally accepted accounting practice.

(3) Where for any period—

(a) a person is not within the charge to income tax or corporation tax by reason of not being resident in the United Kingdom, and
(b) accounts are not prepared in accordance with international accounting standards or UK generally accepted accounting practice,

any question relating to generally accepted accounting practice is to be determined for the purposes of this section by reference to generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards.

70O The lease payments test

(1) A lease meets the lease payments test if—
(a) the present value of the minimum lease payments (see section 70YE),

is equal to
(b) 80% or more of the fair value of the leased plant or machinery.

(2) The present value of the minimum lease payments is to be calculated by using the interest rate implicit in the lease.

(3) In this section "fair value" means—
(a) the market value of the leased plant or machinery,

less
(b) any grants receivable towards the purchase or use of that plant or machinery.

(4) For the purposes of this section—
(a) the interest rate implicit in the lease is the interest rate that would apply in accordance with normal commercial criteria, including, in particular, generally accepted accounting practice (where applicable), but
(b) if the interest rate implicit in the lease cannot be determined in accordance with paragraph (a), it is the temporal discount rate for the purposes of section 70 of the Finance Act 2005 (companies: film relief: valuation of "rights to guaranteed income" and "disposed rights").

70P The useful economic life test

A lease meets the useful economic life test if the term of the lease is more than 65% of the remaining useful economic life of the leased plant or machinery.

Leases excluded by right of lessor etc to claim capital allowances

70Q Leases excluded by right of lessor etc to claim capital allowances

(1) A lease is not a long funding lease in the case of the lessee if it is excluded by virtue of subsection (2) (but see also subsection (5)).

(2) A lease is excluded if the lessor, or any superior lessor (see subsections (7) to (9)),—
(a) is entitled, at the commencement of the term of the lease, to claim a relevant allowance (see subsection (6)),
(b) would have been so entitled at that time, but for section 70V (tax avoidance involving international leasing),

(c) has at any earlier time been entitled to claim such an allowance, but has not been required to bring a disposal value into account in accordance with section 61(1)(ee), or

(d) would fall within any one or more of paragraphs (a) to (c), if he had been within the charge to income tax or corporation tax at the inception of the lease and any earlier times.

(3) Where for any period the lessor, or any superior lessor, is a person—

(a) who is not within the charge to income tax or corporation tax by reason of not being resident in the United Kingdom, and

(b) who does not prepare accounts in accordance with international accounting standards or UK generally accepted accounting practice,

subsection (4) applies.

(4) In determining whether the condition in subsection (2)(d) is met in any such case, any question relating to generally accepted accounting practice in relation to that person and that period is to be determined by reference to generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards.

(5) A lease is not excluded by virtue of subsection (2) if—

(a) the inception of the lease is before 28th June 2006, and

(b) by virtue only of section 70J(6), the lease is not a funding lease in the case of the lessor.

(6) A "relevant allowance" is an allowance under this Act in respect of the leased plant or machinery.

(7) There is a "superior lessor" only if the leased plant or machinery is the subject of a chain of superior leases.

(8) Leased plant or machinery is the subject of a chain of superior leases if—

(a) the lessor has his interest in relation to the plant or machinery under or by virtue of a lease from a third person (P), or

(b) the circumstances are as in paragraph (a), but P has his interest in relation to the plant or machinery under or by virtue of a lease from a fourth person (Q), or

(c) the circumstances are as in paragraph (b), but Q has his interest in relation to the plant or machinery under or by virtue of a lease from a fifth person (R),

and so on, where there is more than a fifth person involved.

(9) Where any leased plant or machinery is the subject of a chain of superior leases, the superior lessors are the persons described in subsection (8) as P, Q, R, and so on.

(10) Subsections (6) to (9) have effect for the interpretation of this section.

Excluded leases of background plant or machinery for a building

70R Excluded leases of background plant or machinery for a building

(1) Construe references to an excluded lease of background plant or machinery for a building in accordance with this section.

(2) This section applies where—

(a) plant or machinery is affixed to, or otherwise installed in or on, any land which consists of or includes a building,

(b) the plant or machinery is background plant or machinery for the building (see subsections (4) and (5)),

(c) the plant or machinery is leased with the land under a mixed lease, and

(d) none of the disqualifications set out in section 70S applies.

(3) In any such case, the derived lease of the plant or machinery is an excluded lease of background plant or machinery for a building.

(4) The background plant or machinery for a building is any plant or machinery—

(a) which is of such a description that plant or machinery of that description might reasonably be expected to be installed in, or in or on the sites of, a variety of buildings of different descriptions, and

(b) whose sole or main purpose is to contribute to the functionality of the building or its site as an environment within which activities can be carried on.

(5) Subsection (4) has effect subject to the provisions of any order under section 70T.

70S The disqualifications

(1) This section sets out the disqualifications mentioned in subsection (2)(d) of section 70R and is to be construed as one with that section.

(2) Disqualification A is that the amounts payable—

(a) under the mixed lease, or

(b) under any other arrangement,

vary, or may be varied, by reference to the value from time to time to the lessor of allowances under this Act in respect of expenditure incurred by him in the provision of the background plant or machinery for the building.

(3) Disqualification B is that the main purpose, or one of the main purposes, of entering into—

(a) the mixed lease,

(b) a series of transactions of which the mixed lease is one, or

(c) any of the transactions in such a series,

is to secure that allowances under this Act are available to the lessor in respect of expenditure incurred in the provision of background plant or machinery for a building.

70T Orders relating to background plant or machinery for a building

(1) This section supplements section 70R and is to be construed as one with it.

(2) The Treasury may by order prescribe—

(a) descriptions of plant or machinery to be used as examples of the kinds of plant or machinery that may be regarded as falling within the definition of background plant or machinery for a building in determining whether any particular plant or machinery does or does not fall within that definition;

(b) descriptions of plant or machinery to be deemed to be background plant or machinery for a building;

(c) descriptions of plant or machinery to be deemed not to be background plant or machinery for a building.

(3) An order under this section—

(a) may make different provision for different cases (including different descriptions of building),

(b) may contain incidental, consequential, supplemental, or transitional provision or savings.

(4) The first order made under this section may include provisions having effect in relation to times before the making of the order (but not times earlier than 1st April 2006).

Exclusion for certain plant or machinery leased with land

70U Plant or machinery leased with land: low percentage value

(1) This section applies where—

(a) any plant or machinery (the "relevant plant or machinery") is affixed to, or otherwise installed, in or on any land,

(b) the plant or machinery is not background plant or machinery for any building situated in or on the land,

(c) the plant or machinery is leased with the land under a mixed lease, and

(d) none of the relevant disqualifications applies.

(2) For the purposes of this section the "relevant disqualifications" are the disqualifications set out in section 70S, but for this purpose—

(a) take the reference in subsection (1) of that section to subsection (2)(d) of section 70R as a reference to this subsection (and, accordingly, construe the second reference to that section as a reference to this section), and

(b) take references in section 70S to background plant or machinery for a building as references to relevant plant or machinery.

(3) Where this section applies, the derived lease of the relevant plant or machinery is excluded by this section if the condition in subsection (4) is met at the commencement of the term of that lease.

(4) The condition is that AMV does not exceed both—

(a) 10% of BMV; and

(b) 5% of LMV.

(5) For that purpose—

AMV is the aggregate of—

(a) the market value of the relevant plant or machinery, and

(b) the market value of any other plant or machinery that falls within subsection (1) in the case of the leased land;

BMV is the aggregate market value of all the background plant or machinery leased with the land;

LMV is the market value of the land (including buildings and fixtures).

(6) For this purpose the market value of any land at any time is to be determined on the assumption of a sale by an absolute owner of the land free from all leases and other encumbrances.

Avoidance

70V Tax avoidance involving international leasing

(1) This section applies where matters are so arranged that there are plant or machinery leases such that—

(a) under a lease by a non-resident, an asset is provided directly or indirectly to a resident,

(b) the direct provision of the asset to the resident is by a lease which, in the case of the resident, is a long funding lease or a lease to which section 67 (hire purchase etc) applies,

(c) the asset is used by the resident for the purpose of leasing it under a lease (the "relevant lease") that would not (apart from this section) be a long funding lease in the case of the resident, and

(d) under the relevant lease, the asset is provided directly or indirectly (but by a lease) to a non-resident.

(2) Subsection (3) applies if the sole or main purpose of arranging matters in that way is to obtain a tax advantage by securing that allowances under this Part are available to a resident by virtue of—

(a) section 67 (hire purchase), or

(b) section 70A (long funding leases).

(3) In any such case, the relevant lease is deemed to be a long funding lease in the case of the resident who is the lessor under it.

(4) The reference in this section to a person obtaining a tax advantage (see section 577(4)) also includes a reference to a person obtaining a tax advantage within the meaning of **[**[F103]section 840ZA of ICTA**]**.

(5) In this section—

"non-resident" means a person who—

(a) is not resident in the United Kingdom, and

(b) does not use the plant or machinery exclusively for earning profits chargeable to tax;

"resident" means a person who—

(a) is resident in the United Kingdom, or

(b) uses the plant or machinery exclusively for earning profits chargeable to tax.

Textual Amendments

F103 Words in s. 70V(4) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 398** (with Sch. 2)

Transfers, assignments, novations, leaseback, variations etc

70W Transfers, assignments etc by lessor

(1) This section applies in any case where the following conditions are met—

(a) a person (the "old lessor") is lessor of plant or machinery under a plant or machinery lease (the "old lease"),
(b) during the term of the lease, the old lessor transfers the plant or machinery to another person (the "new lessor"),
(c) the transfer is not the grant of a plant or machinery lease by the old lessor,
(d) immediately after the transfer, the new lessor is the lessor of the plant or machinery under a lease ("the new lease") (whether or not the same lease as the old lease).

(2) If it is not otherwise the case,—
(a) the old lessor is to be treated as if the old lease terminated immediately before the transfer, and
(b) the new lessor is to be treated as if the new lease had been entered into immediately after the transfer.

(3) The new lessor is also to be treated as if the date of the transfer were the date of both—
(a) the inception of the new lease, and
(b) the commencement of the term of the new lease,

if it is not otherwise the case.

(4) If, immediately before the transfer, the old lease was (or was treated by virtue of this subsection as being) in the case of the old lessor a lease of either of the following descriptions—
(a) a long funding lease, or
(b) a lease which is not a long funding lease,

the new lease is to be treated in the case of the new lessor as being a lease of the same description, if the conditions in subsection (5) are met.

(5) The conditions are that—
(a) the term of the new lease is the unexpired portion of the term of the old lease, and
(b) the amounts receivable under the new lease are the same as would have been receivable under the old lease, assuming it to have continued in effect.

(6) If—
(a) it is not otherwise the case, and
(b) the conditions in subsection (5) are met,

the lessee is to be treated as if the old lease and the new lease were the same continuing lease.

(7) Any reference in this section to a transfer of plant or machinery by a person includes a reference to—
(a) any kind of disposal of, or of the person's interest in, the plant or machinery,
(b) any arrangements under which the person's interest in the plant or machinery is terminated and another person becomes lessor of the plant or machinery,
(c) in a case where the plant or machinery is a fixture and the person is treated under section 176 as the owner, any cessation of ownership under section 188, 190, 191, 192 or 192A.

70X Transfers, assignments etc by lessee

(1) This section applies in any case where the following conditions are met—

(a) a person (the "old lessee") is lessee of plant or machinery under a plant or machinery lease (the "old lease"),

(b) during the term of the lease, the old lessee transfers the plant or machinery to another person (the "new lessee"),

(c) the transfer is not the grant of a plant or machinery lease by the old lessee,

(d) immediately after the transfer, the new lessee is the lessee of the plant or machinery under a lease ("the new lease") (whether or not the same lease as the old lease).

(2) If it is not otherwise the case,—

(a) the old lessee is to be treated as if the old lease terminated immediately before the transfer, and

(b) the new lessee is to be treated as if the new lease had been entered into immediately after the transfer.

(3) The new lessee is also to be treated as if the date of the transfer were the date of both—

(a) the inception of the new lease, and

(b) the commencement of the term of the new lease,

if it is not otherwise the case.

(4) If, immediately before the transfer, the old lease was (or was treated by virtue of this subsection as being) in the case of the old lessee a lease of one of the following descriptions—

(a) a long funding lease, or

(b) a lease which is not a long funding lease,

the new lease is to be treated in the case of the new lessee as being a lease of the same description, if the conditions in subsection (5) are met.

(5) The conditions are that—

(a) the term of the new lease is the unexpired portion of the term of the old lease, and

(b) the amounts payable under the new lease are the same as would have been payable under the old lease, assuming it to have continued in effect.

(6) If—

(a) it is not otherwise the case, and

(b) the conditions in subsection (5) are met,

the lessor is to be treated as if the old lease and the new lease were the same continuing lease.

(7) Any reference in this section to a transfer of plant or machinery by a person includes a reference to—

(a) any kind of disposal of, or of the person's interest in, the plant or machinery,

(b) any arrangements under which the person's interest in the plant or machinery is terminated and another person becomes lessee of the plant or machinery,

(c) in a case where the plant or machinery is a fixture and the person is treated under section 176 as the owner, any cessation of ownership under section 188, 190, 191, 192 or 192A.

70Y Sale and leaseback, lease and leaseback etc: lessors

(1) Where—
(a) a person (B) transfers plant or machinery to another person (A),
(b) the plant or machinery is directly or indirectly leased back to B, and
(c) immediately before the commencement of the term of the lease back to B, B is the lessor of the plant or machinery to another person under a lease which is, in B's case, a long funding lease,

the lease back to B is, in the case of both A and B, a long funding lease.

(2) If, in any such case, the plant or machinery is leased back from A to B indirectly, any leases by means of which the indirect lease back from A to B is effected are also long funding leases in the case of each of the parties to them.

(3) Any reference in this section to a transfer of plant or machinery by a person includes a reference to—
(a) any kind of disposal of, or of the person's interest in, the plant or machinery (including the grant of a lease),
(b) any arrangements under which the person's interest in the plant or machinery is terminated and another person becomes entitled to, or to an interest in, the plant or machinery,
(c) in a case where the plant or machinery is a fixture and the person is treated under section 176 as the owner, any cessation of ownership under section 188, 190, 191, 192 or 192A.

70YA Change in accountancy classification of long funding lease

(1) This section applies in any case where—
(a) a person is lessor or lessee under a long funding lease, and
(b) at any time after the inception of the lease, the accountancy classification of the lease as a finance lease or an operating lease changes in the relevant accounts.

(2) The person is to be treated as if—
(a) the lease had terminated immediately before the time of the change,
(b) another lease (the "new lease") had been entered into immediately after the time of the change, and
(c) the new lease were a long funding lease in the case of the lessor.

(3) The person is also to be treated as if the date on which the change occurs were the date of both—
(a) the inception of the new lease, and
(b) the commencement of the term of the new lease.

(4) The cases where the accountancy classification of a long funding lease as a finance lease or an operating lease changes at any time (the "relevant time") in the relevant accounts are those set out in subsections (5) and (6).

(5) Case 1 is where—
(a) immediately before the relevant time, the lease is one that falls (or would fall) to be treated in the relevant accounts in accordance with generally accepted accounting practice as a finance lease for accounting purposes, and

(b) at the relevant time the lease becomes one that falls (or would fall) to be treated in the relevant accounts in accordance with generally accepted accounting practice as not being a finance lease for accounting purposes.

(6) Case 2 is where—

(a) immediately before the relevant time, the lease is one that falls (or would fall) to be treated in the relevant accounts in accordance with generally accepted accounting practice as not being a finance lease for accounting purposes, and

(b) at the relevant time the lease becomes one that falls (or would fall) to be treated in the relevant accounts in accordance with generally accepted accounting practice as a finance lease for accounting purposes.

(7) The Treasury may by regulations make provision for or in connection with restricting the application or operation of this section.

(8) In this section, any reference to a finance lease includes a reference to a loan.

(9) In the application of this section in relation to any person, the "relevant accounts" are the accounts—

(a) of that person, or

(b) where that person is the lessor, of any person connected with that person,

but only to the extent that the treatment of the lease in those accounts as a finance lease or otherwise falls (or would fall) to be determined by reference to that person as the lessor or lessee under the lease.

(10) Subsections (2) and (3) of section 70N (finance lease test: group accounts, and generally accepted accounting practice for persons outside the charge to tax) also apply for the purposes of this section.

70YB Long funding operating lease: extension of term of lease

(1) This section applies in any case where—

(a) a person is lessor or lessee under a long funding operating lease (the "existing lease"),

(b) an event occurs which has the effect of extending the term of the lease (whether by variation of the provisions of the lease, the grant or exercise of an option or in any other way), and

(c) the event is not one by reason of which, within the meaning of section 70YA, the accountancy classification of the lease as an operating lease changes in the relevant accounts.

(2) For this purpose an event has the effect of extending the term of the lease if it meets any of the following conditions—

(a) it has the effect of making a further period a non-cancellable period;

(b) it is the grant of an option to the lessee to continue to lease the plant or machinery for a further period, where it is reasonably certain at the time the option is granted that the lessee will exercise it;

(c) it is the exercise by the lessee of an option to continue to lease the plant or machinery for a further period;

(d) it does not fall within the preceding paragraphs, but it has the effect that the lessee will continue, or is reasonably certain to continue, to lease the plant or machinery for a further period.

For this purpose "further period" means a period falling wholly or partly after the end of the pre-existing term.

(3) The person is to be treated as if—
 (a) the existing lease terminated at the end of the day before the effective date,
 (b) another lease (the "new lease") were entered into on the effective date, and
 (c) the term of the new lease were the unexpired portion of the term of the existing lease, as extended.

(4) The person is also to be treated as if the effective date were the date of both—
 (a) the inception of the new lease, and
 (b) the commencement of the term of the new lease.

(5) The new lease is to be taken to be a long funding operating lease.

(6) For the purposes of this section the "effective date" is the earlier of—
 (a) the day after the end of the pre-existing term of the existing lease;
 (b) if the rentals payable are varied as a result of or otherwise in connection with the event, the date on which the variation takes effect.

(7) In this section—

"non-cancellable period" has the same meaning as in section 70YF (the "term" of a lease);

"pre-existing term", in relation to a lease, means the term of the lease apart from the extension in question.

70YC Extension of term of lease that is not a long funding lease

(1) This section applies where—
 (a) a person is lessor under a plant or machinery lease (the "existing lease") that is not a long funding lease, and
 (b) an event occurs which has the effect of extending the term of the lease (whether by variation of the provisions of the lease, the grant or exercise of an option or in any other way).

(2) Subsection (2) of section 70YB (events having the effect of extending the term of a lease) also has effect for the purposes of this section.

(3) Make the following assumptions—
 (a) the existing lease terminates immediately before the effective date,
 (b) another lease (the "new lease") is entered into on the effective date,
 (c) the term of the new lease is the portion of the term of the existing lease, as extended, that remains unexpired as at the effective date;
 (d) the effective date is the date of both—
  (i) the inception of the new lease, and
  (ii) the commencement of the term of the new lease.

(4) If, on those assumptions, the new lease would be a long funding lease, the person is to be treated on those assumptions.

(5) If subsection (4) does not apply, then, for the purposes of any subsequent application of this section or section 70YD in the case of the existing lease, the term of the existing lease is to be taken to be the term as extended (or further extended).

(6) For the purposes of this section the "effective date" is the earlier of—

(a) the day after the end of the pre-existing term of the existing lease;

(b) if the rentals payable are varied as a result of or otherwise in connection with the event, the date on which the variation takes effect.

(7) In this section "pre-existing term", in relation to a lease, means the term of the lease apart from the extension in question.

70YD Increase in proportion of residual amount guaranteed: review of status

(1) This section applies where—

(a) a person is lessor under a lease (the "existing lease") that is not a long funding lease,

(b) the person enters into an arrangement which meets, or arrangements which (taken together) meet, the conditions in subsection (2).

(2) The conditions are that—

(a) as a result of the arrangement or arrangements, there is an increase, after the inception of the lease, in the proportion of the residual amount that is guaranteed as mentioned in section 70YE(1)(b), and

(b) had the arrangement or arrangements been entered into before the inception of the lease, the lease would have been a long funding lease.

(3) The person is to be treated as if—

(a) the existing lease had terminated immediately before the time of the relevant transaction,

(b) another lease (the "new lease") had been entered into immediately after the time of the relevant transaction,

(c) the term of the new lease were the portion of the term of the existing lease that remains unexpired as at the date of the relevant transaction;

(d) the date of the relevant transaction were the date of both—

(i) the inception of the new lease, and

(ii) the commencement of the term of the new lease.

(4) For the purposes of this section, the "relevant transaction" is the arrangement or, where two or more arrangements have been entered into, the latest of them.

(5) The Treasury may by regulations make provision for or in connection with restricting the application or operation of this section.

Interpretation

70YE "Minimum lease payments"

(1) In the case of any lease, the minimum lease payments are the minimum payments under the lease over the term of the lease (including any initial payment) together with—

(a) in the case of the lessee, so much of any residual amount as is guaranteed by him or a person connected with him, or
(b) in the case of the lessor, so much of any residual amount as is guaranteed by the lessee or a person who is not connected with the lessor.

(2) In determining the minimum payments, exclude so much of any payment as represents—
(a) charges for services, or
(b) qualifying UK or foreign tax to be paid by the lessor.

(3) In this section—

"qualifying UK or foreign tax" means any tax or duty chargeable under the law of any part of the United Kingdom, or under the law of any foreign country, other than—
(a) income tax,
(b) corporation tax,
(c) any tax chargeable under the law of a foreign country which is similar to income tax or corporation tax,

and here "foreign country" means any territory outside the United Kingdom;

"residual amount" means so much of the fair value of the plant or machinery subject to the lease as cannot reasonably be expected to be recovered by the lessor from the payments under the lease.

(4) In the definition of "residual amount" in subsection (3), "fair value" means—
(a) the market value of the leased plant or machinery,
less
(b) any grants receivable towards the purchase or use of that plant or machinery.

70YF The "term" of a lease

(1) The term of a lease is the period comprising—
(a) so much of the post-commencement period as is a non-cancellable period, and
(b) any subsequent periods which meet the conditions in subsection (2).

(2) The conditions are that—
(a) the lessee has an option to continue to lease the asset for the period (whether with or without further payment), and
(b) it is reasonably certain, at the inception of the lease, that the lessee will exercise that option.

(3) The "post-commencement period" is so much of the period of the lease as begins with the commencement of the term of the lease.

(4) A "non-cancellable period" is any period during which the lessee may terminate the lease only—
(a) upon the occurrence of some remote contingency, or
(b) upon payment by the lessee of such an additional amount that, at the inception of the lease, continuation of the lease is reasonably certain.

(5) If, at the commencement of the term of the lease,—

(a) the market value of the asset exceeds £1 million, and
(b) the estimated market value of the asset 5 years after the commencement of the term of the lease is more than half of the market value of the asset at the commencement of the term of the lease,

subsection (6) applies.

(6) If, in any such case, the term of the lease (apart from this subsection) would be 5 years or less, but—
(a) the lessee has one or more options to continue to lease the asset,
(b) on the assumption that it is reasonably certain, at the inception of the lease, that the lessee will exercise those options, the term of the lease would exceed 7 years, and
(c) on failing to exercise any one of those options, the lessee may be required to make a payment to the lessor,

it is to be assumed for the purposes of this section that any option to continue to lease the asset will be exercised, unless it is reasonably certain, at the inception of the lease, that the option will not be exercised.

(7) Subsection (6) does not apply if, leaving out of account any options that would, by virtue of that subsection, result in the term of the lease exceeding 7 years, Conditions A, B and C in section 70I (meaning of "short lease") are met.

(8) See also section 70YC(5) (extension, for certain purposes, of term of lease that is not a long funding lease).

70YG "Termination amount"

(1) This section applies where plant or machinery is or has been, or is to be, leased under a long funding lease.

(2) Construe "termination amount", in the case of a long funding lease, in accordance with the following provisions of this section.

(3) If—
(a) the lease terminates as a result of a plant or machinery disposal event, or
(b) a plant or machinery disposal event occurs as a result of, or otherwise in connection with, the termination of the lease,

the termination amount is the disposal value that would have fallen to be brought into account by the lessor by reason of the plant or machinery disposal event on the assumptions in subsection (4).

(4) Those assumptions are—
(a) that section 34A (which prevents the lessor's expenditure for long funding leasing from being qualifying expenditure) did not apply in the case of the lessor, and
(b) that the lessor had claimed all the capital allowances that would in consequence have been available to him.

(5) If—
(a) subsection (3) does not apply, and
(b) the lease is a long funding finance lease,

the termination amount is the value at which, immediately after the termination of the lease, the plant or machinery is recognised in the books or other financial records of the lessor.

(6) If—

(a) subsection (3) does not apply, and

(b) the lease is a long funding operating lease,

the termination amount is the market value of the plant or machinery immediately after the termination of the lease.

(7) For the purposes of this section a "plant or machinery disposal event" is an event that would have been a disposal event in relation to the plant or machinery in the case of the lessor on the assumptions in subsection (4).

70YH "Termination value"

(1) This section applies where plant or machinery is or has been, or is to be, leased under a long funding lease.

(2) Construe "termination value" in accordance with the following provisions of this section.

(3) The general rule is that the termination value of any plant or machinery is the value of the plant or machinery at or about the time when the lease terminates.

(4) Any reference to calculation by reference to the termination value includes a reference to calculation by reference to any one or more of—

(a) the proceeds of sale, if the plant or machinery is sold after the lease comes to an end,

(b) any insurance proceeds, compensation or similar sums in respect of the plant or machinery,

(c) an estimate of the market value of the plant or machinery.

(5) Any reference to calculation by reference to the termination value also includes a reference to—

(a) determination in a way which, or by reference to factors or criteria which, might reasonably be expected to produce a broadly similar result to calculation by reference to the termination value, or

(b) any other form of calculation indirectly by reference to the termination value.

70YI General definitions

(1) Construe these expressions as follows—

"absolute owner", in the application of this Chapter in relation to Scotland, means the owner;

"arrangement" includes any transaction or series of transactions;

"background plant or machinery for a building" is to be construed in accordance with sections 70R to 70T;

"building" includes a reference to—

(a) a structure,

(b) part of a building or structure;

"commencement", in relation to the term of a lease, means the date on and after which the lessee is entitled to exercise his right to use the complete leased asset under the lease;

for this purpose an asset is to be regarded as complete if its construction is substantially complete;

"derived lease" is to be construed in accordance with section 70L;

"the finance lease test" means the finance lease test in section 70N;

"fixture"—

(a) means any plant or machinery that is so installed or otherwise fixed in or to a building or other description of land as to become, in law, part of that building or other land, and
(b) includes any boiler or water-filled radiator installed in a building as part of a space or water heating system;

"funding lease" has the meaning given by section 70J;

"inception", in relation to a plant or machinery lease, means the earliest date on which the following conditions are met—

(a) there is a contract in writing for the lease between the lessor and the lessee,
(b) either—
    (i) the contract is unconditional, or
    (ii) if it is conditional, the conditions have been met,
(c) no terms remain to be agreed;

"initial payment", in the case of a plant or machinery lease, means a payment by the lessee—

(a) at or before the time when the lease is entered into, and
(b) in respect of the plant or machinery which is the subject of the lease;

"lease" includes any agreement or arrangement which is or includes a plant or machinery lease (and "lessor", "lessee" and other related expressions are to be construed accordingly);

"lease", in relation to land, includes—

(a) an underlease, sublease or any tenancy,
(b) in England and Wales or Northern Ireland, an agreement for a lease, underlease, sublease, or tenancy,
(c) in Scotland, an agreement (including missives of let not constituting a lease) under which a lease, sublease or tenancy is to be executed,
(d) in the case of land situated outside the United Kingdom, any interest corresponding to a lease as so defined,

and "lessor", "lessee" and other related expressions are to be construed accordingly;

"lease", in relation to plant or machinery, includes a sublease (and "lessor", "lessee" and other related expressions are to be construed accordingly);

"lessee", in relation to a lease, includes any person entitled to the lessee's interest under the lease;

"lessor", in relation to a lease, includes any person entitled to the lessor's interest under the lease;

"long funding lease" has the meaning given by section 70G;

"long funding finance lease" means a long funding lease that meets the finance lease test by virtue of section 70N(1)(a);

"long funding operating lease" means a long funding lease which is not a long funding finance lease;

"market value", in relation to plant or machinery, is to be construed in accordance with subsection (2);

"minimum lease payments" has the meaning given by section 70YE;

"mixed lease" is to be construed in accordance with section 70L;

"plant or machinery lease" has the meaning given by section 70K (and see also sections 70L and 70M);

"remaining useful economic life", in the case of any leased plant or machinery, is the period—

(a) beginning with the commencement of the term of the lease, and

(b) ending when the asset is no longer used, and no longer likely to be used, by any person for any purpose as a fixed asset of a business;

"short lease" is to be construed in accordance with section 70I;

"the term", in relation to a lease, is to be construed in accordance with section 70YF (but see also section 70YC(5) (extension, for certain purposes, of term of lease that is not a long funding lease));

"termination", in relation to a lease,—

(a) means the coming to an end of the lease, whether by effluxion of time or in any other way, and

(b) includes in particular the bringing to an end of the lease by any person or by operation of law,

and related expressions are to be construed accordingly;

"termination amount" is to be construed in accordance with section 70YG;

"termination value" is to be construed in accordance with section 70YH.

(2) The market value of any plant or machinery at any time is to be determined on the assumption of a disposal by an absolute owner free from all leases and other encumbrances.

(3) In relation to a lease, any reference to plant or machinery includes a reference to fixtures.

F104(4) . . . .

(5) Any necessary apportionments under or by virtue of this Chapter are to be made on a just and reasonable basis.

Textual Amendments

F104 S. 70YI(4) repealed (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), Sch. 1 para. 399, **Sch. 3 Pt. 1** (with Sch. 2)

70YJ Power to vary the meaning of certain expressions

(1) The Treasury may by regulations make provision amending this Chapter so as to vary—

(a) the meaning of "plant or machinery lease", or

(b) the finance lease test.

(2) A statutory instrument containing regulations under this section is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.**]**

CHAPTER 7

COMPUTER SOFTWARE

71 Software and rights to software

(1) For the purposes of this Part computer software is treated as plant (whether or not it would constitute plant apart from this section).

(2) If a person carrying on a qualifying activity incurs capital expenditure in acquiring, for the purposes of the qualifying activity, a right to use or otherwise deal with computer software, this Part applies as if—

(a) the right and the software to which it relates were plant,

(b) the plant were provided for the purposes of the qualifying activity, and

(c) so long as the person is entitled to the right, the person owned the plant as a result of incurring the capital expenditure.

72 Disposal values

(1) This section applies if a person—

(a) has incurred qualifying expenditure on the provision of plant consisting of computer software or the right to use or otherwise deal with computer software, and

(b) grants to another a right to use or otherwise deal with the whole or part of the computer software in circumstances in which the consideration for the grant—

(i) consists of a capital sum, or

(ii) would consist of a capital sum if the consideration were in money.

(2) The person is required to bring a disposal value into account unless—

(a) while the person owned the computer software or the right to use or otherwise deal with the computer software, and

(b) before the grant of the right referred to in subsection (1)(b),

there has been a disposal event falling within section 61(1)(e) (use for purposes other than those of the qualifying activity) or 61(1)(f) (permanent discontinuance of the qualifying activity).

(3) The disposal value to be brought into account under this section depends on the circumstances of the grant of the right, as shown in the Table—

Table

Disposal values: grant of software right

1. Circumstances of grant	***2. Disposal value***

1. The grant is for a consideration not consisting entirely of money.	The market value of the right granted at the time of the grant.
2. The grant is made where— (a) it is for no consideration or at less than market value, (b) there is no charge to tax under **[**[F105]ITEPA 2003**]**, and (c) the condition in subsection (5) is met by the grantee.	The market value of the right granted at the time of the grant.
3. The grant is made in circumstances other than those given in item 1 or 2.	The net consideration in money received in respect of the grant, together with— (a) any insurance money received in respect of the computer software as a result of an event affecting the consideration obtainable on the grant, and (b) any other compensation of any description so received, so far as it consists of capital sums.

(4) The amounts referred to in column 2 of the Table are those received by the person required to bring the disposal value into account.

(5) The condition referred to in item 2 of the Table is met by the grantee if—
   (a) the grantee's expenditure on the acquisition of the plant cannot be qualifying expenditure under this Part or Part 6 (research and development allowances), or
   (b) the grantee is a dual resident investing company which is connected with the grantor.

Textual Amendments

F105 Words in s. 72(3) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1) , s. 723 , **Sch. 6 para. 251** (with Sch. 7)

Modifications etc. (not altering text)

C18 S. 72(3)-(5) excluded (E.W.S.) (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 14(2)(a)**; S.I. 2005/1444, art. 2(1), Sch. 1

73 Limit on disposal values

(1) This section applies if a person is required to bring into account a disposal value in respect of—
   (a) computer software, or
   (b) the right to use or otherwise deal with computer software.

(2) For the purpose only of—
   (a) determining whether the limit on the disposal value under section 62 is exceeded, and
   (b) reducing the amount of that disposal value so that the limit is not exceeded,

the disposal value is to be taken to be increased by the amount given in subsection (3).

(3) The amount is the total of any disposal values which, in respect of that person and that plant, fall or have fallen to be brought into account under section 72.

CHAPTER 8

CARS, ETC.

Cars above the cost threshold

74 Single asset pool

(1) Qualifying expenditure incurred on the provision of a car to which this section applies, if allocated to a pool, must be allocated to a single asset pool.

(2) This section applies to a car if—
(a) the car is not a qualifying hire car (as defined by section 82), [F106]...
(b) the capital expenditure incurred on its provision for the purposes of the qualifying activity exceeds £12,000.[[F107], and
(c) the qualifying expenditure incurred on the provision of the car is not first-year qualifying expenditure under section 45D (expenditure on cars with low CO_2 emissions)]

(3) In this Chapter "car" has the meaning given by section 81 (extended meaning of "car").

(4) The Treasury may by order increase or further increase the sums of money specified in subsection (2) and in sections 75 and 76.

Textual Amendments

F106 Word in s. 74(2) repealed (with effect as mentioned in s. 59 of the amending Act) by Finance Act 2002 (c. 23), **s. 141**, (Sch. 40 Pt. 3(7) note)

F107 S. 74(2)(c) and word inserted (with effect as mentioned in s. 59 of the amending Act) by Finance Act 2002 (c. 23), s. 59, **Sch. 19 para. 6**

Modifications etc. (not altering text)

C19 S. 74(2) modified by 1993 c. 34, s. 93A(6) (as inserted (with effect as mentioned in s. 80(2) of the inserting Act) by Finance Act 2002 (c. 23), s. 80, **Sch. 24 para. 4**(with Sch. 23 para. 25))

75 General limit on amount of writing-down allowance

(1) The amount of the writing-down allowance to be made to a person for a chargeable period in respect of qualifying expenditure incurred on the provision of a car to which section 74 applies must not exceed £3,000.

(2) The limit under subsection (1) is proportionately increased or reduced if the chargeable period is more or less than a year.

(3) The amount of the writing-down allowance may be further limited under—
section 76 (expenditure met by another person),
section 77 (effect of use partly for other purposes), or

section 78 (effect of partial depreciation subsidy).

Modifications etc. (not altering text)

C20 S. 75(1) modified by 1993 c. 34, s. 93A(6) (as inserted (with effect as mentioned in s. 80(2) of the inserting Act) by Finance Act 2002 (c. 23), s. 80, **Sch. 24 para. 4** (with Sch. 23 para. 25))

76 Limit where part of expenditure met by another person

(1) Subsection (2) applies if, as a result of section 532 (general rule excluding contributions), only part of the capital expenditure incurred on the provision of a car to which section 74 applies is treated as incurred by a person.

(2) The amount of the writing-down allowance to be made to that person for a chargeable period in respect of the qualifying expenditure on the car must not exceed—

$$£3{,}000 \text{x} \frac{E-X}{E}$$

where—
E is the amount of capital expenditure incurred on the provision of the car, and
X is the amount of the expenditure excluded by section 532.

(3) Subsection (4) applies if—

(a) capital expenditure exceeding £12,000 is incurred on the provision of a car to which section 74 applies, and

(b) a person ("the contributor") is entitled to writing-down allowances as a result of section 538 (contribution allowances for plant and machinery).

(4) The amount of the writing-down allowance to be made to the contributor for a chargeable period in respect of his contribution to the expenditure on the car must not exceed—

$$£3{,}000 \text{x} \frac{C}{E}$$

where—
E is the amount of capital expenditure incurred on the provision of the car, and
C is the amount of the contribution.

(5) The limit under subsection (2) or (4) is proportionately increased or reduced if the chargeable period is more or less than a year.

Modifications etc. (not altering text)

C21 S. 76(2) modified by 1993 c. 34, s. 93A(6) (as inserted (with effect as mentioned in s. 80(2) of the inserting Act) by Finance Act 2002 (c. 23), s. 80, **Sch. 24 para. 4** (with Sch. 23 para. 25))

C22 S. 76(3) modified by 1993 c. 34, s. 93A(6) (as inserted (with effect as mentioned in s. 80(2) of the inserting Act) by Finance Act 2002 (c. 23), s. 80, **Sch. 24 para. 4** (with Sch. 23 para. 25))

C23 S. 76(4) modified by 1993 c. 34, s. 93A(6) (as inserted (with effect as mentioned in s. 80(2) of the inserting Act) by Finance Act 2002 (c. 23), s. 80, **Sch. 24 para. 4** (with Sch. 23 para. 25))

77 Car used partly for purposes other than those of qualifying activity

(1) In the case of a single asset pool under section 74 there is no final chargeable period or disposal event merely because the car begins to be used partly for purposes other than those of the qualifying activity.

(2) For any chargeable period in which the car is used partly for purposes other than those of the qualifying activity—

(a) any writing-down allowance or balancing allowance to which the person is entitled, or

(b) any balancing charge to which the person is liable,

must be reduced to an amount which is just and reasonable having regard to the relevant circumstances.

(3) The relevant circumstances include, in particular, the extent to which the car is used in that chargeable period for purposes other than those of the qualifying activity.

(4) In calculating under section 59 the amount of unrelieved qualifying expenditure carried forward, a reduction of a writing-down allowance under this section is to be disregarded.

(5) If this section applies, Chapter 15 (plant or machinery provided or used partly for purposes other than those of the qualifying activity) does not apply.

78 Effect of partial depreciation subsidy

(1) This section applies if—

(a) a car to which section 74 applies is in use for the purposes of the qualifying activity,

(b) there is paid to the person carrying on that activity a sum in respect of, or which takes account of, part of the depreciation of the car resulting from that use, and

(c) the sum does not fall to be taken into account as income of that person or in calculating the profits of any qualifying activity carried on by him.

(2) The amount of—

(a) any writing-down allowance or balancing allowance to which the person is entitled, or

(b) any balancing charge to which the person is liable,

must be reduced to an amount which is just and reasonable having regard to the relevant circumstances.

(3) In calculating under section 59 the amount of unrelieved qualifying expenditure carried forward, a reduction of a writing-down allowance under subsection (2) is to be disregarded.

(4) This section has effect for the chargeable period in which any such sum as is mentioned in subsection (1)(b) is first paid and for any subsequent chargeable period.

(5) If this section applies, Chapter 16 (partial depreciation subsidies) does not apply.

79 Cases where Chapter 17 (anti-avoidance) applies

(1) This section applies if—

(a) a disposal value is required to be brought into account under section 61, and

(b) the disposal event is that the person concerned ceases to own a car to which section 74 applies because of—

(i) a sale, or

(ii) the performance of a contract,

which is a relevant transaction for the purposes of Chapter 17 (anti-avoidance).

(2) The disposal value to be brought into account is—

(a) the market value of the car at the time of the event referred to in subsection (1), or

(b) if less, the capital expenditure incurred, or treated as incurred, on the provision of the car by the person disposing of it.

(3) The person acquiring the car is to be treated as having incurred capital expenditure on its provision of an amount equal to the disposal value required to be brought into account under subsection (2).

Vehicles provided for purposes of employment or office

80 Vehicles provided for purposes of employment or office

F108 . . . .

Textual Amendments

F108 S. 80 repealed (with effect as mentioned in s. 59(3)(4) of the amending Act) by Finance Act 2001 (c. 9), s. 59(2), 110, **Sch. 33 Pt. 2(1)** Note

Interpretation

81 Extended meaning of "car"

In this Part "car" means a mechanically propelled road vehicle other than one—

(a) of a construction primarily suited for the conveyance of goods or burden of any description, or

(b) of a type not commonly used as a private vehicle and unsuitable for such use.

References to a car accordingly include a motor cycle.

82 Qualifying hire cars

(1) For the purposes of this Part a car is a qualifying hire car if—

(a) it is provided wholly or mainly for hire to, or the carriage of, members of the public in the ordinary course of a trade, and

(b) the case is within subsection (2), (3) or (4).

(2) The first case is where the following conditions are met—

(a) the number of consecutive days for which the car is on hire to, or used for the carriage of, the same person will normally be less than 30, and

(b) the total number of days for which it is on hire to, or used for the carriage of, the same person in any period of 12 months will normally be less than 90.

(3) The second case is where the car is provided for hire to a person who will himself use it—

(a) wholly or mainly for hire to, or for the carriage of, members of the public in the ordinary course of a trade, and

(b) in a way that meets the conditions in subsection (2).

(4) The third case is where the car is provided wholly or mainly for the use of a person in receipt of—

(a) a disability living allowance under—

(i) the Social Security Contributions and Benefits Act 1992 (c. 4), or

(ii) the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),

because of entitlement to the mobility component,

(b) a mobility supplement under a scheme made under the Personal Injuries (Emergency Provisions) Act 1939 (c. 82),

(c) a mobility supplement under an Order in Council made under section 12 of the Social Security (Miscellaneous Provisions) Act 1977 (c. 5), or

(d) any payment appearing to the Treasury to be of a similar kind and specified by them by order.

(5) For the purposes of subsection (2) persons who are connected with each other are to be treated as the same person.

CHAPTER 9

SHORT-LIFE ASSETS

83 Meaning of "short-life asset"

Plant or machinery in respect of which qualifying expenditure has been incurred is a short-life asset if—

(a) its treatment as a short-life asset is not ruled out by section 84, and

(b) the person incurring the expenditure elects for the plant or machinery to be treated as a short-life asset.

84 Cases in which short-life asset treatment is ruled out

Treatment of plant or machinery as a short-life asset is ruled out in any of the cases listed in column 1 of the Table, unless an exception listed in column 2 applies.

Table

Short-life asset treatment

1. Short-life asset treatment ruled out	*2. Exception (if any)*
1. The expenditure is treated as incurred for the purposes of a qualifying activity under—	

(a) section 13 (use for qualifying activity of plant or machinery provided for other purposes), or [F109(aa) section 13A (use for other purposes of plant or machinery provided for long funding leasing), or] (b) section 14 (use for qualifying activity of plant or machinery which is a gift).	
2. The plant or machinery is the subject of special leasing (as defined by section 19).	
3. The plant or machinery is a car (as defined by section 81).	The car is within section 82(4) (cars hired out to persons receiving disability allowances etc.).
4. The expenditure is long-life asset expenditure (see Chapter 10).	
5. The plant or machinery is provided for leasing.	The plant or machinery is a car which is within section 82(4) (cars hired out to persons receiving disability allowances etc.). The plant or machinery will be used within the designated period (as defined by section 106) for a qualifying purpose (as defined by sections 122 to 125).
6. Section 109 provides only a 10% writing-down allowance in respect of expenditure on the plant or machinery.	
7. The plant or machinery is leased to two or more persons jointly in circumstances such that section 116 applies.	
8. The plant or machinery is a ship.	
9. The expenditure was incurred partly for the purposes of a qualifying activity and partly for other purposes (see Chapter 15).	
10. The expenditure is required to be allocated to a single asset pool under section 211 (partial depreciation subsidy).	

Textual Amendments

F109 Words in s. 84 inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 8(2)**

85 Election for short-life asset treatment: procedure

(1) An election under section 83 must specify—

(a) the plant or machinery which is the subject of the election,

(b) the qualifying expenditure incurred in respect of it, and

(c) the date on which the expenditure was incurred.

(2) An election under section 83 must be made by notice given to **[**F39an officer of Revenue and Customs**]**—

(a) for income tax purposes, on or before the normal time limit for amending a tax return for the tax year in which the relevant chargeable period ends;

(b) for corporation tax purposes, no later than 2 years after the end of the relevant chargeable period.

(3) "The relevant chargeable period" means—

(a) the chargeable period in which the qualifying expenditure was incurred, or

(b) if the qualifying expenditure was incurred in different chargeable periods, the first chargeable period in which any of the qualifying expenditure was incurred.

(4) An election under section 83 is irrevocable.

(5) All such assessments and adjustments of assessments are to be made as are necessary to give effect to the election.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

86 Short-life asset pool

(1) Qualifying expenditure in respect of a short-life asset, if allocated to a pool, must be allocated to a single asset pool (a "short-life asset pool").

(2) If the final chargeable period for the short-life asset pool has not occurred before the four-year cut-off—

(a) the pool ends at the four-year cut-off without a final chargeable period,

(b) the available qualifying expenditure in the pool is allocated to the main pool for the first chargeable period ending after the four-year cut-off, and

(c) the asset ceases to be a short-life asset.

(3) In this Chapter "the four-year cut-off" means the fourth anniversary of the end of—

(a) the chargeable period in which the qualifying expenditure was incurred on the provision of the short-life asset, or

(b) if the qualifying expenditure was incurred in different chargeable periods, the first chargeable period in which any of the qualifying expenditure was incurred.

(4) For the purposes of subsection (2), the final chargeable period occurs before the four-year cut-off only if it ends on or before it.

87 Short-life assets provided for leasing

(1) This section applies if—

(a) plant or machinery is a short-life asset on the basis that it has been provided for leasing but will be used within the designated period for a qualifying purpose (see item 5 of the Table in section 84),

(b) in a chargeable period ending on or before the four-year cut-off, the short-life asset begins to be used otherwise than for a qualifying purpose, and

(c) the time when it begins to be so used falls within the first 4 years of the designated period.

(2) If this section applies—

(a) the short-life asset pool ends without a final chargeable period,

(b) the available qualifying expenditure in the pool is allocated to the main pool for the chargeable period in which the asset begins to be used otherwise than for a qualifying purpose, and

(c) the asset ceases to be a short-life asset.

88 Sales at under-value

If—

(a) a short-life asset is disposed of at less than market value,

(b) the disposal is not one in respect of which an election is made under section 89(6), and

(c) there is no charge to tax under **[**[F110]ITEPA 2003**]**,

the disposal value to be brought into account for the purposes of Chapter 5 is the market value of the asset.

Textual Amendments

F110 Words in s. 88(c) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1) , s. 723 , **Sch. 6 para. 252** (with Sch. 7)

Modifications etc. (not altering text)

C24 S. 88 excluded (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 14(2)(a)**; S.I. 2005/1444, art. 2(1), Sch. 1

C25 S. 88 excluded (E.W.S.) (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 2(4)**; S.I. 2005/1444, art. 2(1), Sch. 1

C26 S. 88 excluded (24.7.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 22(4)**; S.I. 2005/1909, art. 2, Sch.

89 Disposal to connected person

(1) This section applies if, at any time before the four-year cut-off, a person (“the transferor”) disposes of a short-life asset to a connected person.

(2) Subject to subsection (6)—

(a) the transferor is to be treated as having sold the short-life asset to the connected person for an amount equal to the available qualifying expenditure in the short-life asset pool for the chargeable period in which the disposal occurs, and

(b) the connected person is to be treated as having incurred qualifying expenditure of the same amount in buying the short-life asset.

(3) Subject to subsection (6)—

(a) sections 217 and 218 (restrictions on first-year and other allowances in the case of certain transactions between connected persons, to obtain a tax advantage etc.), and

(b) sections 222 to 225 (further restrictions in the case of sale and finance leaseback),

do not apply to the disposal.

(4) Immediately after the disposal of the short-life asset, the connected person is to be taken to have made an election under section 83 (so that the plant or machinery is a short-life asset in his hands).

(5) In relation to the connected person, "the four-year cut-off" means the date that would have been the four-year cut-off in relation to the transferor.

(6) Subsections (2) and (3) apply in relation to a disposal only if—

(a) the transferor, and

(b) the connected person,

elect that they should apply.

(7) An election under subsection (6) must be made by notice given to **[**[F39]an officer of Revenue and Customs**]** no later than 2 years after the end of the chargeable period in which the disposal occurred.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

CHAPTER 10

LONG-LIFE ASSETS

Long-life asset expenditure

90 Long-life asset expenditure

"Long-life asset expenditure" means qualifying expenditure—

(a) incurred on the provision of a long-life asset for the purposes of a qualifying activity, and

(b) not excluded from being long-life asset expenditure by any of sections 93 to 100.

91 Meaning of "long-life asset"

(1) For the purposes of this Chapter "long-life asset" means plant or machinery which—

(a) if new, can reasonably be expected to have a useful economic life of at least 25 years, and
(b) if not new, could reasonably have been expected when new to have a useful economic life of at least 25 years.

(2) "New" means unused and not second-hand.

(3) The useful economic life of plant or machinery is the period—
(a) beginning when it is first brought into use by any person for any purpose, and
(b) ending when it is no longer used or likely to be used by anyone for any purpose as a fixed asset of a business.

92 Application of Chapter to part of expenditure

(1) If, under any of the following provisions of this Chapter, this Chapter applies to part only of the capital expenditure on plant and machinery—
(a) the part to which this Chapter applies, and
(b) the part to which it does not,

are to be treated for the purposes of this Act as expenditure on separate items of plant or machinery.

(2) For the purposes of subsection (1), all such apportionments are to be made as are just and reasonable.

Expenditure excluded from being long-life asset expenditure

93 Fixtures etc.

(1) Expenditure is not long-life asset expenditure if it is incurred on the provision of plant or machinery which is a fixture in, or is provided for use in, any building used wholly or mainly—
(a) as a dwelling-house, hotel, office, retail shop or showroom, or
(b) for purposes ancillary to the use referred to in paragraph (a).

(2) In this section—
"fixture" has the meaning given by section 173(1);
"retail shop" includes any premises of a similar character where a retail trade or business, including repair work, is carried on.

94 Ships

(1) Expenditure is not long-life asset expenditure if—
(a) it is incurred before 1st January 2011 on the provision of a ship of a sea-going kind, and
(b) each of the conditions in subsection (2) is met.

(2) The conditions are that—
(a) the ship is not an offshore installation,
F111(b) . . . .

(c) the primary use to which ships of the same kind are put by their owners (or, if their use is made available to others, those others) is a use otherwise than for sport or recreation.

F112(3) . . . .

Textual Amendments

F111 S. 94(2)(b) repealed (with effect in accordance with Sch. 27 para. 11 of the amending Act) by Finance Act 2004 (c. 12) , Sch. 27 para. 8 , **42 Pt. 2(19)**

F112 S. 94(3) repealed (with effect in accordance with Sch. 27 para. 11 of the amending Act) by Finance Act 2004 (c. 12) , Sch. 27 para. 8 , **42 Pt. 2(19)**

95 Railway assets

(1) Expenditure is not long-life asset expenditure if it is incurred before 1st January 2011 on the provision of a railway asset used by any person wholly and exclusively for the purposes of a railway business.

(2) "Railway asset" means—

(a) a locomotive, tram or other vehicle, or a carriage, wagon or other rolling stock designed or adapted for use on a railway;

(b) anything which is, or is to be, comprised in any railway station, railway track or light maintenance depot or any apparatus which is, or is to be, installed in association with such a station, track or depot.

(3) "Railway business" means a business so far as carried on to provide a service to the public for carrying goods or passengers by means of a railway in the United Kingdom or the Channel Tunnel.

(4) For the purposes of subsection (1), a railway asset of a kind described in subsection (2)(a) is not to be treated as used otherwise than wholly and exclusively for the purposes of a railway business merely because it is used to carry goods or passengers—

(a) from places inside the United Kingdom to places outside the United Kingdom, or

(b) from places outside the United Kingdom to places inside the United Kingdom.

(5) In subsections (2) and (3), "railway" has the same meaning as in section 81(2) of the 1993 Act ("railway" includes tramways and other modes of guided transport).

(6) In this section—

"the 1993 Act" means the Railways Act 1993 (c. 43);

"goods" has the same meaning as in Part I of the 1993 Act;

"railway station" and "railway track" include—

(a) anything included in the definitions of "station" and "track" in section 83 of the 1993 Act, and

(b) anything else that would be included if in section 83 "railway" had the meaning given in section 81(2) of the 1993 Act;

"light maintenance depot" means—

(a) any light maintenance depot within the meaning of Part I of the 1993 Act, and

(b) any land or other property which is the equivalent of such a depot in relation to anything which is a railway only when "railway" has the meaning given by section 81(2) of the 1993 Act.

96 Cars

Expenditure is not long-life asset expenditure if it is incurred on the provision of a car (as defined by section 81).

97 Expenditure within the relevant monetary limit: general

Expenditure is not long-life asset expenditure if it is—

(a) expenditure to which the monetary limits apply, and

(b) incurred in a chargeable period for which the relevant monetary limit is not exceeded.

98 Expenditure to which the monetary limits apply

(1) The monetary limits apply to expenditure incurred by an individual for a chargeable period if—

(a) the expenditure was incurred by him for the purposes of a qualifying activity carried on by him,

(b) the whole of his time is substantially devoted in that period to the carrying on of that qualifying activity, and

(c) the expenditure is not within subsection (4).

(2) The monetary limits apply to expenditure incurred by a partnership for a chargeable period if—

(a) all of the members of the partnership are individuals,

(b) the expenditure was incurred by the partnership for the purposes of a qualifying activity carried on by it,

(c) at all times throughout that period at least half the partners for the time being devote the whole or a substantial part of their time to the carrying on of that qualifying activity, and

(d) the expenditure is not within subsection (4).

(3) The monetary limits apply for the purposes of corporation tax to any expenditure incurred by a company for a chargeable period other than expenditure within subsection (4).

(4) Expenditure is within this subsection if it is—

(a) incurred on the provision of a share in plant or machinery,

(b) treated as a result of section 538 (contribution allowances: plant and machinery) as incurred on the provision of plant or machinery, or

(c) incurred on the provision of plant or machinery for leasing (whether or not the leasing is in the course of a trade).

99 The monetary limit

(1) The monetary limit in the case of a chargeable period of 12 months is £100,000.

(2) If, in the case of an individual or partnership, the chargeable period is longer or shorter than 12 months, the monetary limit is the amount given by a proportional increase or reduction of £100,000.

(3) If, in the case of a company, the chargeable period is shorter than 12 months, the monetary limit is the amount given by a proportional reduction of £100,000.

(4) If, in a chargeable period, a company has one or more associated companies, the monetary limit for that period is—

$$\frac{L}{N+1}$$

where—
L is the monetary limit applicable under subsection (1) or (3), and
N is the number of the associated companies.

(5) Section 13(4) and (5) of ICTA (companies which count as associated companies for the purposes of section 13(3)) applies for the purposes of subsection (4).

Modifications etc. (not altering text)

C27 S. 99(1) modified by 1993 c. 34, s. 93A(6) (as inserted (with effect as mentioned in s. 80(2) of the inserting Act) by Finance Act 2002 (c. 23), s. 80, **Sch. 24 para. 4** (with Sch. 23 para. 25))

C28 S. 99(2) modified by 1993 c. 34, s. 93A(6) (as inserted (with effect as mentioned in s. 80(2) of the inserting Act) by Finance Act 2002 (c. 23), s. 80, **Sch. 24 para. 4** (with Sch. 23 para. 25))

C29 S. 99(3) modified by 1993 c. 34, s. 93A(6) (as inserted (with effect as mentioned in s. 80(2) of the inserting Act) by Finance Act 2002 (c. 23), s. 80, **Sch. 24 para. 4** (with Sch. 23 para. 25))

100 Exceeding the monetary limit

(1) The monetary limit for a chargeable period is exceeded if the total expenditure in that period that meets the conditions in subsection (2) exceeds that limit.

(2) The conditions are that the expenditure—
(a) is long-life asset expenditure, or would be long-life asset expenditure in the absence of section 97 (expenditure within monetary limit), and
(b) is expenditure to which the monetary limits apply.

(3) Subsection (4) applies if, in the case of any contract for the provision of plant or machinery, the capital expenditure which is (or is to be) incurred under the contract is (or may fall to be) treated for the purposes of this Act as incurred in different chargeable periods.

(4) All of the expenditure falling to be incurred under the contract on the provision of the plant or machinery is to be treated for the purposes of this section as incurred in the first chargeable period in which any of the expenditure is incurred.

Rules applying to long-life asset expenditure

101 Long-life asset pool

(1) Long-life asset expenditure to which this section applies, if allocated to a pool, must be allocated to a class pool ("the long-life asset pool").

(2) This section applies to long-life asset expenditure if—

(a) it is incurred on the provision of long-life assets wholly and exclusively for the purposes of a qualifying activity, and

(b) it is not expenditure which is required to be allocated to a single asset pool.

102 Writing-down allowances at 6%

(1) The amount of the writing-down allowance to which a person is entitled for a chargeable period in respect of expenditure which is long-life asset expenditure is 6% of the amount by which AQE exceeds TDR (see Chapter 5).

(2) Subsection (1) applies even if the long-life asset expenditure is in a single asset pool.

(3) In the case of expenditure which is within section 107(2)(a) and (b) (overseas leasing which is not protected leasing), this section is subject to sections 110, 114 and 115 (allowances prohibited in certain cases etc.).

(4) Subsections (3) and (4) of section 56 (proportionate increases or reductions in amount in certain cases) apply for the purposes of subsection (1) of this section as they apply for the purposes of subsection (1) of that section.

Anti-avoidance provisions

103 Later claims

(1) Subsection (2) applies if—

(a) a person entitled to do so has made a Part 2 claim in respect of expenditure incurred on the provision of plant or machinery, and

(b) the expenditure fell to be treated as long-life asset expenditure for the purposes of the claim.

(2) If—

(a) at any time after making the Part 2 claim, that claimant or another person makes a Part 2 claim in respect of any qualifying expenditure incurred at any time (including a time before the incurring of the expenditure to which the earlier claim relates) on the provision of the same plant or machinery, and

(b) the expenditure to which the later claim relates—

(i) would not (but for this subsection) be treated for the purposes of the later claim as long-life asset expenditure, and

(ii) is not prevented from being long-life asset expenditure by any of sections 93 to 96,

this Part has effect in relation to the later claim as if the expenditure to which it relates were long-life asset expenditure.

(3) A person makes a Part 2 claim in respect of any expenditure if he—

(a) makes a tax return in which the expenditure is taken into account in determining his available qualifying expenditure for the purposes of this Part;
(b) gives notice of an amendment of a tax return which provides for the expenditure to be so taken into account;
(c) makes a claim in any other way for the expenditure to be so taken into account.

104 Disposal value of long-life assets

(1) This section applies if—
(a) section 102 (writing-down allowances at 6%) has had effect in relation to any long-life asset expenditure incurred by a person ("the taxpayer"),
(b) any disposal event occurs in relation to the long-life asset,
(c) the disposal value to be brought into account by the taxpayer would (but for this section) be less than the notional written-down value of the long-life asset, and
(d) the disposal event is part of, or occurs as a result of, a scheme or arrangement the main purpose or one of the main purposes of which is the obtaining by the taxpayer of a tax advantage under this Part.

(2) The disposal value that the taxpayer must bring into account is the notional written-down value of the long-life asset.

(3) The notional written-down value is—

$$\mathrm{QE} - A$$

where—
QE is the taxpayer's expenditure on the plant or machinery that is qualifying expenditure, and
A is the total of all allowances which could have been made to the taxpayer in respect of that expenditure if—
(a) that expenditure had been the only expenditure that had ever been taken into account in determining his available qualifying expenditure,
(b) that expenditure had not been prevented by the application of a monetary limit from being long-life asset expenditure, and
(c) all allowances had been made in full.

CHAPTER 11

OVERSEAS LEASING

Basic terms

105 "Leasing", "overseas leasing" etc.

(1) In this Chapter—
(a) "leasing" includes letting a ship or aircraft on charter or letting any other asset on hire, and
(b) references to a lease include a sub-lease (and references to a lessor or lessee are to be read accordingly).

(2) Plant or machinery is used for overseas leasing if it is 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 plant or machinery exclusively for earning profits chargeable to tax.

[F113(2A) In determining whether plant or machinery is used for overseas leasing, no account shall be taken of any lease finalised, within the meaning of Part 4 of Schedule 8 to the Finance Act 2006, on or after 1st April 2006.]

(3) In this Chapter "profits chargeable to tax"—
(a) includes profits chargeable under section 830(4) of ICTA (profits from exploration and exploitation of the seabed etc.), but
(b) excludes profits arising to a person who, under double taxation arrangements, is afforded or is entitled to claim any relief from the tax chargeable on those profits.

(4) "Double taxation arrangements" means arrangements specified in an Order in Council making any such provisions as are referred to in section 788 of ICTA.

(5) "Protected leasing" of plant or machinery means—
(a) short-term leasing of the plant or machinery (as defined in section 121), or
(b) if the plant or machinery is a ship, aircraft or transport container, the use of the ship, aircraft or transport container for a qualifying purpose under section 123 or 124 (letting on charter to UK resident etc.).

(6) In this Chapter "qualifying activity" includes (subject to any provision to the contrary) any activity listed in section 15(1) even if any profits or gains from it are not chargeable to tax.

Textual Amendments
F113 S. 105(2A) inserted (19.7.2006) by Finance Act 2006 (c. 25), **Sch. 9 para. 13(2)**

106 The designated period

(1) Subject to subsection (2), the designated period, in relation to expenditure incurred by a person on the provision of plant or machinery, is the period of 10 years beginning with the date on which he first brought the plant or machinery into use.

(2) If the person who incurred the expenditure ceases to own the plant or machinery before the end of the 10 year period, the designated period ends on the date when he ceases to own it.

(3) For the purposes of subsection (2), a person is to be treated as continuing to own plant or machinery so long as it is owned by a person who—
(a) is connected with him, or
(b) acquired it from him as a result of one or more disposals on the occasion of which, or each of which [F114—
(i) there was a change in the persons carrying on the qualifying activity which did not involve all of the persons carrying on that activity before the change permanently ceasing to carry it on, or

(ii) the qualifying activity carried on by the person making the disposal was treated as continuing under section 114(1) of ICTA (effect of partnership changes involving companies). **]**

F115(4) . . . .

Textual Amendments

F114 Words in s. 106(3)(b) substituted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 536(2)** (with Sch. 2)

F115 S. 106(4) repealed (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5),, Sch. 1 para. 536(3), **3** (with Sch. 2)

Certain expenditure to be pooled

107 The overseas leasing pool

(1) Qualifying expenditure to which this section applies, if allocated to a pool, must be allocated to a class pool ("the overseas leasing pool").

(2) This section applies to qualifying expenditure if—

(a) it is incurred on the provision of plant or machinery for leasing,

(b) the plant or machinery is at any time in the designated period used for overseas leasing which is not protected leasing, and

(c) the expenditure is not—

(i) long-life asset expenditure, or

(ii) expenditure that is required to be allocated to a single asset pool.

108 Effect of disposal to connected person on overseas leasing pool

(1) This section applies if—

(a) a person who has incurred qualifying expenditure which has been allocated to an overseas leasing pool disposes of the plant or machinery to a connected person,

[F116(b) the disposal is one on the occasion of which—

(i) there was a change in the persons carrying on the qualifying activity which involved all of the persons carrying on that activity before the change permanently ceasing to carry it on, or

(ii) the qualifying activity carried on by the person making the disposal was not treated as continuing under section 114(1) or 343(2) of ICTA (effect of partnership changes involving companies or of company reconstructions), and **]**

(c) a disposal value is required to be brought into account on that occasion under this Part.

(2) The disposal value to be brought into account is—

(a) the market value of the plant or machinery at the time of the disposal, or

(b) if less, the qualifying expenditure incurred by the person disposing of the plant or machinery.

(3) The person acquiring the plant or machinery is to be treated for the purposes of this Part as having incurred expenditure on its provision of an amount equal to the disposal value given by subsection (2).

F117(4) . . . .

Textual Amendments

F116 S. 108(1)(b) substituted for s. 108(1)(b) (with effect in accordance with s. 883(1) of the amending Act)) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 537(2)** (with Sch. 2)

F117 S. 108(4) repealed (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 537(3), **3** (with Sch. 2)

Allowances reduced or, in certain cases, prohibited

109 Writing-down allowances at 10%

(1) The amount of the writing-down allowance to which a person is entitled for a chargeable period in respect of expenditure to which this section applies is 10% of the amount by which AQE exceeds TDR (see Chapter 5).

(2) This section applies to expenditure incurred on the provision of plant or machinery for leasing if—

(a) the plant or machinery is at any time in the designated period used for overseas leasing which is not protected leasing, and

(b) the expenditure is not long-life asset expenditure.

(3) Subsection (2) applies to expenditure even if the expenditure is in a single asset pool.

(4) Subsections (3) and (4) of section 56 (proportionate increases or reductions in amount in certain cases) apply for the purposes of subsection (1) of this section as they apply for the purposes of subsection (1) of that section.

110 Cases where allowances are prohibited

(1) A person is not entitled to any writing-down or balancing allowances in respect of qualifying expenditure which is within subsection (2).

(2) Expenditure is within this subsection if—

(a) it is incurred on the provision of plant or machinery for leasing,

(b) the plant or machinery is at any time in the designated period used for overseas leasing which is not protected leasing,

(c) the plant or machinery is used otherwise than for a qualifying purpose (see sections 122 to 125), and

(d) the lease is within any of the items in the list below.

List

Leases in relation to which allowances are prohibited

1.	The lease is expressed to be for a period of more than 13 years.

2.	The lease, or a separate agreement, provides for— (a) extending or renewing the lease, or (b) the grant of a new lease,making it possible for the plant or machinery to be leased for a period of more than 13 years.
3.	There is a period of more than one year between the dates on which any two consecutive payments become due under the lease.
4.	Any payments are due under the lease or a collateral agreement other than periodical payments.
5.	If payments due under the lease or a collateral agreement are expressed as monthly amounts due over a period, any payment due for that period is not the same as any of the others. But, for this purpose, ignore variations made under the terms of the lease which are attributable to changes in— (a) the rate of corporation tax or income tax, (b) the rate of capital allowances, (c) any rate of interest where the changes are linked to changes in the rate of interest applicable to inter-bank loans, or (d) the premiums charged for insurance of any description by a person who is not connected with the lessor or the lessee.
6.	The lessor or a person connected with the lessor will, or may in certain circumstances, become entitled at any time to receive from the lessee or any other person a payment, other than a payment of insurance money, which is— (a) of an amount determined before the expiry of the lease, and (b) referable to a value of the plant or machinery at or after the expiry of the lease. For this purpose, it does not matter whether the payment relates to a disposal of the plant or machinery.

(3) In items 4 and 5 of the list “collateral agreement” means an agreement which might reasonably be construed as being collateral to the lease.

Recovery of excess allowances

111 Excess allowances: standard recovery mechanism

(1) If—

(a) expenditure incurred by a person in providing plant or machinery has qualified for a first-year allowance or a normal writing-down allowance, and

(b) at any time in the designated period, the plant or machinery is used for overseas leasing which is not protected leasing,

the following provisions of this section have effect in relation to the person who is the owner of the plant or machinery when it is first so used.

(2) For the chargeable period in which the plant or machinery is first used as described in subsection (1)(b), the owner is—

(a) liable to a balancing charge of an amount given by subsection (4), and

(b) required to bring into account a disposal value of an amount given by that subsection.

(3) For the chargeable period following that in which the plant or machinery is first used as described in subsection (1)(b), an amount given by subsection (4) is to be allocated to whatever pool is appropriate for plant or machinery which is of that description and is provided for leasing and used for overseas leasing.

(4) The amounts are—

The balancing charge

The amount, if any, by which F + N exceeds T, where—

F is the amount of any first-year allowance made in respect of the qualifying expenditure referred to in subsection (1)(a) ("E"),

N is the total of any normal writing-down allowances made in respect of E for the relevant chargeable periods, and

T is the total of the allowances that could have been made for the relevant chargeable periods if no first-year allowance or normal writing-down allowances had been or could have been made.

The disposal value

The amount, if any, by which E exceeds (F + N), where E, F and N have the meaning given in relation to the amount of the balancing charge.

The amount to be allocated to the pool

The aggregate of the balancing charge and the disposal value.

(5) For the purpose of calculating N, the normal writing-down allowances that were made in respect of expenditure on an item of plant or machinery are to be determined as if that item were the only item of plant or machinery in relation to which Chapter 5 had effect.

(6) "The relevant chargeable periods" means the chargeable period in which the qualifying expenditure was incurred and any subsequent chargeable period up to and including the one in which the plant or machinery was first used as described in subsection (1)(b).

112 Excess allowances: connected persons

(1) Section 111 applies with the modifications in subsections (2) to (4) in a case in which—

(a) the owner acquired the plant or machinery as a result of a transaction between connected persons (or a series of transactions each of which was between connected persons),

[F118(b) the transaction (or each of the transactions) is one—

(i) which involved all of the persons carrying on the qualifying activity before the transaction permanently ceasing to carry it on, or

(ii) in respect of which the qualifying activity carried on by the person making the disposal was not treated as continuing under section 114(1) or 343(2) of ICTA (effect of partnership changes involving companies or of company reconstructions), and]

(c) any of the connected persons is a person to whom—

(i) a first-year allowance or a normal writing-down allowance has been made in respect of expenditure on the provision of the plant or machinery, or

(ii) a balancing allowance has been made in respect of such expenditure without a first-year allowance or normal writing-down allowance having been claimed.

(2) For the purposes of section 111(2) and (3)—

E is the amount of the expenditure in respect of which an allowance within subsection (1)(c) has been made,

F is the amount of any first-year allowance within subsection (1)(c), and

N is the amount of any normal writing-down allowance or balancing allowance within subsection (1)(c).

(3) For the purposes of section 111(2) and (3), any consideration paid or received on a disposal of the plant or machinery between the connected persons is to be disregarded.

(4) If a balancing allowance or a balancing charge has been made in respect of any of the transactions, the amount representing F + N is to be adjusted in a just and reasonable manner.

F119(5) . . . .

Textual Amendments

F118 S. 112(1)(b) substituted for s. 112(1)(b) (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 538(2)** (with Sch. 2)

F119 S. 112(5) repealed (with effect in accordance with s. 883(1) of the amending Act)by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 538(3), **3** (with Sch. 2)

113 Excess allowances: special provision for ships

(1) If the plant or machinery referred to in section 111 is a ship—

(a) no allowance is to be made in respect of the ship under section 131(3) (postponed allowances) for the first chargeable period of overseas use or any subsequent chargeable period,

(b) nothing in section 132(2) (disposal events and single ship pool) restricts the operation of section 111, and

(c) the amount of any first-year or writing-down allowance in respect of the ship which has been postponed under section 130 and not made is to be allocated to a long-life asset pool or an overseas leasing pool for the chargeable period following the first chargeable period of overseas use.

(2) "The first chargeable period of overseas use" means the chargeable period in which the plant or machinery is first used for overseas leasing which is not protected leasing.

Recovery of allowances given in cases where prohibition applies

114 Prohibited allowances: standard recovery mechanism

(1) If—

(a) a first-year allowance, a writing-down allowance or a balancing allowance has been made in respect of expenditure incurred in providing plant or machinery, and

(b) at any time in the designated period, an event occurs such that the expenditure is brought within section 110(2) (cases where allowances are prohibited),

the following provisions have effect in relation to the person owning the plant or machinery immediately before that event.

(2) For the chargeable period in which the event occurs, the owner is—

(a) liable to a balancing charge of an amount equal to A — R, and

(b) required to bring into account a disposal value of an amount equal to E - (A - R).

(3) For the purposes of subsection (2)—

A is the amount of any allowances within subsection (1)(a),

R is any amount previously recovered under section 111 or 112 (recovery of excess allowances), and

E is the amount of the expenditure referred to in subsection (1)(a).

(4) For the purpose of calculating A, the amount of the allowances made in respect of expenditure on an item of plant or machinery is to be determined as if that item were the only item of plant or machinery in relation to which Chapter 5 had effect.

115 Prohibited allowances: connected persons

(1) Section 114 applies with the modifications in subsection (2) in a case in which—

(a) an amount falls to be treated as a balancing charge under that section,

(b) the person on whom the balancing charge is to be imposed acquired the plant or machinery in question as a result of a transaction between connected persons (or a series of transactions each of which was between connected persons),

[F120(c) the transaction (or each of the transactions) is one—

(i) which involved all of the persons carrying on the qualifying activity before the transaction permanently ceasing to carry it on, or

(ii) in respect of which the qualifying activity carried on by the person making the disposal was not treated as continuing under section 114(1) or 343(2) of ICTA (effect of partnership changes involving companies or of company reconstructions), and]

(d) a first-year allowance, a writing-down allowance or a balancing allowance in respect of expenditure on the provision of that plant or machinery has been made to any of those persons.

(2) For the purpose of calculating the balancing charge—

(a) A is the amount of any allowances within subsection (1)(d),

(b) any consideration paid or received on a disposal of the plant or machinery between the connected persons is to be disregarded, and

(c) if a balancing allowance or a balancing charge has been made in respect of any of the transactions, A is to be adjusted in a just and reasonable manner.

F121(3) . . . .

Textual Amendments

F120 S. 115(1)(c) substituted for s. 115(1)(c) (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 539(2)** (with Sch. 2)

F121 S. 115(3) repealed (with effect in accordance with s. 883(1) of the amending Act)by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 539(3), **Sch. 3** (with Sch. 2)

Application of Chapter in relation to joint lessees

116 Mitigation of regime

(1) This section applies if—

(a) plant or machinery is leased to two or more persons jointly,

(b) at least one of them is a person who—

(i) is not resident in the United Kingdom, and

(ii) does not use the plant or machinery exclusively for earning profits chargeable to tax, and

(c) the leasing is not protected leasing.

(2) Subsection (3) applies if, at any time when the plant or machinery is leased as described in subsection (1), the lessees use the plant or machinery for the purposes of a qualifying activity or activities but not for leasing.

(3) The expenditure on the provision of the plant or machinery is to be treated as not subject to sections 107, 109 and 110 if, and to the extent to which, it appears that the profits of the qualifying activity or activities will be chargeable to tax throughout—

(a) the designated period, or

(b) if shorter, the period of the lease.

(4) Subsection (5) applies if, under subsection (3), part of the expenditure is treated as not subject to section 107, 109 or 110.

(5) Whether or not the plant or machinery continues to be leased as described in subsection (1), Chapters 5 (allowances and charges) and 10 (long-life assets) and this Chapter have effect as if—

(a) the part of the expenditure that is not subject to section 107, 109 or 110 were expenditure on the provision of a separate item of plant or machinery, and
(b) the rest were expenditure which has been incurred on the provision of another item of plant or machinery (and which is subject to those sections).

(6) All such apportionments are to be made as are necessary as a result of subsection (5).

117 Recovery of allowances in case of joint lessees

(1) If—
(a) expenditure is incurred on the provision of plant or machinery which is leased as described in section 116(1),
(b) the whole or a part of the expenditure has qualified for a normal writing-down allowance under section 116(3),
(c) at any time in the designated period while the plant or machinery is so leased, no lessee uses the plant or machinery for the purposes of a qualifying activity or activities the profits of which are chargeable to tax, and
(d) section 114 (recovery of prohibited allowances) does not apply at that time and has not applied at any earlier time,

sections 111 and 112 (recovery of excess allowances) apply as if the plant or machinery or (as the case may be) the separate item of plant or machinery referred to in section 116(5)(a) had at that time begun to be used for overseas leasing which is not protected leasing.

(2) If—
(a) the whole or a part of any expenditure has qualified for—
(i) a normal writing-down allowance otherwise than as a result of section 116(3), or
(ii) a first-year allowance,
(b) subsequently, but during the designated period, the plant or machinery is leased as described in section 116(1),
(c) at any time in the designated period while the plant or machinery is so leased, no lessee uses the plant or machinery for the purposes of a qualifying activity or activities the profits of which are chargeable to tax, and
(d) section 114 (recovery of prohibited allowances) does not apply at that time and has not applied at any earlier time,

sections 111 and 112 (recovery of excess allowances) apply as if the plant or machinery (and not any separate item of plant or machinery referred to in section 116(5)(a)) had at that time begun to be used for overseas leasing which is not protected leasing.

(3) Subsections (4) and (5) apply if—
(a) expenditure is incurred on the provision of plant or machinery which is leased as described in section 116(1),
(b) the whole or a part of the expenditure has qualified for a normal writing-down allowance under section 116(3),
(c) at the end of the designated period, the plant or machinery is leased as described in section 116(1) but subsection (1) has not had effect, and
(d) it appears that the extent to which the plant or machinery has been used for the purposes of a qualifying activity or activities the profits of which are chargeable to tax is less than the extent of such use taken into account

in determining the amount of the expenditure which qualified for a normal writing-down allowance.

(4) Sections 111 and 112 (recovery of excess allowances) apply as if—

(a) a part of the expenditure corresponding to the reduction in the extent of use referred to in subsection (3)(d) were expenditure on the provision of a separate item of plant or machinery, and

(b) the separate item of plant or machinery had been used, on the last day of the designated period, for overseas leasing which is not protected leasing.

(5) Any disposal value subsequently brought into account under this Part in respect of the plant or machinery must be apportioned by reference to the extent of its use (determined at the end of the designated period) for the purposes of a qualifying activity or activities the profits of which are chargeable to tax.

(6) If an apportionment is made under subsection (5), section 116(6) does not apply.

Duties to supply information

118 Certificate relating to protected leasing

(1) If—

(a) expenditure is incurred on the provision of plant or machinery, and

(b) before the expenditure has qualified for a normal writing-down allowance, the plant or machinery is used for overseas leasing which is protected leasing,

a claim for a writing-down allowance which takes account of that expenditure must be accompanied by a certificate.

(2) The certificate must specify—

(a) the description of protected leasing,

(b) the person to whom the plant or machinery has been leased, and

(c) if the certificate is given by reference to a chargeable period, all the items of plant or machinery (if more than one) relevant to that period.

(3) Subsection (1) applies, for the purposes of claims to first-year allowances, as if the references to a normal writing-down allowance and to a writing-down allowance included a first-year allowance.

(4) But nothing in subsection (3) prevents subsection (1) from continuing to apply if the use for protected leasing occurs after the expenditure has qualified for one allowance and before it qualifies for another.

119 Notice of change of use of plant or machinery

(1) If—

(a) any expenditure on plant or machinery has qualified for a first-year allowance or a normal writing-down allowance, and

(b) the plant or machinery is subsequently used at any time in the designated period for overseas leasing which is not protected leasing,

the person who then owns the plant or machinery must give notice of the fact to **[**[F39]an officer of Revenue and Customs**]**.

(2) The notice must specify—

(a) the person who is not resident in the United Kingdom to whom the plant or machinery has been leased, and

(b) if the notice is given by reference to a chargeable period, all the items of plant or machinery (if more than one) relevant to that period.

(3) The notice must be given—

(a) no later than 3 months after the end of the chargeable period in which the plant or machinery is first used for overseas leasing which is not protected leasing, or

(b) if at the end of the 3 months the person required to give the notice does not know and cannot reasonably be expected to know that the plant or machinery is being so used, within 30 days of coming to know of it.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

120 Notice and joint lessees

(1) If expenditure is incurred on the provision of plant or machinery which is leased as described in section 116(1) (joint lessees: mitigation of regime), the lessor must give notice to **[**[F39]an officer of Revenue and Customs**]**.

(2) A notice under subsection (1) must specify—

(a) the names and addresses of the persons to whom the asset is jointly leased,

(b) the part of the expenditure properly attributable to each of them, and

(c) which of them (so far as the lessor knows) is resident in the United Kingdom.

(3) If circumstances occur such that section 117(1) or (2) (recovery of allowances) applies, the person who is then the lessor must give notice of the fact to **[**[F39]an officer of Revenue and Customs**]**.

(4) A notice under subsection (3) must specify—

(a) any of the joint lessees who is not resident in the United Kingdom to whom the plant or machinery has been leased, and

(b) if it is given by reference to a chargeable period, all the items of plant or machinery (if more than one) relevant to that period.

(5) A notice under this section must be given—

(a) no later than 3 months after the end of the chargeable period in which the plant or machinery is first leased as described in section 116(1) or (as the case may be) in which the circumstances referred to in subsection (3) occur, or

(b) if at the end of the 3 months the person required to give the notice does not know and cannot reasonably be expected to know that the plant or machinery is being so used, within 30 days of coming to know of it.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

Qualifying purposes

121 Meaning of "short-term leasing"

(1) Leasing of plant or machinery is short-term leasing if—

(a) the number of consecutive days for which it is leased to the same person will normally be less than 30, and

(b) the total number of days for which it is leased to that person in any period of 12 months will normally be less than 90.

(2) Leasing of plant or machinery is also short-term leasing if—

(a) the number of consecutive days for which the plant or machinery is leased to the same person will not normally exceed 365, and

(b) the total length of the periods for which it is leased in any consecutive period of 4 years within the designated period to lessees in circumstances not falling within section 125(4) (other qualifying purposes: non-leasing use) will not exceed 2 years.

(3) If any plant or machinery is leased as a number of items which—

(a) form part of a group of items of the same or a similar description, and

(b) are not separately identifiable,

all items in the group may be treated as used for short-term leasing if substantially the whole of the items in the group are so used.

(4) For the purposes of subsections (1) and (2) persons who are connected with each other are to be treated as the same person.

122 Short-term leasing by buyer, lessee, etc.

(1) Plant or machinery is used for a qualifying purpose at any time when any of the persons listed in subsection (2) uses it for short-term leasing (as defined by section 121).

(2) The persons are—

(a) the person ("X") who incurred expenditure on the provision of the plant or machinery;

(b) a person who is connected with X;

[[F122](c) a person who acquired the plant or machinery from X as a result of a disposal on the occasion of which, or two or more disposals on the occasion of each of which—

(i) there was a change in the persons carrying on the qualifying activity which did not involve all of the persons carrying on that activity before the change permanently ceasing to carry it on, or

(ii) the qualifying activity carried on by the person making the disposal was treated as continuing under section 114(1) of ICTA (effect of partnership changes involving companies); **]**

(d) a person to whom the plant or machinery is leased and who is resident in the United Kingdom;

(e) a person to whom the plant or machinery is leased, who is carrying on a qualifying activity in the United Kingdom and who uses the plant or machinery for the short-term leasing in the course of that activity.

F123(3) . . . .

Textual Amendments

F122 S. 122(2)(c) substituted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), , **Sch. 1 para. 540(2)** (with Sch. 2)

F123 S. 122(3) repealed (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 540(3), **Sch. 3** (with Sch. 2)

123 Ships and aircraft

(1) A ship is 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 by a person who is—

(a) resident in the United Kingdom or carries on the trade there, and

(b) responsible for navigating and managing the ship throughout the period of the charter and for defraying—

(i) all expenses in connection with the ship throughout that period, or

(ii) substantially all such expenses other than those directly incidental to a particular voyage or to the employment of the ship during that period.

(2) Subsection (1) applies, with the necessary modifications, in relation to aircraft as it applies in relation to ships.

(3) For the purposes of subsection (1)(b) a person is responsible for something if he—

(a) is responsible as principal, or

(b) appoints another person to be responsible in his place.

(4) Subsections (1) and (2) do not apply if the main object, or one of the main objects—

(a) of the letting of the ship or aircraft on charter,

(b) of a series of transactions of which the letting of the ship or aircraft on charter was one, or

(c) of any of the transactions in such a series,

was to obtain a writing-down allowance determined without regard to section 109 (writing-down allowances at 10%) in respect of expenditure incurred by any person on the provision of the ship or aircraft.

124 Transport containers

(1) A transport container is 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—

(a) is resident in the United Kingdom, or

(b) carries on the trade there,

and either of the conditions given below is met.

(2) The first condition is that—

(a) the person's trade consists of or includes the operation of ships or aircraft, and

(b) the container is at other times used by that person in connection with the operation of the ships or aircraft.

(3) The second condition is that the container is leased under a succession of leases to different persons who are not, or most of whom are not, connected with each other.

125 Other qualifying purposes

(1) Plant or machinery is used for a qualifying purpose at any time when subsection (2) or (4) applies.

(2) This subsection applies if any of the persons listed in subsection (3) uses the plant or machinery for the purpose of a qualifying activity without leasing it.

(3) The persons are—

(a) the person ("X") who incurred expenditure on the provision of the plant or machinery;

(b) a person who is connected with X;

[[F124](c) a person who acquired the plant or machinery from X as a result of a disposal on the occasion of which, or two or more disposals on the occasion of each of which—

(i) there was a change in the persons carrying on the qualifying activity which did not involve all of the persons carrying on that activity before the change permanently ceasing to carry it on, or

(ii) the qualifying activity carried on by the person making the disposal was treated as continuing under section 114(1) of ICTA (effect of partnership changes involving companies). **]**

(4) This subsection applies if—

(a) a lessee uses the plant or machinery for the purposes of a qualifying activity without leasing it, and

(b) if he had incurred expenditure on the provision of the plant or machinery at that time, the expenditure would have fallen to be included, in whole or in part, in his available qualifying expenditure for a chargeable period.

[F125](5) . . . .

Textual Amendments

F124 S. 125(3)(c) substituted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 541(2)** (with Sch. 2)

F125 S. 125(5) repealed (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 541(3), **Sch. 3** (with Sch. 2)

Minor definitions

126 Minor definitions

(1) In this Chapter "normal writing-down allowance" means a writing-down allowance of an amount determined without regard to sections 102 and 109 (reduced rates).

(2) In this Chapter any reference, in relation to any person, to expenditure having qualified for a normal writing-down allowance is to—

(a) the expenditure, or part of it, having fallen to be included in that person's available qualifying expenditure for any chargeable period, and

(b) that available qualifying expenditure being expenditure which is not subject to section 102 or 109.

(3) Any reference in this Chapter to a person's expenditure having qualified for a first-year allowance is to such an allowance having fallen to be made in respect of the whole or any part of the expenditure.

CHAPTER 12

SHIPS

Pooling and postponement of allowances

127 Single ship pool

(1) Qualifying expenditure incurred on the provision of a ship for the purposes of a qualifying activity, if allocated to a pool, must be allocated to a single asset pool (a "single ship pool").

(2) Subsection (1) is subject to the exceptions given in section 128 and any election under section 129 to use the appropriate non-ship pool.

(3) In this Chapter "the appropriate non-ship pool", in relation to a ship, means the pool to which the expenditure incurred on the provision of the ship would be allocated, or would have been allocated, apart from this Chapter.

128 Expenditure which is not to be allocated to single ship pool

(1) The expenditure is not to be allocated to a single ship pool if the ship is provided for leasing unless—

(a) the ship is not used for overseas leasing at any time in the designated period, or if it is, is used only for protected leasing, and

(b) it appears that the ship will be used for a qualifying purpose in the designated period and will not be used for any other purpose at any time in that period.

(2) The expenditure is not to be allocated to a single ship pool if the qualifying activity for the purposes of which the ship is provided is special leasing of plant or machinery.

(3) In subsection (1) "leasing", "overseas leasing", "protected leasing", "qualifying purpose" and "designated period" have the same meaning as in Chapter 11 (overseas leasing).

129 Election to use the appropriate non-ship pool

(1) A person who has incurred qualifying expenditure on the provision of a ship may, by an election made for a chargeable period, allocate to the appropriate non-ship pool—

(a) all or a part of any qualifying expenditure that would otherwise be allocated to a single ship pool, or
(b) all or a part of the available qualifying expenditure in a single ship pool.

(2) An election under this section must be made by notice given to **[**[F39]an officer of Revenue and Customs**]**—
(a) for income tax purposes, on or before the normal time limit for amending a tax return for the tax year in which the relevant chargeable period ends;
(b) for corporation tax purposes, no later than 2 years after the end of the relevant chargeable period.

(3) "The relevant chargeable period" means the chargeable period for which the election is made.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

130 Notice postponing first-year or writing-down allowance

(1) A person who is entitled to a first-year allowance for a chargeable period in respect of qualifying expenditure on the provision of a ship may, by notice, postpone all or part of the allowance.

(2) A person who is entitled to a writing-down allowance for a chargeable period in respect of qualifying expenditure allocated to a single ship pool may, by notice, postpone all or part of the allowance.

(3) A notice under this section must specify the amount postponed.

(4) A notice under this section must be given to **[**[F39]an officer of Revenue and Customs**]**—
(a) for income tax purposes, on or before the normal time limit for amending a tax return for the tax year in which the relevant chargeable period ends;
(b) for corporation tax purposes, no later than 2 years after the end of the relevant chargeable period.

(5) "The relevant chargeable period" means the chargeable period for which the person is entitled to the allowance.

(6) If a person entitled to a first-year allowance in respect of qualifying expenditure on the provision of a ship claims the allowance in respect of part of the expenditure, subsection (1) applies to the allowance claimed.

(7) If a person entitled to a writing-down allowance in respect of qualifying expenditure allocated to a single ship pool requires the allowance to be reduced to a specified amount, subsection (2) applies to the allowance as so reduced.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

131 Effect of postponement

(1) If a person gives notice in respect of a chargeable period under section 130—
(a) the allowance is withheld or withdrawn to the extent that it is postponed, but
(b) sections 57 to 59 (calculation of available qualifying expenditure) apply as if the allowance had been made to the person without any postponement.

(2) On making a claim, the person is entitled to have all or part of a postponed first-year allowance made to him as a first-year allowance for one or more subsequent chargeable periods in which he is carrying on the qualifying activity.

(3) On making a claim, the person is entitled to have all or part of a postponed writing-down allowance made to him as a writing-down allowance for one or more subsequent chargeable periods in which he is carrying on the qualifying activity.

(4) The total amount of any first-year allowances made under subsection (2) or writing-down allowances made under subsection (3) must not exceed the amount of the postponed allowance in question.

(5) A writing-down allowance made under subsection (3) is ignored for the purposes of section 59 (unrelieved qualifying expenditure).

(6) The fact that a postponed writing-down allowance is claimed for a chargeable period does not affect entitlement to, or the amount of, any other writing-down allowance to which the person is otherwise entitled for that chargeable period.

(7) A postponed allowance is not, merely because of the postponement, included in the reference in section 403ZB(2) of ICTA (group relief) to an allowance or amount carried forward from an earlier period.

132 Disposal events and single ship pool

(1) A person is required to bring a disposal value into account in a single ship pool if the ship—
(a) is provided for leasing, and
(b) begins to be used otherwise than for a qualifying purpose within the first 4 years of the designated period.

(2) If any disposal event (including one under subsection (1)) occurs in relation to a single ship pool—
(a) the available qualifying expenditure in the single ship pool is allocated, for the chargeable period in which the event occurs, to the appropriate non-ship pool,
(b) the disposal value must be brought into account as a disposal value for that chargeable period in the appropriate non-ship pool, and
(c) the single ship pool ends without a final chargeable period and without any liability to a balancing charge arising.

(3) Subsections (1) and (2) apply even if, as a result of an election under section 129, some of the qualifying expenditure on the provision of the ship has been allocated to the appropriate non-ship pool.

(4) In subsection (1) "leasing", "qualifying purpose" and "designated period" have the same meaning as in Chapter 11 (overseas leasing).

133 Ship not used

(1) This section applies if—

(a) a person has incurred qualifying expenditure on the provision of a ship for the purposes of a qualifying activity, and

(b) the ship ceases to be owned by the person without having been brought into use for the purposes of the qualifying activity.

(2) Any writing-down allowances that have previously been made in respect of qualifying expenditure in the single ship pool (or which have been postponed) must be withdrawn.

(3) The amount of any writing-down allowances withdrawn under subsection (2) is allocated, for the chargeable period in which the person ceases to own the ship, to the appropriate non-ship pool.

(4) Any adjustments required by this section are in addition to any adjustments required under section 132 (disposal events and single ship pool).

Deferment of balancing charges

134 Deferment of balancing charges: introduction

(1) Sections 135 to 156 enable a balancing charge that arises when there is a disposal event in respect of a ship to be deferred and attributed to qualifying expenditure on another ship.

(2) In this Chapter "the deferment rules" means sections 135 to 156.

135 Claim for deferment

(1) A person ("the shipowner") who is liable to a balancing charge for a chargeable period may claim deferment of all or part of the charge if—

(a) in the chargeable period there is a disposal event ("the relevant disposal event") in respect of a ship ("the old ship"),

(b) the old ship—

(i) was provided for the purposes of a qualifying activity carried on by the shipowner, and

(ii) was owned by the shipowner at some time in the chargeable period, and

(c) the conditions in section 136 are met.

(2) The amount which may be deferred is subject to the limit in section 138.

(3) For income tax purposes, a claim for deferment must be made on or before the normal time limit for amending a tax return for the tax year in which the relevant chargeable period ends.

(4) "The relevant chargeable period" means the chargeable period for which the shipowner is liable to the balancing charge.

(5) For corporation tax purposes, Part IX of Schedule 18 to FA 1998 applies in relation to the making of a claim for deferment as it applies in relation to the making of a claim for an allowance.

136 Further conditions for deferment

The conditions referred to in section 135(1)(c) are that—

(a) the relevant disposal event is of a kind mentioned in section 61(1)(a) to (d) (cessation of ownership, loss, abandonment, destruction etc. of ship),

(b) the old ship was a qualifying ship immediately before the relevant disposal event,

(c) the shipowner has not incurred a loss in respect of the qualifying activity for the chargeable period for which he is liable to the balancing charge, and

(d) no amount in respect of the old ship has been allocated to—

(i) the overseas leasing pool,

(ii) a single asset pool under section 206 (plant or machinery provided or used partly for purposes other than those of the qualifying activity),

(iii) a single asset pool under section 211 (payment of partial depreciation subsidy), or

(iv) a pool for a qualifying activity consisting of special leasing.

137 Effect of deferment

A claim for deferment is given effect by allocating the amount deferred, for the chargeable period in respect of which the claim is made, to the appropriate non-ship pool.

138 Limit on amount deferred

(1) The amount deferred must not exceed the smallest of the following amounts—

(a) the amount of any balancing charge which, if the claim for deferment had not been made, would have been made for the chargeable period for which deferment is claimed in the appropriate non-ship pool;

(b) the amount given by section 139 (amount taken into account in respect of the old ship);

(c) the amount which is, or is expected to be, the amount of expenditure on new shipping incurred—

(i) by the shipowner or, if the shipowner is a company, by another company which is a member of the same group at the time when the expenditure is incurred, and

(ii) within the period of 6 years beginning with the relevant disposal event;

(d) the amount of the shipowner's profits or income from the qualifying activity for the chargeable period for which deferment is claimed.

(2) In determining profits or income for the purposes of subsection (1)(d)—

(a) any other amounts deferred under section 135 are to be taken into account, and

(b) any amounts brought forward under [F126 section 83 of ITA 2007 or section] 393 of ICTA (losses) are to be disregarded.

Textual Amendments

F126 Words in s. 138(2)(b) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 400** (with Sch. 2)

139 Amount taken into account in respect of old ship

(1) The amount taken into account in respect of the old ship for the purposes of section 138(1)(b) is—

(a) amount A, if no election has been made under section 129 (election to use appropriate non-ship pool) in respect of any of the qualifying expenditure incurred on the provision of the ship, or

(b) amount B, in any other case.

(2) Amount A is the amount which falls to be brought into account as a disposal value in the appropriate non-ship pool under section 132(2)(b) as a result of the relevant disposal event, less the available qualifying expenditure allocated to the appropriate non-ship pool under section 132(2)(a).

(3) Amount B is—

$$DV - (QE - WDA - FYA)$$

where—

DV is the amount of the disposal value required to be brought into account in respect of the old ship,

QE is all the qualifying expenditure incurred in respect of the old ship,

WDA is the maximum amount of any writing-down allowances which (on the assumptions in subsection (4)) could have been made in respect of that qualifying expenditure for chargeable periods up to (but not including) the one in respect of which the claim for deferment is made, and

FYA is the total of any first-year allowances actually made or postponed in respect of the old ship.

(4) The assumptions are that—

(a) all the qualifying expenditure in respect of the old ship is (and has always been) allocated to the appropriate non-ship pool, and

(b) no other qualifying expenditure has been allocated to that pool.

(5) If an election is made under section 129 (election to use appropriate non-ship pool) after the determination under this section of the amount taken into account in respect of the old ship, the amount is, and is treated as always having been, amount B and not amount A.

Attribution of deferred amounts

140 Notice attributing deferred amounts to new expenditure

(1) The shipowner may, by notice to [F39 an officer of Revenue and Customs], attribute all or part of an amount deferred under section 135 to expenditure on new shipping.

(2) An amount attributed under this section is attributed to an equal amount of the expenditure on new shipping.

(3) Subsection (1) is subject to subsections (4) and (5) and section 141 (deferred amounts attributed to earlier expenditure first).

(4) Subsection (1) applies only if the expenditure on new shipping is incurred—

(a) by the shipowner or, if the shipowner is a company, by another company which is a member of the same group at the time when the expenditure is incurred, and

(b) within the period of 6 years beginning with the relevant disposal event.

(5) An amount may be attributed to expenditure on new shipping only to the extent that amounts have not already been attributed to it under this section.

(6) A notice given in respect of expenditure incurred by another company does not have effect unless the other company joins the shipowner in giving it.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

141 Deferred amounts attributed to earlier expenditure first

(1) No part of an amount deferred under section 135 is to be attributed to the whole or a part of any expenditure on new shipping (“the current expenditure”) if there is other expenditure (“the earlier expenditure”) which—

(a) was incurred before the current expenditure but at the same time as or after the relevant disposal event,

(b) was incurred by the shipowner or, if the shipowner is a company, by another company which was a member of the same group at the time the earlier expenditure was incurred, and

(c) is expenditure on new shipping, or would be treated as such but for an election under section 129 (election to use appropriate non-ship pool),

unless the condition in subsection (2) is met in relation to the earlier expenditure.

(2) The condition is that—

(a) amounts have been attributed to all the earlier expenditure under section 140, and

(b) the attributions have been made in the case of the amount deferred and any other amounts deferred under section 135 as a result of disposal events occurring at the same time as or before the relevant disposal event.

142 Variation of attribution

(1) The shipowner may, by notice, vary an attribution under section 140 (notice attributing deferred amounts to new expenditure).

(2) The notice must be given to **[**[F39]an officer of Revenue and Customs**]** on or before the time limit for the shipowner to make a claim for deferment in respect of the relevant chargeable period.

(3) For the time limit for making a claim for deferment, see section 135(3) to (5).

(4) For the purposes of subsection (2), it is to be assumed that—

(a) the shipowner is liable to a balancing charge for the relevant chargeable period, and

(b) a claim for deferment of that balancing charge can be made for the relevant chargeable period.

(5) "The relevant chargeable period" means the earliest chargeable period in which expenditure to which the variation relates is incurred.

(6) If the person to whose expenditure the notice relates is not the shipowner, a notice under subsection (1) does not have effect unless the person joins the shipowner in giving it.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

143 Effect of attribution

(1) This section applies if a notice is given under section 140 attributing an amount to expenditure on new shipping.

(2) The amount must be brought into account as a disposal value—

(a) for the chargeable period in which the expenditure is incurred, and

(b) in the single ship pool to which the expenditure is allocated.

144 Amounts which cease to be attributable

(1) This section applies if—

(a) an amount has been deferred under section 135, and

(b) circumstances arise in which any part of the amount ceases (otherwise than by being attributed) to be attributable.

(2) The shipowner is assumed not to have been entitled to defer so much of the amount as ceases to be attributable.

(3) For the purposes of this section an amount is attributable if it may be attributed to expenditure on new shipping in accordance with section 140.

145 Requirement to notify where no entitlement to defer amounts

(1) This section applies if—

(a) an amount has been deferred under section 135, and

(b) circumstances arise that require the shipowner to be treated as if he was not entitled to defer all or part of the amount.

(2) The shipowner must give notice of the fact to **[**[F39]an officer of Revenue and Customs**]**, specifying the circumstances.

(3) The notice must be given no later than 3 months after the end of the chargeable period in which the circumstances first arise.

(4) An assessment to tax chargeable as a result of the circumstances may be made at any time in the period which—

(a) begins when those circumstances arise, and

(b) ends 12 months after the shipowner gives notice of them to **[**[F39]an officer of Revenue and Customs**]**.

(5) Subsection (4) applies in spite of any limitation on the time for making assessments.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

Expenditure on new shipping

146 Basic meaning of expenditure on new shipping

(1) For the purposes of the deferment rules, expenditure on the provision of a ship is expenditure on new shipping if the conditions in subsection (3) are met.

(2) Subsection (1) is subject to sections 147 to 150.

(3) The conditions are that—

(a) the expenditure is qualifying expenditure incurred by a person wholly and exclusively for the purposes of a qualifying activity carried on by him,

(b) when the expenditure is incurred, it appears that the ship will—

(i) be brought into use for the purposes of the qualifying activity as a qualifying ship, and

(ii) continue to be a qualifying ship for at least 3 years after that, and

(c) the expenditure is allocated to a single ship pool.

147 Exclusions: ship previously owned

(1) Expenditure on the provision of a ship is not expenditure on new shipping if the person who incurred the expenditure—

(a) has already owned the ship in the period of 6 years ending with the time when he first owns it as a result of incurring the expenditure, or

(b) was connected at a material time with a person who owned the ship at any time during that period.

(2) For this purpose a material time is—

(a) the time when the expenditure was incurred, or

(b) any earlier time in the 6 year period beginning with the relevant disposal event.

148 Exclusions: object to secure deferment

Expenditure on the provision of a ship is not expenditure on new shipping if the object, or one of the main objects, of—

(a) the transaction by which the ship was provided for the purposes of a qualifying activity carried on by the person who incurred the expenditure,

(b) any series of transactions of which that transaction was one, or

(c) any transaction in such a series,

was to secure the deferment of a balancing charge under section 135.

149 Exclusions: later events

(1) Expenditure on the provision of a ship is not, and is treated as never having been, expenditure on new shipping if—

(a) at a time during the period mentioned in subsection (2), the ship is not a qualifying ship,

(b) the expenditure is allocated to a pool as a result of an election under section 129 (election to use appropriate non-ship pool), or

(c) section 107 applies in relation to the expenditure (overseas leasing).

(2) The period referred to in subsection (1)(a) is—

(a) the period of 3 years beginning with the time when the ship is first brought into use for the purposes of a qualifying activity carried on—

(i) by the person ("A") who incurred the expenditure, or

(ii) if earlier, by a person connected with A, or

(b) if shorter, the period beginning with that time and ending when neither A nor a person connected with A owns the ship.

150 Exclusions where expenditure not incurred by shipowner

(1) Expenditure on the provision of a ship is not, and is treated as never having been, expenditure on new shipping if—

(a) it is incurred by a company which is a member of the same group as the shipowner at the time when the expenditure is incurred, and

(b) subsection (2) or (4) applies.

(2) This subsection applies (subject to subsection (3)) if—

(a) the ship ceases to be owned by the company before it has been brought into use for the purposes of a qualifying activity carried on by the company, or

(b) a disposal event occurs in respect of the ship within 3 years of its first being brought into use for the purposes of a qualifying activity carried on by the company.

(3) But subsection (2) does not apply if the event which would otherwise result in that subsection applying is, or is the result of, the total loss of the ship or irreparable damage to it.

(4) This subsection applies if—

(a) after the expenditure is incurred, there is a time when the company and the shipowner are not members of the same group, and

(b) if the ship is brought into use for the purposes of a qualifying activity carried on by the company, that time is within 3 years of the ship first being so brought into use.

(5) A time falling after the total loss of the ship or irreparable damage to it is to be disregarded for the purposes of subsection (4).

(6) In this section "irreparable damage", in relation to a ship, means damage that puts it in a condition in which it is impossible, or not commercially worthwhile, to undertake the repairs required for restoring it to its previous use.

Qualifying ships

151 Basic meaning of qualifying ship

(1) For the purposes of the deferment rules, a ship is a qualifying ship if it is—

(a) of a sea-going kind, and

(b) registered as a ship with a gross tonnage of 100 tons or more in a register of shipping established and maintained under the law of any country or territory.

(2) This is subject to sections 152 to 154.

152 Ships under 100 tons

(1) This section applies if the relevant disposal event is, or results from—

(a) the total loss of the old ship, or

(b) damage to the old ship that puts it in a condition in which it is impossible, or not commercially worthwhile, to undertake the repairs required for restoring it to its previous use.

(2) A registered ship may be a qualifying ship for the purposes of—

(a) section 136(b) (further conditions for deferment), or

(b) sections 146(3)(b) and 149(1)(a) (expenditure on new shipping),

even if it is not registered as a ship with a gross tonnage of 100 tons or more.

(3) In subsection (2) "registered ship" means a ship registered in a register of shipping established and maintained under the law of any country or territory.

153 Ships which are not qualifying ships

(1) A ship is not a qualifying ship if the primary use to which ships of the same kind as that ship are put—

(a) by the persons who own them, or

(b) by others to whom they are made available,

is use for sport or recreation.

[[F127](2) A ship is not a qualifying ship at any time when it is an offshore installation.**]**

[F128](3) . . . .

Textual Amendments

F127 S. 153(2) substituted (with effect in accordance with Sch. 27 para. 11 of the amending Act) by Finance Act 2004 (c. 12) , **Sch. 27 para. 9(2)**

F128 S. 153(3) repealed (with effect in accordance with Sch. 27 para. 11 of the amending Act) by Finance Act 2004 (c. 12) , Sch. 27 para. 9(3) , **42 Pt. 2(19)**

154 Further registration requirement

(1) If—

(a) a person ("A") has incurred expenditure on the provision of a ship, and

(b) there is a time in the qualifying period, but more than 3 months after the beginning of that period, when the ship is not registered in a relevant register,

the ship is not a qualifying ship after that time.

(2) The qualifying period is—

(a) the period of 3 years beginning with the time when the ship is first brought into use for the purposes of a qualifying activity carried on—

(i) by A, or

(ii) if earlier, by a person connected with A, or

(b) if shorter, the period beginning with that time and ending when neither A nor a person connected with A owns the ship.

(3) In determining the qualifying period for the old ship, a qualifying activity carried on at any time by a person ("B") is taken to be carried on at that time by a person connected with A if—

(a) it is subsequently carried on by A or a person connected with A, and

[F129(b) the only changes in the persons carrying it on between the time that B does so and the time that A or a person connected with A does so are changes—

(i) which do not involve all of the persons carrying it on before the changes permanently ceasing to carry it on, or

(ii) in respect of which the qualifying activity is treated as continuing under section 343(2) of ICTA.]

(4) In this section "relevant register" means a register of shipping established and maintained—

(a) under the laws of any part of the British Islands, or

(b) under the laws of any country or territory which, at a time in the qualifying period for the ship, is an EEA State or a colony.

(5) "EEA State" means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993 (except that for the period before the Agreement came into force in relation to Liechtenstein it does not include the State of Liechtenstein).

Textual Amendments

F129 S. 154(3)(b) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 542** (with Sch. 2)

Deferment of balancing charges: supplementary provisions

155 Change in the persons carrying on the qualifying activity

(1) This section applies if—

(a) a person is carrying on the qualifying activity previously carried on by the shipowner, and

[F130(b) the only changes in the persons carrying on the qualifying activity since the shipowner carried it on are changes—

(i) which do not involve all of the persons carrying it on before the changes permanently ceasing to carry it on, or

(ii) in respect of which the qualifying activity is treated as continuing under section 343(2) of ICTA.**]**

(2) For the purposes of the deferment rules—

(a) expenditure incurred by a person mentioned in subsection (1)(a) for the purposes of the qualifying activity is to be treated as incurred by the shipowner, and

(b) in relation to the giving of any notice, a reference to the shipowner is to be read as a reference to the person carrying on the qualifying activity when the notice is given or is required to be given.

Textual Amendments

F130 S. 155(1)(b) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 543** (with Sch. 2)

156 Connected persons

(1) For the purposes of the deferment rules a person ("B") is connected with another person ("A") at any time if, at that time—

(a) B is connected (in the sense given in **[**F131 section 575**]**) with A,

(b) B is carrying on a qualifying activity previously carried on by A and the condition in subsection (2) is met, or

(c) B is connected (in the sense given in **[**F132 section 575**]**) with a person who is carrying on a qualifying activity previously carried on by A and the condition in subsection (2) is met.

[F133(2) The condition is that the only changes in the persons carrying on the qualifying activity since A carried it on are changes—

(a) which do not involve all of the persons carrying it on before the changes permanently ceasing to carry it on, or

(b) in respect of which the qualifying activity is treated as continuing under section 343(2) of ICTA.**]**

(3) If expenditure is incurred by a person who is not the shipowner, the persons connected with him at any time include any person connected with the shipowner at that time as a result of subsection (1).

Textual Amendments

F131 Words in s. 156(1)(a) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 401** (with Sch. 2)

F132 Words in s. 156(1)(c) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 401** (with Sch. 2)

F133 S. 156(2) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 544** (with Sch. 2)

Further provisions

157 Adjustment of assessments etc.

(1) All such assessments and adjustments of assessments are to be made as are necessary to give effect to this Chapter.

(2) Subsection (1) does not apply for the purposes of section 145 (see instead section 145(4) and (5)).

158 Members of same group

For the purposes of this Chapter two companies are members of the same group at any time if they would be treated as members of the same group of companies at that time for the purposes of Chapter IV of Part X of ICTA (group relief).

CHAPTER 13

PROVISIONS AFFECTING MINING AND OIL INDUSTRIES

Expenditure connected with mineral extraction trades

159 Meaning of "mineral extraction trade" etc.

In this Chapter—

"mineral extraction trade", and

"mineral exploration and access"

have the same meaning as in Part 5 (mineral extraction allowances).

160 Expenditure treated as incurred for purposes of mineral extraction trade

For the purposes of this Part, expenditure incurred by a person—

(a) on the provision of plant or machinery for mineral exploration and access, and

(b) in connection with a mineral extraction trade carried on by him,

is to be treated as incurred for the purposes of that trade.

161 Pre-trading expenditure on mineral exploration and access

(1) This section applies if a person—

(a) incurs pre-trading expenditure on the provision of plant or machinery for the purposes of mineral exploration and access, and

(b) owns the plant or machinery on the first day of trading.

But this is subject to subsection (5).

(2) The person is to be treated for the purposes of this Part as if he had—

(a) sold the plant or machinery immediately before the first day of trading, and

(b) on that first day incurred capital expenditure on the provision of the plant or machinery for the purposes of the trade.

(3) The amount of the capital expenditure that the person is to be treated as having incurred is an amount equal to—
- (a) the pre-trading expenditure, or
- (b) if there has been an actual sale and re-acquisition before the first day of trading, the amount last incurred on the provision of the plant or machinery.

(4) In this section—
- (a) "pre-trading expenditure" means capital expenditure incurred before the day on which a person begins to carry on a mineral extraction trade, and
- (b) "the first day of trading", in relation to a person's pre-trading expenditure, means the day on which that person begins to carry on the mineral extraction trade.

(5) This section does not apply if the plant or machinery on which the pre-trading expenditure was incurred is sold, demolished, destroyed or abandoned before the first day of trading (but see section 402 (mineral extraction allowances: pre-trading expenditure on plant or machinery)).

[F134 Expenditure connected with reuse etc. of offshore oil infrastructure

Textual Amendments

F134 Ss. 161A-161D and crossheading inserted (with effect as mentioned in Sch. 20 para. 9(1)-(4)(8) of the amending Act) by Finance Act 2001 (c. 9), s. 68, **Sch. 20 para. 5(1)**

161A Meaning of "offshore infrastructure"

(1) In sections 161C and 161D " offshore infrastructure " means—
- (a) an offshore installation within the meaning given by section 44 of the Petroleum Act 1998 (c. 17) or a part of such an installation, or
- (b) something that would be, or would be a part of, an offshore installation within that meaning if in subsection (3) of that section " relevant waters " meant waters in a foreign sector of the continental shelf and other foreign tidal waters, or
- (c) a pipeline within the meaning of section 26 of that Act, or a part of such a pipeline, that is in, under or over waters in—
  - (i) the territorial sea adjacent to the United Kingdom, or
  - (ii) an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29), or
- (d) a pipeline within the meaning of section 26 of the Petroleum Act 1998 (c. 17), or a part of such a pipeline, that is in, under or over waters in a foreign sector of the continental shelf.

(2) In subsection (1)(b) and (d)—

" foreign sector of the continental shelf " means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom;

" foreign tidal waters " means tidal waters in an area within which rights are exercisable with respect to the bed and subsoil of the body of water in question and their natural resources by a country or territory outside the United Kingdom.

161B Meaning of "decommissioning expenditure"

(1) In sections 161C and 161D " decommissioning expenditure " means expenditure in connection with—

(a) preserving plant or machinery pending its reuse or demolition,

(b) preparing plant or machinery for reuse, or

(c) arranging for the reuse of plant or machinery.

(2) It is immaterial for the purposes of subsection (1)(a) whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.

(3) It is immaterial for the purposes of subsection (1)(b) and (c) whether the plant or machinery is in fact reused.

161C Expenditure related to reuse etc. qualifies for writing-down allowances

(1) This section applies where—

(a) a person carrying on a trade of oil extraction incurs decommissioning expenditure, and

(b) the plant or machinery concerned—

(i) has been brought into use for the purposes of the trade, and

(ii) is, or was when last in use for those purposes, offshore infrastructure.

(2) The decommissioning expenditure is allocated to the appropriate pool for the chargeable period in which it is incurred.

(3) Subsection (2) is subject to sections 161D and 164(4).

(4) In subsection (2) " the appropriate pool " means the pool to which the expenditure on the plant or machinery concerned has been or would be allocated in accordance with this Part.

161D Exceptions to section 161C(2)

(1) Subsection (2) of section 161C does not apply to decommissioning expenditure on UK infrastructure unless it is incurred in connection with measures taken, wholly or substantially, in order to comply with—

(a) an abandonment programme within the meaning given by section 29 of the Petroleum Act 1998 (c. 17), or

(b) any condition to which the approval of such a programme is subject.

(2) Subsection (2) of section 161C does not apply to expenditure in respect of which an allowance or deduction could be made apart from that subsection in taxing, or computing, the person's income for any tax purpose.

(3) For the purposes of subsection (1), decommissioning expenditure is " on UK infrastructure " if the plant or machinery concerned—

(a) is offshore infrastructure within section 161A(1)(a) or (c), or

(b) is not offshore infrastructure but was offshore infrastructure within section 161A(1)(a) or (c) when last in use for the purposes of the trade.**]**

Provisions relating to ring fence trades

162 Ring fence trade a separate qualifying activity

(1) If a person carries on a ring fence trade, it is a separate qualifying activity for the purposes of this Part.

(2) In this Chapter "ring fence trade" means activities which—

(a) fall within [F135 the definition of "oil-related activities" in section 16(2) of ITTOIA 2005 or within][F135 the definition of "oil-related activities" in section 16(2) of ITTOIA 2005 or within] any of paragraphs (a) to (c) of section 492(1) of ICTA (oil extraction activities, the acquisition, enjoyment or exploitation of oil rights, etc.), and

(b) constitute a separate trade (whether as a result of [F136 section 16(1) of ITTOIA 2005 or][F136 section 16(1) of ITTOIA 2005 or] section 492(1) of ICTA or otherwise).

Textual Amendments

F135 Words in s. 162(2)(a) inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 545(a)** (with Sch. 2)

F136 Words in s. 162(2)(b) inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 545(b)** (with Sch. 2)

163 Meaning of "abandonment expenditure"

(1) In sections 164 and 165 "abandonment expenditure" means expenditure which meets the requirements in subsections (2) to (4).

(2) The expenditure must have been incurred—

(a) for the purposes of, or in connection with, the closing down of an oil field or of any part of an oil field, and

(b) on the [F137 decommissioning] plant or machinery—

(i) which has been brought into use for the purposes of a ring fence trade, and

(ii) which is, or forms part of, an offshore installation or a submarine pipeline [F138 or which, when last in use for the purposes of a ring-fence trade, was, or formed part of, such an installation or pipeline.]

(3) The [F139 decommissioning] of the plant or machinery must be carried out, wholly or substantially, to comply with—

(a) an abandonment programme, or

(b) any condition to which the approval of an abandonment programme is subject.

(4) The plant or machinery must not be replaced.

[F140 (4A) In this section " decommissioning ", in relation to any plant or machinery, means—

(a) demolishing the plant or machinery,

(b) preserving the plant or machinery pending its reuse or demolition,

(c) preparing the plant or machinery for reuse, or

(d) arranging for the reuse of the plant or machinery.

(4B) In determining whether expenditure is incurred on preserving plant or machinery pending its reuse or demolition, it is immaterial whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.

(4C) In determining whether expenditure is incurred on preparing plant or machinery for reuse, or on arranging for the reuse of plant or machinery, it is immaterial whether the plant or machinery is in fact reused.**]**

(5) In this section—

(a) "oil field" has the same meaning as in Part I of OTA 1975, and

(b) "abandonment programme", "offshore installation" and "submarine pipeline" have the same meaning as in Part IV of the Petroleum Act 1998 (c. 17).

Textual Amendments

F137 Words in s. 163(2)(b) substituted (with effect as mentioned in Sch. 20 para. 9(1)(5)(8) of the amending Act) by Finance Act 2001 (c. 9), s. 68, **Sch. 20 Pt. 2 para. 6(2)**

F138 Words in s. 163(2)(b)(ii) inserted (with effect as mentioned in Sch. 20 para. 9(1)(5)(8) of the amending Act) by Finance Act 2001 (c. 9), s. 68, **Sch. 20 Pt. 2 para. 6(3)**

F139 Word in s. 163(3) substituted (with effect as mentioned in Sch. 20 para. 9(1)(5)(8) of the amending Act) by Finance Act 2001 (c. 9), s. 68, **Sch. 20 Pt. 2 para. 6(4)**

F140 S. 163(4A)-(4C) inserted (with effect as mentioned in Sch. 20 para. 9(1)(5)(8) of the amending Act) by Finance Act 2001 (c. 9), s. 68, **Sch. 20 Pt. 2 para. 6(5)**

164 Abandonment expenditure incurred before cessation of ring fence trade

(1) If a person carrying on a ring fence trade incurs abandonment expenditure, **[**[F141]and the plant or machinery concerned has been brought into use for the purposes of that trade,**]** he may elect to have a special allowance made to him.

(2) The election—

(a) must be made by notice to **[**[F39]an officer of Revenue and Customs**]** no later than 2 years after the end of the chargeable period in which the abandonment expenditure is incurred, and

(b) is irrevocable.

(3) The election must specify—

(a) the abandonment expenditure to which it relates, and

[[F142](b) where the plant or machinery concerned has been or is to be demolished, any amounts received for its remains.**]**

(4) If a person makes an election under this section—

(a) he is entitled to a special allowance [F143]... for the chargeable period in which the abandonment expenditure is incurred, and

[[F144](b) neither of sections 26(3) and 161C(2)(net cost of demolition where plant or machinery not replaced, or cost of preparing for reuse, added to existing pool) applies.**]**

[[F145](5) The amount of the special allowance for a chargeable period is equal to so much of the abandonment expenditure to which the election relates as is incurred in that period.

(6) If plant or machinery is demolished, the total of any special allowances in respect of expenditure on decommissioning the plant or machinery is reduced by any amount received for the remains of the plant or machinery.

Here " decommissioning " has the meaning given by section 163(4A).

(7) Effect is given to subsection (6) by setting the amount (until wholly utilised)—

first, against any special allowance for the chargeable period in which the amount is received (as previously reduced in giving effect to subsection (6));

second, against special allowances for earlier chargeable periods (as so reduced and taking later such periods before earlier ones); and

third, against special allowances for later chargeable periods (as so reduced and taking earlier such periods before later ones).]

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

F141 Words in s. 164(1) inserted (retrospectively) by Finance Act 2001 (c. 9) , s. 68 , Sch. 20 Pt. 2 paras. 7(2) , **9(9)**

F142 S. 164(3)(b) substituted (with effect as mentioned in Sch. 20 para. 9(1)(5)(8) of the amending Act) by Finance Act 2001 (c. 9), s. 68, **Sch. 20 Pt. 2 para. 7(3)**

F143 Words in s. 164(4)(a) repealed (with effect as mentioned in Sch. 20 para.9(1)(5)(8) of the amending Act) by Finance Act 2001 (c. 9), s. 68, 110, Sch. 20 Pt. 2 para. 7(4), **Sch. 33 Pt. 2(5)** Note 1

F144 S. 164(4)(b) substituted (with effect as mentioned in Sch. 20 para. 9(1)(5)(8) of the amending Act) by Finance Act 2001 (c. 9), s. 68, **Sch. 20 Pt. 2 para. 7(5)**

F145 S. 164(5)-(7) substituted (with effect as mentioned in Sch. 20 para. 9(1)(5)(8) of the amending Act) for s. 164(5) by Finance Act 2001 (c. 9), s. 68, **Sch. 20 Pt. 2 para. 7(6)**

165 Abandonment expenditure within 3 years of ceasing ring fence trade

(1) This section applies if—

(a) a person ("the former trader") has ceased to carry on a ring fence trade,

(b) the former trader incurs abandonment expenditure [F146]... within the post-cessation period, and

(c) the abandonment expenditure is not otherwise deductible in calculating the income of the former trader for any tax purpose.

(2) "The post-cessation period" means the period of 3 years immediately following the last day on which the former trader carried on the ring fence trade.

(3) If this section applies—

(a) an amount equal to the relevant abandonment cost is allocated to the appropriate pool for the chargeable period in which the former trader ceased to carry on the ring fence trade, and

(b) [[F147]where any of the abandonment expenditure was incurred on the demolition of plant or machinery,]any amount received within the post-cessation period for the remains of the plant or machinery does not constitute income of the former trader for any tax purpose.

(4) In subsection (3)—

"the appropriate pool" means the pool to which the expenditure on the demolished plant or machinery has been allocated, and

"the relevant abandonment cost" means the amount by which the abandonment expenditure exceeds any amounts received within the post-cessation period for the remains of **[**F148any plant or machinery on whose demolition any of the abandonment expenditure was incurred**]**.

(5) All such adjustments, by discharge or repayment of tax or otherwise, are to be made as are necessary to give effect to this section.

Textual Amendments

F146 Words in s. 165(1)(b) repealed (retrospectively) by Finance Act 2001 (c. 9) , s. 68 , 110 , Sch. 20 Pt. 2 para. 8(2) , **Sch. 33 Pt. 2(5)** , Note 2

F147 Words in s. 165(3)(b) inserted (with effect as mentioned in Sch. 20 para. 9(1)(5)(8) of the amending Act) by Finance Act 2001 (c. 9), s. 68, **Sch. 20 para. 8(3)**

F148 Words in s. 165(4) substituted (with effect as mentioned in Sch. 20 para. 9(1)(5)(8) of the amending Act) by Finance Act 2001 (c. 9), s. 68, **Sch. 20 para. 8(4)**

Transfers of interests in oil fields: anti-avoidance

166 Transfers of interests in oil fields: anti-avoidance

(1) This section applies if—

(a) there is, for the purposes of Schedule 17 to FA 1980, a transfer by a participator in an oil field of the whole or part of his interest in the field, and

(b) as part of the transfer, the old participator disposes of, and the new participator acquires—

(i) plant or machinery used, or expected to be used, in connection with the field, or

(ii) a share in such plant or machinery.

(2) The amount, if any, by which the new participator's expenditure exceeds the old participator's disposal value is to be left out of account in determining the new participator's available qualifying expenditure.

(3) In subsection (2)—

(a) "the new participator's expenditure" means the expenditure incurred by the new participator on the acquisition of the plant or machinery, and

(b) "the old participator's disposal value" means the disposal value to be brought into account by the old participator as a result of the disposal of the plant or machinery to the new participator.

(4) In this section—

(a) "oil field" and "participator" have the same meaning as in Part I of OTA 1975,

(b) "the old participator" means the participator whose interest in the oil field is wholly or partly transferred, and

(c) "the new participator" means the person to whom the interest in the oil field is transferred.

(5) Nothing in this section affects the operation of Chapter 17 (anti-avoidance).

Oil production sharing contracts

167 Oil production sharing contracts

(1) Sections 168 to 170 apply if—

(a) a person ("the contractor") is entitled to an interest in a contract made with, or with the authorised representative of, the government of a country or territory in which oil is or may be produced, and

(b) the contract provides (among other things) for any plant or machinery of a description specified in the contract which—

(i) is provided by the contractor, and

(ii) has an oil-related use under the contract,

to be transferred (immediately or later) to the government or representative.

(2) For the purposes of this section and sections 168 to 170, plant or machinery has an oil-related use if it is used—

(a) to explore for, win access to or extract oil,

(b) for the initial storage or treatment of oil, or

(c) for other purposes ancillary to the extraction of oil.

(3) In this section and sections 168 to 170 "oil" has the meaning given by section 556(3).

168 Expenditure on plant or machinery incurred by contractor

(1) This section applies if—

(a) the contractor incurs capital expenditure on the provision of plant or machinery of a description specified in the contract,

(b) the plant or machinery is to have an oil-related use under the contract, for the purposes of a trade of oil extraction carried on by the contractor,

(c) the amount of the expenditure is commensurate with the value of the contractor's interest under the contract, and

(d) the plant or machinery is transferred to the government or representative in accordance with the contract.

(2) Despite the transfer, the plant or machinery is to be treated for the purposes of this Part as owned by the contractor (and not by any other person) until—

(a) it ceases to be owned by the government or representative, or

(b) it ceases to be used, or held for use, by any person under the contract.

This is subject to section 170(2).

169 Expenditure on plant or machinery incurred by participator

(1) This section applies if—

(a) a person ("the participator") acquires an interest in the contract from—

(i) the contractor, or

(ii) another person who has acquired it (directly or indirectly) from the contractor,

(b) the participator incurs capital expenditure on the provision of plant or machinery,

(c) the plant or machinery is to have an oil-related use under the contract, for the purposes of a trade of oil extraction carried on by the participator,

(d) the amount of the expenditure is commensurate with the value of the participator's interest under the contract, and

(e) the plant or machinery is transferred to the government or representative in accordance with the contract.

(2) Despite the transfer, the plant or machinery is to be treated for the purposes of this Part as owned by the participator (and not by any other person) until—

(a) it ceases to be owned by the government or representative, or

(b) it ceases to be used, or held for use, by any person under the contract.

This is subject to section 170(2).

170 Participator's expenditure attributable to plant or machinery

(1) This section applies if—

(a) a person ("the relevant participator") acquires an interest in the contract from—

(i) the contractor, or

(ii) another person who has acquired it (directly or indirectly) from the contractor, and

(b) some of the expenditure incurred by the relevant participator to acquire the interest in the contract is attributable to plant or machinery which—

(i) is treated by section 168 as owned by the contractor, or

(ii) is treated by section 169 or subsection (2) as owned by another person ("the other participator").

(2) The plant or machinery is to be treated for the purposes of this Part as owned by the relevant participator (and not by any other person) until—

(a) it ceases to be owned by the government or representative, or

(b) it ceases to be used, or held for use, by any person under the contract.

This is subject to a later application of this subsection.

(3) The person who, until subsection (2) applies, is treated as owning the plant or machinery is to be treated for the purposes of this Part as if he had disposed of it for a consideration equal to the relevant participator's expenditure attributable to it.

(4) The relevant participator is to be treated for the purposes of this Part as if—

(a) he had incurred capital expenditure of an amount given by subsection (5), and

(b) he owned the plant or machinery (in accordance with subsection (2)) as a result of having incurred that expenditure.

(5) The amount of that expenditure is—

(a) the amount of the relevant participator's expenditure attributable to the plant or machinery, or

(b) if less, the disposal value to be brought into account by the contractor or the other participator as a result of subsection (3).

(6) The expenditure attributable to plant or machinery for the purposes of this section is to be determined having regard to what is just and reasonable in the circumstances.

171 Disposal values on cessation of ownership

(1) This section applies if a person treated as owning plant or machinery under section 168(2), 169(2) or 170(2) ceases to be treated as owning it solely as a result of one of those provisions.

(2) If the person receives capital compensation, the disposal value to be brought into account is the amount of the compensation.

(3) If the person does not receive capital compensation, the disposal value to be brought into account is nil.

Modifications etc. (not altering text)

C30 S. 171 excluded (E.W.S.) (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 14(2)(a)**; S.I. 2005/1444, art. 2(1), Sch. 1

CHAPTER 14

FIXTURES

Introduction

172 Scope of Chapter etc.

(1) This Chapter applies to determine entitlement to allowances under this Part in respect of expenditure on plant or machinery that is, or becomes, a fixture.

(2) For the purposes of this Part, ownership of plant or machinery that is, or becomes, a fixture is determined under this Chapter.

[[F149](2A) Subsections (1) and (2) are subject to section 172A.**]**

(3) The provisions of this Chapter that treat a person as being the owner of a fixture (see sections 176 to 184 and 193 to **[**[F150]195B**]**) are subject to the provisions of this Chapter which treat a person as ceasing to be the owner of a fixture (see sections 188 to **[**[F151]192A**]**).

(4) References in this Chapter to a person being treated—

(a) as the owner of plant or machinery, or

(b) as ceasing to be the owner of plant or machinery,

are to be read as references to the person being so treated for the purposes of this Part.

(5) This Chapter does not affect any entitlement a person has to an allowance as a result of section 538 (contribution allowances for plant and machinery).

Textual Amendments

F149 S. 172(2A) inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 9(1)**

F150 Word in s. 172(3) substituted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 1(a)**

F151 Word in s. 172(3) substituted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 1(b)**

[F152 172A Long funding leases etc: cases where this Chapter does not apply.

(1) This section applies where plant or machinery that is or becomes a fixture is the subject of a long funding lease (see Chapter 6A).

(2) This section also applies if, in any such case,—

(a) the lessee under the long funding lease is or becomes the lessor of some or all of the plant or machinery under a further lease, and

(b) the further lease is not itself a long funding lease within subsection (1).

(3) This Chapter does not apply to determine the entitlement of the lessor or the lessee (under either lease) to allowances under this Part in respect of expenditure on the plant or machinery.

(4) This Chapter does not apply to determine whether the lessor or the lessee (under either lease) is to be treated as the owner of the plant or machinery.**]**

Textual Amendments

F152 S. 172A inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 9(2)**

173 Meaning of "fixture" and "relevant land"

(1) In this Chapter "fixture"—

(a) means plant or machinery that is so installed or otherwise fixed in or to a building or other description of land as to become, in law, part of that building or other land, and

(b) includes any boiler or water-filled radiator installed in a building as part of a space or water heating system.

(2) In this Chapter "relevant land", in relation to a fixture means—

(a) the building or other description of land of which the fixture becomes part, or

(b) in the case of a boiler or water-filled radiator which is a fixture as a result of subsection (1)(b), the building in which it is installed as part of a space or water heating system.

174 Meaning of "equipment lease" and "lease"

(1) In this Chapter "equipment lease" means—

(a) an agreement entered into in the circumstances given in subsection (2), or

(b) a lease entered into under or as a result of such an agreement.

(2) The circumstances are that—

(a) a person incurs capital expenditure on the provision of plant or machinery for leasing,

(b) an agreement is entered into for the lease, directly or indirectly from that person, of the plant or machinery to another person,

(c) the plant or machinery becomes a fixture, and

(d) the agreement is not an agreement for the plant or machinery to be leased as part of the relevant land.

(3) In this Chapter—

"equipment lessor" means the person from whom (directly or indirectly) the equipment lease provides for the plant or machinery to be leased, and

"equipment lessee" means the person to whom the equipment lease provides for the plant or machinery to be leased.

(4) Except in the context of leasing plant or machinery, any reference in this Chapter to a lease is to—

(a) any leasehold estate in or, in Scotland, lease of, the land (whether in the nature of a head-lease, sub-lease or under-lease), or

(b) any agreement to acquire such an estate or, in Scotland, lease;

and, in relation to such an agreement, "grant" is to be read accordingly.

175 Meaning of "interest in land", etc.

(1) In this Chapter "interest in land" means—

(a) the fee simple estate in the land or an agreement to acquire such an estate,

(b) in relation to Scotland, the interest of the owner or an agreement to acquire such an interest,

(c) a lease,

(d) an easement or servitude or an agreement to acquire an easement or servitude, and

(e) a licence to occupy land.

(2) If an interest in land is—

(a) conveyed or assigned by way of security, and

(b) subject to a right of redemption,

the person with the right of redemption is treated for the purposes of this Chapter as having that interest, and not the creditor.

[F153 175A Meaning of "energy services agreement"

(1) In this Chapter " energy services agreement " means an agreement entered into by an energy services provider (" the energy services provider ") and another person (" the client ") that makes provision, with a view to saving energy or using energy more efficiently, for—

(a) the design of plant or machinery, or one or more systems incorporating plant or machinery,

(b) obtaining and installing the plant or machinery,

(c) the operation of the plant or machinery,

(d) the maintenance of the plant or machinery, and

(e) the amount of any payments in respect of the operation of the plant or machinery to be linked (wholly or in part) to energy savings or increases in energy efficiency resulting from the provision or operation of the plant or machinery.

(2) In this Chapter " energy services provider " means a person carrying on a qualifying activity consisting wholly or mainly in the provision of energy management services. **]**

Textual Amendments

F153 S. 175A inserted by (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 2**

Persons who are treated as owners of fixtures

176 Person with interest in relevant land having fixture for purposes of qualifying activity

(1) If—

(a) a person incurs capital expenditure on the provision of plant or machinery for the purposes of a qualifying activity carried on by him,

(b) the plant or machinery becomes a fixture, and

(c) that person has an interest in the relevant land at the time the plant or machinery becomes a fixture,

that person is to be treated, on and after that time, as the owner of the fixture as a result of incurring the expenditure.

(2) If there are two or more persons with different interests in the relevant land who would be treated as the owner of the same fixture as a result of subsection (1), one interest only is taken into account under that subsection.

(3) The interest to be taken into account is given by the following rules—

Rule 1

If one of the interests is an easement or servitude or any agreement to acquire an easement or servitude, that interest is the interest to be taken into account.

Rule 2

If Rule 1 does not apply, but one of the interests is a licence to occupy land, that interest is the interest to be taken into account.

Rule 3

In any other case—

(a) except in Scotland, the interest to be taken into account is the 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 in subsection (2), and

(b) in Scotland, the interest to be taken into account is the interest of whichever of the persons referred to in subsection (2) has, or last had, the right of use of the relevant land.

(4) Subsection (1) is subject to **[**[F154]sections 177(4) and 180A(4)**]** .

Textual Amendments

F154 Words in s. 176(4) substituted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 3**

177 Equipment lessors

(1) If—

(a) the conditions in—

(i) section 178 (equipment lessee has qualifying activity etc.),

(ii) section 179 (equipment lessor has right to sever fixture that is not part of building), or

(iii) section 180 (equipment lease is part of affordable warmth programme),

are met in relation to an equipment lease,

(b) the equipment lessor and the equipment lessee are not connected persons, and

(c) they elect that this section should apply,

the equipment lessor is to be treated, on and after the relevant time, as the owner of the fixture as a result of incurring the capital expenditure on the provision of the plant or machinery that is the subject of the equipment lease.

(2) The relevant time for the purposes of subsection (1) is (unless subsection (3) applies) the time when the equipment lessor incurs the expenditure.

(3) If—

(a) the conditions in section 178 are met in relation to an equipment lease (but the conditions in sections 179 and 180 are not), and

(b) the equipment lessor incurs the capital expenditure before the equipment lessee begins to carry on the qualifying activity,

the relevant time is the time when the equipment lessee begins to carry on the qualifying activity.

(4) If an election is made under this section, the equipment lessee is not to be treated under section 176 as the owner of the fixture.

(5) An election under this section must be made by notice to the **[**[F39]an officer of Revenue and Customs**]**—

(a) for income tax purposes, on or before the normal time limit for amending a tax return for the tax year in which the relevant chargeable period ends;

(b) for corporation tax purposes, no later than 2 years after the end of the relevant chargeable period.

(6) "The relevant chargeable period" means the chargeable period in which the capital expenditure was incurred.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

Status: Point in time view as at 06/04/2008.
Changes to legislation: There are currently no known outstanding effects for the Capital Allowances Act 2001, Part 2. (See end of Document for details)

178 Equipment lessee has qualifying activity etc.

The conditions referred to in section 177(1)(a)(i) are that—

(a) the equipment lease is for the lease of the plant or machinery for the purposes of a qualifying activity which is, or is to be, carried on by the equipment lessee,

(b) if the equipment lessee had incurred the capital expenditure incurred by the equipment lessor on the provision of the plant or machinery that is the subject of the equipment lease, he would, as a result of section 176, have been entitled to an allowance in respect of it, and

(c) the equipment lease is not for the lease of the plant or machinery for use in a dwelling-house.

179 Equipment lessor has right to sever fixture that is not part of building

(1) The conditions referred to in section 177(1)(a)(ii) are that—

(a) the plant or machinery becomes a fixture by being fixed to land that is neither a building nor part of a building,

(b) the equipment lessee has an interest in the land when taking possession of the plant or machinery under the equipment lease,

(c) under the terms of the equipment lease, the equipment lessor is entitled to sever the plant or machinery, at the end of the period for which it is leased, from the land to which it is fixed at that time,

(d) under the terms of the equipment lease, the equipment lessor will own the plant or machinery on its severance in accordance with the equipment lease,

(e) the nature of the plant or machinery and the way in which it is fixed to land are such that its use on one set of premises does not, to any material extent, prevent it from being used, once severed, for the same purposes on a different set of premises,

(f) the equipment lease is one which under [F155 generally accepted accounting practice] falls (or would fall) to be treated in the accounts of the equipment lessor as an operating lease, and

(g) the equipment lease is not for the lease of the plant or machinery for use in a dwelling-house.

(2) F156 . . . .

Textual Amendments

F155 Words in s. 179(1)(f) substituted (24.7.2002) by Finance Act 2002 (c. 23) , **s. 103(4)(g)**

F156 S. 179(2) repealed (with effect as mentioned in s. 107 of the amending Act) by Finance Act 2002 (c. 23), s. 141, **Sch. 40 Pt. 3(16)**

180 Equipment lease is part of affordable warmth programme

(1) The conditions referred to in section 177(1)(a)(iii) are that—

(a) the plant or machinery which is the subject of the equipment lease consists of a boiler, heat exchanger, radiator or heating control that is installed in a building as part of a space or water heating system,

(b) the expenditure of the equipment lessor is incurred before 1st January 2008, and

(c) the equipment lease is approved for the purposes of this section as entered into as part of the affordable warmth programme.

(2) The approval mentioned in subsection (1)(c) may be given, with the consent of the Treasury—

(a) by the Secretary of State;

(b) in the case of buildings in Scotland, by the Scottish Ministers;

(c) in the case of buildings in Wales, by the National Assembly for Wales;

(d) in the case of buildings in Northern Ireland, by the Department for Social Development in Northern Ireland.

(3) If an approval is withdrawn, it is to be treated for the purposes of subsection (1)(c) as never having had effect.

[F157 180A Energy services providers

(1) If—

(a) an energy services agreement is entered into,

(b) the energy services provider incurs capital expenditure under the agreement on the provision of plant or machinery,

(c) the plant or machinery becomes a fixture,

(d) at the time the plant or machinery becomes a fixture—

(i) the client has an interest in the relevant land, and

(ii) the energy services provider does not,

(e) the plant or machinery—

(i) is not provided for leasing, and

(ii) is not provided for use in a dwelling-house,

(f) the operation of the plant or machinery is carried out wholly or substantially by the energy services provider or a person connected with him,

(g) the energy services provider and the client are not connected persons, and

(h) they elect that this section should apply,

the energy services provider is to be treated, on and after the time at which he incurs the expenditure, as the owner of the fixture as a result of incurring the expenditure.

(2) But if the client would not have been entitled to a section 176 allowance in respect of the expenditure if he had incurred it, subsection (1) does not apply unless the plant or machinery belongs to a class of plant or machinery specified by Treasury order.

(3) In subsection (2) a " section 176 allowance " means an allowance to which a person is entitled as a result of section 176.

(4) If an election is made under this section, the client is not to be treated under section 176 as the owner of the fixture.

(5) An election under this section must be made by notice to [F39 an officer of Revenue and Customs]—

(a) for income tax purposes, on or before the normal time limit for amending a tax return for the tax year in which the relevant chargeable period ends;

(b) for corporation tax purposes, no later than 2 years after the end of the relevant chargeable period.

(6) The " relevant chargeable period " means the chargeable period in which the capital expenditure was incurred. **]**

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

F157 S. 180A inserted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 4**

181 Purchaser of land giving consideration for fixture

(1) If—

(a) after any plant or machinery has become a fixture, a person ("the purchaser") acquires an interest in the relevant land,

(b) that interest was in existence before the purchaser's acquisition of it, and

(c) the consideration which the purchaser gives for the interest is or includes a capital sum that, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture,

the purchaser is to be treated, on and after the time of the acquisition, as the owner of the fixture as a result of incurring that expenditure.

[[F158]](2) Subsection (1) does not apply, and is to be treated as never having applied, if, immediately after the time of the acquisition, a person has a prior right in relation to the fixture.**]**

(3) For the purposes of **[**[F159]subsection (2), a person**]** has a prior right in relation to the fixture if he—

(a) is treated as the owner of the fixture immediately before the time referred to in **[**[F160]subsection (2)**]** as a result of incurring expenditure on the provision of the fixture,

(b) is not so treated as a result of section 538 (contribution allowances for plant and machinery),

(c) is entitled to an allowance in respect of that expenditure, and

(d) makes or has made a claim in respect of that expenditure.

(4) Subsection (1) is subject to **[**[F161]sections 182 and 182A**]** .

Textual Amendments

F158 S. 181(2) substituted (with effect as mentioned in s. 69(2) of the amending Act) by Finance Act 2001 (c. 9), s. 69(1), **Sch. 21 para. 2(1)**

F159 Words in s. 181(3) substituted (with effect as mentioned in s. 69(2) of the amending Act) by Finance Act 2001 (c. 9), s. 69(1), **Sch. 21 para. 2(2)(a)**

F160 Words in s. 181(3) substituted (with effect as mentioned in s. 69(2) of the amending Act) by Finance Act 2001 (c. 9), s. 69(1), **Sch. 21 para. 2(2)(b)**

F161 Words in s. 181(4) substituted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 5**

Modifications etc. (not altering text)

C31 S. 181(1) modified (E.W.S.) (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 14(2)(d)**; S.I. 2005/1444, art. 2(1), Sch. 1

182 Purchaser of land discharging obligations of equipment lessee

(1) If—

(a) after any plant or machinery has become a fixture, a person ("the purchaser") acquires an interest in the relevant land,

(b) that interest was in existence before the purchaser's acquisition of it,

(c) before that acquisition, the plant or machinery was let under an equipment lease, and

(d) in connection with that acquisition, the purchaser pays a capital sum to discharge the obligations of the equipment lessee under the equipment lease,

the purchaser is to be treated, on and after the time of the acquisition, as the owner of the fixture as a result of incurring expenditure, consisting of that capital sum, on the provision of the fixture.

[F162(2) Subsection (1) does not apply, and is to be treated as never having applied, if, immediately after the time of the acquisition, a person has a prior right in relation to the fixture.

(3) Section 181(3)(test for whether person has a prior right) applies for the purposes of subsection (2).]

Textual Amendments

F162 S. 182(2)(3) substituted (with effect as mentioned in s. 69(2) of the amending Act) by Finance Act 2001 (c. 9), s. 69(1), **Sch. 21 para. 2(3)**

Modifications etc. (not altering text)

C32 S. 182(1) modified (E.W.S.) (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 14(2)(d)**; S.I. 2005/1444, art. 2(1), Sch. 1

[F163 182A Purchaser of land discharging obligations of client under energy services agreement

(1) If—

(a) after any plant or machinery has become a fixture, a person (" the purchaser ") acquires an interest in the relevant land,

(b) that interest was in existence before the purchaser's acquisition of it,

(c) before that acquisition, the plant or machinery was provided under an energy services agreement, and

(d) in connection with that acquisition, the purchaser pays a capital sum to discharge the obligations of the client under the energy services agreement,

the purchaser is to be treated, on and after the time of the acquisition, as the owner of the fixture as a result of incurring expenditure, consisting of that capital sum, on the provision of the fixture.

(2) Subsection (1) does not apply, and is to be treated as never having applied, if, immediately after the time of the acquisition, a person has a prior right in relation to the fixture.

(3) Section 181(3) (test for whether person has a prior right) applies for the purposes of subsection (2).**]**

Textual Amendments

F163 S. 182A inserted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 6**

183 Incoming lessee where lessor entitled to allowances

(1) If—

(a) after any plant or machinery has become a fixture, a person ("the lessor") who has an interest in the relevant land grants a lease,

(b) the lessor is entitled to an allowance in respect of the fixture for the chargeable period in which the lease is granted or would be if he were within the charge to tax,

(c) the consideration which the lessee gives for the lease is or includes a capital sum that, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture,

(d) the lessor and the lessee are not connected persons, and

(e) the lessor and the lessee make an election under this section,

the lessee is to be treated, on and after the time when the lease is granted, as the owner of the fixture as a result of incurring that expenditure.

(2) An election under this section must be made by notice to **[**[F39]an officer of Revenue and Customs**]** within 2 years after the date on which the lease takes effect.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

184 Incoming lessee where lessor not entitled to allowances

(1) If—

(a) after any plant or machinery has become a fixture, a person ("the lessor") who has an interest in the relevant land grants a lease,

(b) the lessor is not within section 183(1)(b),

(c) before the lease is granted, the fixture has not been used for the purposes of a qualifying activity carried on by the lessor or any person connected with the lessor, and

(d) the consideration which the lessee gives for the lease is or includes a capital sum that, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture, the lessee is to be treated, on and after the time when the lease is granted, as the owner of the fixture as a result of incurring that expenditure.

[F164(2) Subsection (1) does not apply, and is to be treated as never having applied, if, immediately after the time when the lease is granted, a person has a prior right in relation to the fixture.

(3) Section 181(3)(test for whether person has a prior right) applies for the purposes of subsection (2).]

Textual Amendments

F164 S. 184(2)(3) substituted (with effect as mentioned in s. 69(2) of the amending Act) by Finance Act 2001 (c. 9), s. 69(1), **Sch. 21 para. 2(4)**

Restrictions on amount of qualifying expenditure

185 Fixture on which a plant and machinery allowance has been claimed

(1) This section applies if—

(a) a person ("the current owner") is treated as the owner of a fixture as a result of incurring capital expenditure ("new expenditure") on its provision,

(b) the plant or machinery is treated as having been owned at a relevant earlier time by any person ("the past owner") as a result of incurring other expenditure,

(c) the plant or machinery is within paragraph (b) otherwise than as a result of section 538 (contribution allowances for plant and machinery), and

(d) the past owner is or has been required to bring the disposal value of the plant or machinery into account (as a result of having made a claim in respect of that other expenditure).

(2) If the new expenditure exceeds the maximum allowable amount, the excess—

(a) is to be left out of account in determining the current owner's qualifying expenditure, or

(b) if the new expenditure has already been taken into account for this purpose, is to be treated as expenditure that should never have been taken into account.

(3) The maximum allowable amount is—

$$D + I$$

where—
D is the disposal value of the plant or machinery which the past owner has been or is required to bring into account, and
I is any of the new expenditure that is treated under section 25 (building alterations in connection with installation) as expenditure on the provision of the plant or machinery.

(4) If more than one disposal event has occurred requiring the past owner to bring the disposal value of the plant or machinery into account, the maximum allowable amount is calculated by reference only to the most recent of those events.

(5) For the purposes of this section, the current owner and the past owner may be the same person.

(6) In subsection (1)(b) "relevant earlier time" means (subject to subsection (7)) any time before the earliest time when the current owner is treated as owning the plant or machinery as a result of incurring the new expenditure.

(7) If, before the earliest time when the current owner is treated as owning the plant or machinery as a result of incurring the new expenditure—

(a) any person has ceased to own the plant or machinery as a result of a sale,

(b) the sale was not a sale of the plant or machinery as a fixture, and

(c) the buyer and seller were not connected persons at the time of the sale,

the relevant earlier time does not include any time before the seller ceased to own the plant or machinery.

186 Fixture on which an industrial buildings allowance has been made

(1) This section applies if—

(a) a person ("the past owner") has at any time claimed an allowance to which he is entitled under Part 3 (industrial buildings allowances) in respect of expenditure which was or included expenditure on the provision of plant or machinery,

(b) the past owner has transferred the interest which is the relevant interest for the purposes of Part 3, and

(c) the current owner of the plant or machinery makes a claim in respect of expenditure ("new expenditure") incurred—

(i) on the provision of the plant or machinery, and

(ii) at a time when it is a fixture in the building.

(2) If the new expenditure exceeds the maximum allowable amount, the excess is to be left out of account in determining the current owner's qualifying expenditure.

(3) The maximum allowable amount is—

$$\frac{F}{T} \mathrm{x R}$$

where—
F is the part of the consideration for the transfer by the past owner that is attributable to the fixture,
T is the total consideration for that transfer, and
R is the residue of qualifying expenditure attributable to the relevant interest immediately after that transfer, calculated on the assumption that the transfer was a sale of the relevant interest.

(4) For the purposes of this section the current owner of the plant or machinery is—

(a) the person to whom the past owner transferred the relevant interest, or

(b) any person who is subsequently treated as the owner of the plant or machinery.

(5) In this section "building" and "residue of qualifying expenditure" have the same meaning as in Part 3.

187 Fixture on which a research and development allowance has been made

(1) This section applies if—

(a) a person has at any time claimed an allowance to which he is entitled under Part 6 (research and development allowances) in respect of qualifying expenditure under that Part ("Part 6 expenditure"),

(b) an asset representing the whole or part of the Part 6 expenditure ("the Part 6 asset") has ceased to be owned by that person ("the past owner"),

(c) the Part 6 asset was or included plant or machinery, and

(d) the current owner makes a claim under this Part in respect of expenditure ("new expenditure") incurred—

(i) on the provision of the plant or machinery, and

(ii) at a time when it is a fixture.

(2) If the new expenditure exceeds the maximum allowable amount, the excess is to be left out of account in determining the current owner's qualifying expenditure.

(3) The maximum allowable amount is—

$$\frac{F}{T} \mathrm{x} \mathrm{A}$$

where—
F is the part of the consideration for the disposal of the Part 6 asset by the past owner that is attributable to the fixture,
T is the total consideration for that disposal, and
A is an amount equal to whichever is the smaller of—
(a) the disposal value of the Part 6 asset when the past owner ceased to own it, and
(b) so much of the Part 6 expenditure as related to the provision of the Part 6 asset.

(4) For the purposes of this section the current owner of the plant or machinery is—

(a) the person who acquired the Part 6 asset from the past owner, or

(b) any person who is subsequently treated as the owner of the plant or machinery.

Cessation of ownership of fixtures

188 Cessation of ownership when person ceases to have qualifying interest

(1) This section applies if a person is treated as the owner of a fixture under—

(a) section 176 (person with interest in land having fixture for purposes of qualifying activity),

(b) section 181 (purchaser of land giving consideration for fixture),

(c) section 182 (purchaser of land discharging obligations of equipment lessee),

[F165(ca) section 182A (purchaser of land discharging obligations of client under energy services agreement),]

(d) section 183 (incoming lessee where lessor entitled to allowances), or

(e) section 184 (incoming lessee where lessor not entitled to allowances).

(2) If the person ceases at any time to have the qualifying interest, he is to be treated as ceasing to be the owner of the fixture at that time.

(3) In this Chapter "the qualifying interest" means—

(a) if section 176, 181 **[**[F166], 182 or 182A**]** applies, the interest in the relevant land referred to in that section, and

(b) if section 183 or 184 applies, the lease referred to in that section.

(4) This section is subject to section 189.

Textual Amendments

F165 S. 188(1)(ca) inserted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 7(2)**

F166 Words in s. 188(3)(a) substituted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 7(3)**

189 Identifying the qualifying interest in special cases

(1) If—

(a) a person's qualifying interest is an agreement to acquire an interest in land, and

(b) that interest is subsequently transferred or granted to that person,

the interest transferred or granted is to be treated as the qualifying interest.

(2) If a person's qualifying interest ceases to exist as a result of its being merged in another interest acquired by that person, that other interest is to be treated as the qualifying interest.

(3) If—

(a) the qualifying interest is a lease, and

(b) on its termination, a new lease of the relevant land (with or without other land) is granted to the lessee,

the new lease is to be treated as the qualifying interest.

(4) If—

(a) the qualifying interest is a licence, and

(b) on its termination, a new licence to occupy the relevant land (with or without other land) is granted to the licensee,

the new licence is to be treated as the qualifying interest.

(5) If—

(a) the qualifying interest is a lease, and

(b) with the consent of the lessor, the lessee remains in possession of the relevant land after the termination of the lease without a new lease being granted to him,

the qualifying interest is to be treated as continuing so long as the lessee remains in possession of the relevant land.

190 Cessation of ownership of lessor where section 183 applies

(1) This section applies if a lessee is treated under section 183 (incoming lessee where lessor entitled to allowances) as the owner of a fixture.

(2) The lessor is to be treated as ceasing to be the owner of the fixture when the lessee begins to be treated as the owner.

191 Cessation of ownership on severance of fixture

If—

(a) a person is treated as the owner of the fixture as a result of any provision of this Chapter,

(b) the fixture is permanently severed from the relevant land (so that it ceases to be a fixture), and

(c) once it is severed, it is not in fact owned by that person,

that person is to be treated as ceasing to be the owner of the fixture when it is severed.

192 Cessation of ownership of equipment lessor

(1) This section applies if an equipment lessor is treated under section 177 as the owner of a fixture.

(2) If—

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

the equipment lessor is to be treated as ceasing to be the owner of the fixture at that time (or, as the case may be, at the earliest of those times).

(3) The reference in subsection (2)(b) to the equipment lessee is, in a case where the financial obligations of the equipment lessee have become vested in another person (by assignment, operation of law or otherwise), a reference to the person in whom the obligations are vested when the capital sum is paid.

[F167 192A Cessation of ownership of energy services provider

(1) This section applies if an energy services provider is treated under section 180A as the owner of a fixture.

(2) If—

(a) the energy services provider at any time assigns his rights under the energy services agreement, or

(b) the financial obligations of the client in respect of the fixture under an energy services agreement are at any time discharged (on the payment of a capital sum or otherwise),

the energy services provider is to be treated as ceasing to be the owner of the fixture at that time (or, as the case may be, the earliest of those times).

(3) The reference in subsection (2)(b) to the client is, in a case where the financial obligations of the client have become vested in another person (by assignment, operation of law or otherwise), a reference to the person in whom the obligations are vested when the capital sum is paid.**]**

Textual Amendments

F167 S. 192A inserted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 8**

Acquisition of ownership of fixture when another ceases to own it

193 Acquisition of ownership by lessor or licensor on termination of lease or licence

If, on the termination of a lease or licence, the outgoing lessee or licensee is treated under section 188 as ceasing to be the owner of a fixture, the lessor or licensor is to be treated, on and after the termination of the lease or licence, as the owner of the fixture.

194 Acquisition of ownership by assignee of equipment lessor

(1) If section 192(2)(a) applies (cessation of ownership of equipment lessor as a result of assignment), the assignee is to be treated, on and after the assignment—

(a) as having incurred expenditure, consisting of the consideration given by him for the assignment, on the provision of the fixture, and

(b) as being the owner of the fixture.

(2) For the purposes of section 192 (and subsection (1) and section 195) the assignee is to be treated as being an equipment lessor who owns the fixture under section 177.

195 Acquisition of ownership by equipment lessee

(1) If section 192(2)(b) applies (discharge of obligations of equipment lessee) because the equipment lessee has paid a capital sum, the equipment lessee is to be treated—

(a) as having incurred expenditure, consisting of the capital sum, on the provision of the fixture, and

(b) as being, on and after the time of payment, the owner of the fixture.

(2) Section 192(3) (assignee of equipment lessee) applies in relation to subsection (1).

[F168 195A Acquisition of ownership by assignee of energy services provider

(1) If section 192A(2)(a) applies (cessation of ownership of energy services provider as a result of assignment), the assignee is to be treated, on and after the assignment—

(a) as having incurred expenditure, consisting of the consideration given by him for the assignment, on the provision of the fixture, and

(b) as being the owner of the fixture.

(2) For the purposes of section 192A (and subsection (1) and section 195B) the assignee is to be treated as being an energy services provider who owns the fixture under section 180A.

Textual Amendments

F168 Ss, 195A, 195B inserted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 9**

195B Acquisition of ownership by client

(1) If section 192A(2)(b) applies (discharge of obligations of client) because the client has paid a capital sum, the client is to be treated—

(a) as having incurred expenditure, consisting of the capital sum, on the provision of the fixture, and

(b) as being, on and after the time of payment, the owner of the fixture.

(2) Section 192A(3)(assignee of client) applies in relation to subsection (1).]

Textual Amendments

F168 Ss, 195A, 195B inserted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 9**

Disposal values

196 Disposal values in relation to fixtures: general

(1) The disposal value to be brought into account in relation to a fixture depends on the nature of the disposal event, as shown in the Table—

Table

Disposal values: fixtures

1. Disposal event	*2. Disposal value*
1. Cessation of ownership of the fixture under section 188 because of a sale of the qualifying interest except where item 2 applies.	The part of the sale price that— (a) falls to be treated for the purposes of this Part as expenditure incurred by the purchaser on the provision of the fixture, or (b) would fall to be so treated if the purchaser were entitled to an allowance.
2. Cessation of ownership of the fixture under section 188 because of a sale of the qualifying interest where— (a) the sale is at less than market value, and (b) the condition in subsection (2) is met by the purchaser.	The part of the price that would be treated for the purposes of this Part as expenditure by the purchaser on the provision of the fixture if— (a) the qualifying interest were sold at market value, (b) that sale took place immediately before the event which causes the former owner to be treated as ceasing to be the owner of the fixture, and (c) that event were disregarded in determining that market value.
3. Cessation of ownership of the fixture under section 188 where— (a) neither item 1 nor 2 applies, but (b) the qualifying interest continues in existence after that time or would so	The disposal value given for item 2.

continue but for its becoming merged in another interest.	
4. Cessation of ownership of the fixture under section 188 because of the expiry of the qualifying interest.	If the person receives a capital sum, by way of compensation or otherwise, by reference to the fixture, the amount of the capital sum. In any other case, nil.
5. Cessation of ownership of the fixture under section 190 because the lessee has become the owner under section 183.	The part of the capital sum given by the lessee for the lease referred to in section 183 that falls to be treated for the purposes of this Part as the lessee's expenditure on the provision of the fixture.
6. Cessation of ownership of the fixture under section 191 (severance).	The market value of the fixture at the time of the severance.
7. Cessation of ownership of the fixture because section 192(2)(a) (assignment of rights) applies.	The consideration given by the assignee for the assignment.
8. Cessation of ownership of the fixture because section 192(2)(b) (discharge of equipment lessee's obligations) applies on the payment of a capital sum.	The capital sum paid to discharge the financial obligations of the equipment lessee.
[F169 8A. Cessation of ownership of the fixture because section 192A(2)(a) (assignment of rights) applies.	The consideration given by the assignee for the assignment.
8B. Cessation of ownership of the fixture because section 192A(2)(b) (discharge of client's obligations) applies on the payment of a capital sum.	The capital sum paid to discharge the financial obligations of the client.]
9. Permanent discontinuance of the qualifying activity followed by the sale of the qualifying interest.	The part of the sale price that— (a) falls to be treated as expenditure incurred by the purchaser on the provision of the fixture, or (b) would fall to be so treated if the purchaser were entitled to an allowance.
10. Permanent discontinuance of the qualifying activity followed by the demolition or destruction of the fixture.	The net amount received for the remains of the fixture, together with— (a) any insurance money received in respect of the demolition or destruction, and (b) any other compensation of any description so received, so far as it consists of capital sums.
11. Permanent discontinuance of the qualifying activity followed by the permanent loss of the fixture otherwise than as a result of its demolition or destruction.	Any insurance money received in respect of the loss and, so far as it consists of capital sums, any other compensation of any description so received.

12. The fixture begins to be used wholly or partly for purposes other than those of the qualifying activity.	The part of the price that would fall to be treated for the purposes of this Part as expenditure incurred by the purchaser on the provision of the fixture if the qualifying interest were sold at market value.

(2) The condition referred to in item 2 of the Table is met by the purchaser if—

(a) the purchaser's expenditure on the provision of the fixture cannot be qualifying expenditure under this Part or Part 6 (research and development allowances), or

(b) the purchaser is a dual resident investing company which is connected with the former owner.

(3) Items 1 and 5 of the Table are subject to sections 198 and 199 (election to fix apportionment on sale of qualifying interest or grant of lease).

(4) Section 192(3) (assignee of equipment lessee) applies in relation to item 8 of the Table.

[[F170](4A) Section 192A(3)(assignee of client) applies in relation to item 8B of the Table.**]**

(5) Nothing in sections 188 to **[**[F171]192A**]** or this section prevents a disposal value having to be brought into account under Chapter 5 because of a disposal event not dealt with in these sections.

(6) This section is subject to section 197.

Textual Amendments

F169 S. 196(1) Table, items 8A, 8B inserted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 10(2)**

F170 S. 196(4A) inserted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 10(3)**

F171 Words in s. 196(5) substituted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 10(4)**

Modifications etc. (not altering text)

C33 S. 196 excluded (E.W.S.) (8.6.2005) by Railways Act 2005 (c. 14) , s. 60(2) , **Sch. 10 para. 14(2)(a)** ; S.I. 2005/1444 , art. 2(1) , Sch. 1

C34 S. 196 modified (E.W.S.) (8.6.2005) by Railways Act 2005 (c. 14) , s. 60(2) , **Sch. 10 para. 3** ; S.I. 2005/1444 , art. 2(1) , Sch. 1

C35 S. 196 modified (E.W.S.) (24.7.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 23**; S.I. 2005/1909, art. 2, Sch.

197 Disposal values in avoidance cases

(1) This section applies if—

(a) a person ("the taxpayer") is treated under this Chapter as the owner of any plant or machinery as a result of incurring any expenditure,

(b) any disposal event occurs in relation to the plant or machinery,

(c) the disposal value to be brought into account by the taxpayer would (but for this section) be less than the notional written-down value of the plant or machinery, and

(d) the disposal event is part of, or occurs as a result of, a scheme or arrangement the main purpose or one of the main purposes of which is the obtaining by the taxpayer of a tax advantage under this Part.

(2) The disposal value that the taxpayer must bring into account is the notional written-down value of the plant or machinery.

(3) The notional written-down value is—

$$\mathrm{QE} - A$$

where—

QE is the taxpayer's expenditure on the plant or machinery that is qualifying expenditure,

A is the total of all allowances which could have been made to the taxpayer in respect of that expenditure if—

(a) that expenditure had been the only expenditure that had ever been taken into account in determining his available qualifying expenditure, and

(b) all allowances had been made in full.

Election to fix apportionment

198 Election to apportion sale price on sale of qualifying interest

(1) This section applies if the disposal value of a fixture is required to be brought into account in accordance with item 1 of the Table in section 196 (sale of qualifying interest at not less than market value, etc.).

(2) The seller and the purchaser may jointly, by an election, fix the amount that is to be treated—

(a) for the purposes of item 1 of the Table, and

(b) for the other purposes of this Part,

as the part of the sale price that is expenditure incurred by the purchaser on the provision of the fixture.

(3) The amount fixed by the election must not exceed—

(a) the amount of the capital expenditure which was treated as incurred by the seller on the provision of the fixture or of the plant or machinery which became the fixture, or

(b) the actual sale price.

(4) If an election fixes the amount to be treated as the part of the sale price—

(a) the remaining amount (if any) of the sale price is to be treated for the purposes of this Act as expenditure attributable to the acquisition of the property which is not the fixture but is acquired for that amount, and

(b) if there is no remaining amount, the expenditure so attributable is to be treated for the purposes of this Act as nil.

(5) This section is subject to—

(a) sections 186 and 187 (fixtures on which industrial buildings allowance or research and development allowance has been made),
(b) section 197 (disposal values in avoidance cases), and
(c) sections 200 and 201 (further provisions about elections).

199 Election to apportion capital sum given by lessee on grant of lease

(1) This section applies if the disposal value of a fixture is required to be brought into account in accordance with item 5 of the Table in section 196 (on acquisition of ownership by incoming lessee under section 183).

(2) The persons who are the lessor and the lessee for the purposes of section 183 may jointly, by an election, fix the amount that is to be treated—
(a) for the purposes of item 5 of the Table, and
(b) for the other purposes of this Part,

as the part of the capital sum that is expenditure incurred by the lessee on the provision of the fixture.

(3) The amount fixed by the election must not exceed—
(a) the amount of the capital expenditure which was treated as incurred by the lessor on the provision of the fixture or of the plant or machinery which became the fixture, or
(b) the actual capital sum.

(4) If an election fixes the amount to be treated as the part of the capital sum—
(a) the remaining amount (if any) of the capital sum is to be treated for the purposes of this Act as expenditure attributable to the acquisition of the property which is not the fixture but is acquired for that amount, and
(b) if there is no remaining amount, the expenditure so attributable is to be treated for the purposes of this Act as nil.

(5) This section is subject to—
(a) sections 186 and 187 (fixtures on which industrial buildings allowance or research and development allowance has been made),
(b) section 197 (disposal values in avoidance cases), and
(c) sections 200 and 201 (further provisions about elections).

200 Elections under sections 198 and 199: supplementary

(1) In this section and section 201, references to an election are to an election under section 198 or 199.

(2) An apportionment made by an election has effect in place of any apportionment that would otherwise be made under sections 562, 563 and 564(1) (apportionment and procedure for determining apportionment).

(3) An election is irrevocable.

(4) If, as a result of circumstances arising after the making of an election, the maximum amount which could be fixed by the election is reduced to an amount which is less than the amount specified in the election, the election is to be treated, for the purposes of this Act, as having specified the amount to which the maximum is reduced.

201 Elections under sections 198 and 199: procedure

(1) An election must be made by notice to **[**[F39]an officer of Revenue and Customs**]** no later than 2 years after the date when—

- (a) the purchaser acquires the qualifying interest, in the case of an election under section 198, or
- (b) the lessee is granted the lease, in the case of an election under section 199.

(2) The amount fixed by an election must be quantified at the time when the election is made.

(3) The notice must state—

- (a) the amount fixed by the election,
- (b) the name of each of the persons making the election,
- (c) information sufficient to identify the plant or machinery,
- (d) information sufficient to identify the relevant land,
- (e) particulars of—
  - (i) the interest acquired by the purchaser, in the case of an election under section 198, or
  - (ii) the lease granted to the lessee, in the case of an election under section 199, and
- (f) the tax district references of each of the persons making the election.

(4) If a person—

- (a) has joined in making an election, and
- (b) subsequently makes a tax return for a period which is the first period for which he is making a tax return in which the election has an effect for tax purposes in his case,

a copy of the notice containing the election must accompany the return.

(5) The following provisions do not apply to the election—

- (a) section 42 of, and Schedule 1A to, TMA 1970 (claims and elections for income tax purposes);
- (b) paragraphs 54 to 60 of Schedule 18 to FA 1998 (claims and elections for corporation tax purposes).

(6) References in this section to a tax return, in the case of an election for the purposes of a trade, profession or business carried on by persons in partnership, are to be read, in relation to those persons, as references to a return under section 12AA of TMA 1970 (partnership returns).

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

Further provisions

202 Interpretation

(1) Any reference in this Chapter to a person being entitled to an allowance in respect of expenditure on the provision of a fixture includes the person having a pool to which expenditure on the provision of the fixture has been allocated.

But this is subject to subsection (2).

(2) If—

(a) expenditure on the provision of the fixture has been allocated to a pool, and

(b) the person is required under section 61(1) to bring the disposal value of the fixture into account in the pool,

the person is not entitled to an allowance in respect of the expenditure allocated to that pool for any chargeable period after that in which the disposal event occurs.

(3) For the purposes of this Chapter, a person makes a claim in respect of expenditure if he—

(a) makes a claim for an allowance in respect of that expenditure,

(b) makes a tax return in which that expenditure is taken into account in determining his available qualifying expenditure for the purposes of this Part, or

(c) gives notice of an amendment of a tax return which provides for that expenditure to be so taken into account.

203 Amendment of returns etc.

(1) If a person who has made a tax return ("the taxpayer") becomes aware that, after making it, anything in it has become incorrect for any of the reasons given in subsection (2), the taxpayer must give notice to [[F39]an officer of Revenue and Customs] specifying how the return needs to be amended.

(2) The reasons are that—

(a) an approval given for the purposes of section 180 (affordable warmth programme) has been withdrawn;

(b) section 181(2), 182(2) [[F172], 182A(2)] or 184(2) (another person has a prior right) applies in the taxpayer's case;

(c) section 185 (restriction on qualifying expenditure where another person has claimed an allowance) applies in the taxpayer's case;

(d) an election is made under section 198 or 199 (election to fix apportionment);

(e) section 200(4) (reduction in amount which can be fixed by an election) applies in the taxpayer's case.

(3) The notice must be given within 3 months beginning with the day on which the taxpayer first became aware that anything contained in the tax return had become incorrect for any of the reasons given in subsection (2).

(4) All such assessments and adjustments of assessments are to be made as are necessary to give effect to this Chapter.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

F172 Words in s. 203(2)(b) inserted (with effect as mentioned in s. 66 of the amending Act) by Finance Act 2001 (c. 9), s. 66, **Sch. 18 para. 11**

204 Appeals etc.

(1) Subsections (2) and (3) apply if—

(a) any question arises as to whether any plant or machinery has become, in law, part of a building or other land, and

(b) that question is material to the tax liability (for whatever period) of two or more persons.

(2) The question is to be determined, for the purposes of the tax of all the persons concerned, by the Special Commissioners.

(3) The Special Commissioners must determine the question in the same way as an appeal, but all the persons concerned are entitled—

(a) to appear before and be heard by the Special Commissioners, or

(b) to make representations to them in writing.

(4) Subsections (5) and (6) apply if any question relating to an election under section 198 or 199 (apportionments) arises for determination by any body of Commissioners for the purposes of any proceedings before them.

(5) The Commissioners must determine the question separately from any other questions in those proceedings.

(6) Each of the persons who has joined in making the election is entitled—

(a) to appear before and be heard by the Commissioners, or

(b) to make representations to them in writing;

and the Commissioners' determination has effect as if made in an appeal to which each of those persons was a party.

CHAPTER 15

ASSET PROVIDED OR USED ONLY PARTLY FOR QUALIFYING ACTIVITY

205 Reduction of first-year allowances

(1) If it appears that a person carrying on a qualifying activity has incurred expenditure on the provision of plant or machinery—

(a) partly for the purposes of the qualifying activity, and

(b) partly for other purposes,

any first-year allowance to which he is entitled in respect of the expenditure must be reduced to an amount which is just and reasonable having regard to the relevant circumstances.

(2) The relevant circumstances include, in particular, the extent to which it appears that the plant or machinery is likely to be used for purposes other than those of the qualifying activity in question.

(3) In calculating for the purposes of section 58 the balance left after deducting a first-year allowance, a reduction under subsection (1) is to be disregarded.

206 Single asset pool etc.

(1) Qualifying expenditure to which this subsection applies, if allocated to a pool, must be allocated to a single asset pool.

(2) Subsection (1) applies to qualifying expenditure incurred by a person carrying on a qualifying activity—
(a) partly for the purposes of the qualifying activity, and
(b) partly for other purposes.

(3) If a person is required to bring a disposal value into account in a pool for a chargeable period because the plant or machinery begins to be used partly for purposes other than those of the qualifying activity, an amount equal to that disposal value is allocated (as expenditure on the plant or machinery) to a single asset pool for that chargeable period.

(4) In the case of a single asset pool under subsection (1), there is no final chargeable period or disposal event merely because the plant or machinery begins to be used partly for purposes other than those of the qualifying activity.

207 Reduction of allowances and charges on expenditure in single asset pool

(1) This section applies if a person's expenditure is in a single asset pool under section 206(1) or (3).

(2) The amount of—
(a) any writing-down allowance or balancing allowance to which the person is entitled, or
(b) any balancing charge to which the person is liable,

must be reduced to an amount which is just and reasonable having regard to the relevant circumstances.

(3) The relevant circumstances include, in particular, the extent to which it appears that the plant or machinery was used in the chargeable period in question for purposes other than those of the person's qualifying activity.

(4) In calculating under section 59 the amount of unrelieved qualifying expenditure carried forward, a reduction of a writing-down allowance under subsection (2) is to be disregarded.

(5) If a person entitled to a writing-down allowance for a chargeable period—
(a) does not claim the allowance, or
(b) claims less than the full amount of the allowance,

the unrelieved qualifying expenditure carried forward from the period is to be treated as not reduced or (as the case may be) only proportionately reduced.

208 Effect of significant reduction in use for purposes of qualifying activity

(1) This section applies if—

(a) expenditure is allocated to a single asset pool under this Chapter,

(b) there is such a change of circumstances as would make it appropriate for any reduction falling to be made under section 207—

(i) for the chargeable period in which the change takes place ("the relevant chargeable period"), or

(ii) for any subsequent chargeable period,

to represent a larger proportion of the amount reduced than would have been appropriate apart from the change,

(c) no disposal value in respect of the plant or machinery would, apart from this section, fall to be brought into account for the relevant chargeable period, and

(d) the market value of the plant or machinery at the end of the relevant chargeable period exceeds the available qualifying expenditure in that pool for that period by more than £1 million.

(2) If this section applies—

(a) a disposal value is required to be brought into account in the single asset pool for the relevant chargeable period, and

(b) section 206 applies as if, at the beginning of the following chargeable period, expenditure had been incurred on the provision of the plant or machinery of an amount equal to the disposal value brought into account as a result of paragraph (a).

Modifications etc. (not altering text)

C36 S. 208(1) modified by 1993 c. 34, s. 93A(6) (as inserted (with effect as mentioned in s. 80(2) of the inserting Act) by Finance Act 2002 (c. 23), s. 80, **Sch. 24 para. 4**) (with Sch. 23 para. 25))

CHAPTER 16

PARTIAL DEPRECIATION SUBSIDIES

209 Meaning of "partial depreciation subsidy"

In this Chapter "partial depreciation subsidy" means a sum which—

(a) is payable directly or indirectly to a person who has incurred qualifying expenditure for the purposes of a qualifying activity,

(b) is in respect of, or takes account of, part of the depreciation of the plant or machinery resulting from its use for the purposes of that activity, and

(c) does not fall to be taken into account as income of that person or in calculating the profits of any qualifying activity carried on by him.

210 Reduction of first-year allowances

(1) If—

(a) a person has incurred qualifying expenditure for the purposes of a qualifying activity carried on by him, and

(b) it appears that a partial depreciation subsidy is, or will be, payable to him in the period during which the plant or machinery will be used for the purposes of that qualifying activity,

the amount of any first-year allowance in respect of that expenditure must be reduced to an amount which is just and reasonable having regard to the relevant circumstances.

(2) In calculating for the purposes of section 58 the balance left after deducting a first-year allowance, a reduction under subsection (1) is to be disregarded.

211 Single asset pool etc.

(1) Qualifying expenditure to which this subsection applies, if allocated to a pool, must be allocated to a single asset pool.

(2) Subsection (1) applies to qualifying expenditure if a partial depreciation subsidy relating to the plant or machinery has been paid to the person who incurred the expenditure.

(3) Subsection (4) applies if—

(a) qualifying expenditure has been allocated to a pool, and

(b) a partial depreciation subsidy relating to the plant or machinery is paid to that person.

(4) For the chargeable period in which the partial depreciation subsidy is paid—

(a) the person is required to bring a disposal value into account in the pool referred to in subsection (3), and

(b) an amount equal to the disposal value is allocated (as expenditure on the plant or machinery) to a single asset pool.

(5) If qualifying expenditure in respect of any plant or machinery is in a single asset pool under this section, there is no further allocation of that qualifying expenditure because a further partial depreciation subsidy is paid in respect of that plant or machinery.

212 Reduction of allowances and charges on expenditure in single asset pool

(1) This section applies if expenditure is in a single asset pool under section 211(1) or (4).

(2) The amount of—

(a) any writing-down allowance or balancing allowance to which the person is entitled, or

(b) any balancing charge to which the person is liable,

must be reduced to an amount which is just and reasonable having regard to the relevant circumstances.

(3) In calculating under section 59 the amount of unrelieved qualifying expenditure carried forward, a reduction of a writing-down allowance under subsection (2) is to be disregarded.

(4) If a person entitled to a writing-down allowance for a chargeable period—

(a) does not claim the allowance, or

(b) claims less than the full amount of the allowance,

the unrelieved qualifying expenditure carried forward from the period is to be treated as not reduced or (as the case may be) only proportionately reduced.

CHAPTER 17

ANTI-AVOIDANCE

Relevant transactions

213 Relevant transactions: sale, hire-purchase (etc.) and assignment

(1) For the purposes of this Chapter, a person ("B") enters into a relevant transaction with another ("S") if—

- (a) S sells plant or machinery to B,
- (b) B enters into a contract with S providing that B shall or may become the owner of plant or machinery on the performance of the contract, or
- (c) S assigns to B the benefit of a contract providing that S shall or may become the owner of plant or machinery on the performance of the contract.

(2) For the purposes of this Chapter, references to B's expenditure under a relevant transaction are references—

- (a) in the case of a sale within subsection (1)(a), to B's capital expenditure on the provision of the plant or machinery by purchase,
- (b) in the case of a contract within subsection (1)(b), to B's capital expenditure under the contract so far as it relates to the plant or machinery, or
- (c) in the case of an assignment within subsection (1)(c), to B's capital expenditure under the contract so far as it relates to the plant or machinery or is by way of consideration for the assignment.

(3) If—

- (a) B is treated under section 14 (use for qualifying activity of plant or machinery which is a gift) as having incurred capital expenditure on the provision of plant or machinery, and
- (b) the donor of the plant or machinery was S,

B is to be treated for the purposes of this Chapter as having incurred capital expenditure on the provision of the plant or machinery by purchasing it from S.

Restrictions on allowances

214 Connected persons

Allowances under this Part are restricted under sections 217 and 218 if—

- (a) B enters into a relevant transaction with S, and
- (b) B and S are connected with each other.

215 Transactions to obtain allowances

Allowances under this Part are restricted under sections 217 and 218 if—

- (a) B enters into a relevant transaction with S, and
- (b) it appears that the sole or main benefit which (but for this section) might have been expected to accrue to B or S, or to any other party, from—
  - (i) the relevant transaction, or

(ii) transactions of which the relevant transaction is one,

was obtaining an allowance under this Part.

216 Sale and leaseback, etc.

(1) Allowances under this Part are restricted under sections 217 and 218 if—

(a) B enters into a relevant transaction with S, and

(b) the plant or machinery—

(i) continues to be used for the purposes of a qualifying activity carried on by S, or

(ii) is used after the date of the transaction for the purposes of a qualifying activity carried on by S or by a person (other than B) who is connected with S, without having been used since that date for the purposes of any other qualifying activity except that of leasing the plant or machinery.

(2) In this section—

"the date of the transaction" means the date of the sale, the making of the contract or the assignment referred to in section 213(1)(a) to (c), and

"qualifying activity" includes any activity listed in section 15(1) even if any profits or gains from it are not chargeable to tax.

217 No first-year allowance for B's expenditure

(1) If this section applies as a result of section 214, 215 or 216, a first-year allowance is not to be made in respect of B's expenditure under the relevant transaction.

(2) Any first-year allowance which is prohibited by subsection (1), but which has already been made, is to be withdrawn.

(3) If plant or machinery is the subject of a sale and finance leaseback (as defined in section 221) section 223 applies instead of this section.

218 Restriction on B's qualifying expenditure

(1) If this section applies as a result of section 214, 215 or 216, the amount, if any, by which B's expenditure under the relevant transaction exceeds D is to be left out of account in determining B's available qualifying expenditure.

D is defined in subsections (2) and (3).

(2) If S is required to bring a disposal value into account under this Part because of the relevant transaction, D is that disposal value.

(3) If S is not required to bring a disposal value into account under this Part because of the relevant transaction, D is whichever of the following is the smallest—

(a) the market value of the plant or machinery;

(b) if S incurred capital expenditure on the provision of the plant or machinery, the amount of that expenditure;

(c) if a person connected with S incurred capital expenditure on the provision of the plant or machinery, the amount of that expenditure.

(4) If plant or machinery is the subject of a sale and finance leaseback (as defined in section 221), section 224 or 225 applies instead of this section.

[F173Finance leases and certain operating leases]

Textual Amendments

F173 S. 219 cross-heading substituted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 15(5)**

219 Meaning of "finance lease"

(1) In this Chapter "finance lease" means any arrangements—

(a) which provide for plant or machinery to be leased or otherwise made available by a person ("the lessor") to another person ("the lessee"), and

(b) which, under **[**F174generally accepted accounting practice**]**—

(i) fall (or would fall) to be treated, in the accounts of the lessor or a person connected with the lessor, as a finance lease or a loan, or

(ii) are comprised in arrangements which fall (or would fall) to be so treated.

[F175and which are not a long funding lease in the case of the lessor.**]**

F176(2) . . . .

(3) In this section "accounts", in relation to a company, includes any accounts which—

(a) relate to two or more companies of which that company is one, and

[F177(b) are drawn up in accordance with generally accepted accounting practice.**]**

Textual Amendments

F174 Words in s. 219(1) substituted (24.7.2002) by Finance Act 2002 (c. 23), **s. 103(4)(g)**

F175 Words in s. 219(1)(b) inserted (with effect in accordance with Sch. 9 para. 14(3) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 14(2)**

F176 S. 219(2) repealed (with effect as mentioned in s. 107 of the amending Act) by Finance Act 2002 (c. 23), s. 141, **Sch. 40 Pt. 3(16)**

F177 S. 219(3)(b) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 33**

220 Allocation of expenditure to a chargeable period

[F178(A1) Subsection (1) applies to a company for a chargeable period if—

(a) at the end of the ICTA period of account which is the basis period for the chargeable period, the company is a member of a group, and

(b) the last day of that ICTA period of account is not also the last day of an ICTA period of account of the principal company of the group.**]**

(1) Subject to subsection (2), if **[**F179the company**]** incurs at any time in **[**F180the chargeable period**]** capital expenditure on the provision of plant or machinery for leasing under a finance lease **[**F181or under a qualifying operating lease (see subsection (4))**]** —

(a) the part of the expenditure which is proportional to the part of that chargeable period falling before that time is not to be taken into account in determining that [F182 company's] available qualifying expenditure for that period, but

(b) this does not prevent that part of the expenditure being taken into account in determining that [F182 company's] available qualifying expenditure for any subsequent chargeable period.

(2) Subsection (1)(a) does not apply to a chargeable period if a disposal event occurs in that period in respect of the plant or machinery.

[F183 (3) The following provisions have effect for the interpretation of this section.

(4) A "qualifying operating lease" is a plant or machinery lease that meets the following conditions—

(a) it is not a finance lease,

(b) it is a funding lease,

(c) its term is longer than 4 years but not longer than 5 years.

(5) An ICTA period of account is the basis period for a chargeable period if the chargeable period coincides with, or falls within, the ICTA period of account.

(6) An "ICTA period of account" is a period of account as defined in section 832(1) of ICTA.

(7) The provisions of section 170(3) to (6) of TCGA 1992 apply to determine for the purposes of this section—

(a) whether a company is member of a group, and

(b) which company is the principal company of the group.

(8) But, in applying those provisions for the purposes of this section, a company ("the subsidiary company") that does not have ordinary share capital is to be treated as being a qualifying 75% subsidiary of another company ("the parent company") if the parent company—

(a) has control of the subsidiary company F184 ..., and

(b) is beneficially entitled to the appropriate proportion of profits and assets.

(9) The parent company is beneficially entitled to the appropriate proportion of profits and assets if (and only if) it—

(a) is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the subsidiary company, and

(b) would be beneficially entitled to at least 75% of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(10) The provisions of Schedule 18 to ICTA (equity holders and profits or assets etc) also apply for the purposes of this section.

(11) In this section, the following expressions have the same meaning as in Chapter 6A of Part 2 (interpretation of provisions about long funding leases)—

"funding lease",

"plant or machinery lease",

"term", in relation to a lease.]

Textual Amendments

F178 S. 220(A1) inserted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 15(2)**

F179 Words in s. 220(1) substituted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 15(3)(a)**

F180 Words in s. 220(1) substituted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 15(3)(b)**

F181 Words in s. 220(1) inserted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 15(3)(c)**

F182 Word in s. 220(1) substituted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 15(3)(d)**

F183 S. 220(3)-(11) inserted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 15(4)**

F184 Words in s. 220(8)(a) omitted (6.4.2007) by virtue of Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 402**, Sch. 3 Pt. 1 (with Sch. 2)

Sale and finance leasebacks

221 Meaning of "sale and finance leaseback"

(1) For the purposes of this section and sections 222 to 228, plant or machinery is the subject of a sale and finance leaseback if—

(a) B enters into a relevant transaction with S,

(b) after the date of the transaction, the plant or machinery—

(i) continues to be used for the purposes of a qualifying activity carried on by S,

(ii) is used for the purposes of a qualifying activity carried on by S or by a person (other than B) who is connected with S, without having been used since that date for the purposes of any other qualifying activity except that of leasing the plant or machinery, or

(iii) is used for the purposes of a non-qualifying activity carried on by **[**[F185]S or by a person (other than B) who is connected with S**]** , without having been used since that date for the purposes of a qualifying activity except that of leasing the plant or machinery, and

(c) it is directly or indirectly as a consequence of having been leased under a finance lease that the plant or machinery is available to be so used after that date.

(2) In this section—

"the date of the transaction" means the date of the sale, the making of the contract or the assignment referred to in section 213(1)(a) to (c),

"non-qualifying activity" means any activity which is not a qualifying activity, and

"qualifying activity" includes any activity listed in section 15(1) even if any profits or gains from it are not chargeable to tax.

Textual Amendments

F185 Words in s. 221(1)(b)(iii) substituted (with effect as mentioned in s. 69(2) of the amending Act) by Finance Act 2001 (c. 9), s. 69(1), **Sch. 21 para. 3**

222 Disposal value restricted

(1) If—

(a) plant or machinery is the subject of a sale and finance leaseback, and

(b) S is required to bring a disposal value into account under this Part because of the relevant transaction,

the disposal value is whichever of the amounts in subsection (2) is the smallest.

(2) The amounts are—

(a) the disposal value that S would be required to bring into account apart from subsection (1);

(b) the market value of the plant or machinery;

(c) if S incurred capital expenditure on the provision of the plant or machinery, the notional written-down value of that capital expenditure;

(d) if a person connected with S incurred capital expenditure on the provision of the plant or machinery, the notional written-down value of that capital expenditure.

(3) The notional written-down value is—

$$\mathrm{QE} - A$$

where—
QE is the expenditure incurred by S, or the person connected with S, on the plant or machinery,
A is the total of all allowances which could have been made to S, or the person connected with S, in respect of that expenditure if—
(a) that expenditure had been qualifying expenditure,
(b) that expenditure had been the only expenditure that had ever been taken into account in determining his available qualifying expenditure,
(c) that expenditure had been treated as long-life asset expenditure only if it is in fact such expenditure, and
(d) all allowances had been made in full.

(4) This section does not apply if the finance lease or any transaction or series of transactions of which it forms a part makes provision such as is described in section 225(1) (sale and finance leasebacks: B's qualifying expenditure if lessor not bearing non-compliance risk).

223 No first-year allowance for B's expenditure

(1) If plant or machinery is the subject of a sale and finance leaseback, a first-year allowance is not to be made in respect of B's expenditure under the relevant transaction.

(2) Any first-year allowance which is prohibited by subsection (1), but which has already been made, is to be withdrawn.

224 Restriction on B's qualifying expenditure

(1) If plant or machinery is the subject of a sale and finance leaseback the amount, if any, by which B's expenditure under the relevant transaction exceeds D is to be left out of account in determining B's available qualifying expenditure.

D is defined in subsections (2) and (3).

(2) If S is required to bring a disposal value into account under this Part because of the relevant transaction, D is that disposal value (determined in accordance with section 222).

(3) If S is not required to bring a disposal value into account under this Part because of the relevant transaction, D is whichever of the following is the smallest—

(a) the market value of the plant or machinery;

(b) if S incurred capital expenditure on the provision of the plant or machinery, the notional written-down value of that capital expenditure;

(c) if a person connected with S incurred capital expenditure on the provision of the plant or machinery, the notional written-down value of that capital expenditure.

(4) In this section "the notional written-down value", in relation to expenditure incurred by a person on the provision of plant or machinery, has the meaning given by section 222(3).

(5) This section does not apply if the finance lease or any transaction or series of transactions of which it forms a part makes provision such as is described in section 225(1).

225 B's qualifying expenditure if lessor not bearing non-compliance risk

(1) This section applies if plant or machinery is the subject of a sale and finance leaseback, and the finance lease, or any transaction or series of transactions of which it forms a part, makes provision which—

(a) removes from the lessor the whole, or the greater part, of any risk, which would otherwise fall directly or indirectly on the lessor, of any person sustaining a loss if payments under the lease are not made in accordance with its terms, and

(b) does so otherwise than by means of guarantees from persons connected with the lessee.

(2) In such a case the following are not qualifying expenditure for the purposes of this Part —

(a) B's expenditure under the relevant transaction;

(b) if the lessor is a different person from B, the expenditure incurred by the lessor on the provision of the plant or machinery.

(3) For the purposes of determining whether this section applies, the lessor and the persons connected with the lessor are treated as the same person.

226 Qualifying expenditure limited in subsequent transactions

(1) Subsection (2) applies if—

(a) plant or machinery has been the subject of a sale and finance leaseback,

(b) S was required to bring a disposal value into account under this Part because of the relevant transaction,

(c) at any time after that event, a person ("P") becomes the owner of the plant or machinery as a result of incurring capital expenditure, and

(d) P's allowances are not restricted by any other provision of this Chapter.

(2) The amount of P's qualifying expenditure is limited to the sum of—

(a) the amount given by section 222 as the amount of S's disposal value, and

(b) so much of the actual amount of the expenditure as is treated as expenditure on the provision of plant or machinery under section 25 (building alterations connected with installation of plant or machinery).

Sale and leaseback or sale and finance leaseback: election for special treatment

227 Circumstances in which election may be made

(1) Section 228 applies if—

(a) B enters into a relevant transaction with S,

(b) the plant or machinery—

(i) is within section 216(1)(b) (sale and leaseback), or

(ii) is the subject of a sale and finance leaseback (see section 221),

(c) the conditions set out in subsection (2) are met, and

(d) B and S elect that section 228 should apply.

(2) The conditions are—

(a) that S incurred capital expenditure on the provision of the plant or machinery,

(b) that the plant or machinery was unused and not second-hand at or after the time when it was acquired by S,

(c) that the plant or machinery was acquired by S otherwise than as a result of a transaction to which section 217, 218, 223 or 224 applies,

(d) that the relevant transaction is effected not more than 4 months after the first occasion on which the plant or machinery is brought into use by any person for any purpose, and

(e) that S has not—

(i) made a claim for an allowance under this Act in respect of expenditure incurred on the provision of the plant or machinery,

(ii) made a tax return in which such expenditure is taken into account in determining his available qualifying expenditure for the purposes of this Part, or

(iii) given notice of any such amendment of a tax return as provides for such expenditure to be so taken into account.

(3) In subsection (2)(b) and (c), the references to the plant or machinery being acquired by S are, in a case where the relevant transaction between S and B falls within section 213(1)(c) (assignment), references to the making of the contract the benefit of which S assigns to B.

(4) An election under this section—
  (a) must be made by notice to [F39an officer of Revenue and Customs] no later than 2 years after the date of the transaction, and
  (b) is irrevocable.

(5) Nothing in—
  (a) section 42 of, or Schedule 1A to, TMA 1970 (claims and elections for income tax purposes), or
  (b) paragraphs 54 to 60 of Schedule 18 to FA 1998 (claims and elections for corporation tax purposes),

applies to such an election.

(6) In subsection (4) "the date of the transaction" means the date of the sale, the making of the contract or the assignment referred to in section 213(1)(a) to (c).

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

228 Effect of election: relaxation of restriction on B's qualifying expenditure, etc.

(1) The effect of an election under section 227 in relation to B is that subsections (2) and (3) apply instead of section 218 or 224 (restriction on B's qualifying expenditure).

(2) The amount, if any, by which B's expenditure under the relevant transaction exceeds D is to be left out of account in determining B's available qualifying expenditure.

(3) D is whichever of the following is the smaller—
  (a) if S incurred capital expenditure on the provision of the plant or machinery, the amount of that expenditure;
  (b) if a person connected with S incurred capital expenditure on the provision of the plant or machinery, the amount of that expenditure.

(4) Nothing in subsections (1) to (3) prevents section 225 from applying.

(5) The effect of an election under section 227 in relation to S is—
  (a) that no allowance is to be made to S under this Act in respect of the capital expenditure on the provision of the plant or machinery, and
  (b) that the whole of that expenditure must be left out of account in determining the amount for any period of Ss' available qualifying expenditure for the purposes of this Part.

[F186Finance leaseback: parties' income and profits

Textual Amendments

F186 Ss. 228A-228J and cross-heading inserted (with effect in accordance with s. 134(3) of the amending Act) by Finance Act 2004 (c. 12), **s. 134**

228A Application of sections 228B to 228E

(1) Sections 228B to 228E apply where—

(a) plant or machinery is the subject of a sale and finance leaseback for the purposes of section 221, and

(b) section 222 (restriction of disposal value) applies.

(2) [F187 Sections 228B and 228C] also apply, with the modifications set out in section 228F, where plant or machinery is the subject of a lease and finance leaseback (as defined in section 228F).

Textual Amendments

F187 Words in s. 228A(2) substituted (with effect in accordance with Sch. 5 para. 17(5)-(7) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 5 para. 17(2)**

228B Lessee's income or profits: deductions

(1) For the purpose of income tax or corporation tax, in calculating the lessee's income or profits for a period of account the amount deducted in respect of amounts payable under the leaseback may not exceed the permitted maximum.

(2) The permitted maximum is the total of—

(a) finance charges shown in the accounts, and

(b) depreciation, taking the value of the plant or machinery at the beginning of the leaseback to be the restricted disposal value.

(3) In relation to a period of account during which the leaseback terminates, the permitted maximum shall also include an amount calculated in accordance with subsection (4).

(4) The calculation is—

$$\text{CurrentBookValue} \times \frac{\text{OriginalConsideration}}{\text{OriginalBookValue}}$$

where—

" Current Book Value " means the net book value of the leased plant or machinery immediately before the termination,

" Original Consideration " means the consideration payable to S for entering into the relevant transaction, and

" Original Book Value " means the net book value of the leased plant or machinery at the beginning of the leaseback.

228C Lessee's income or profits: termination of leaseback

(1) Subsection (2) applies where the leaseback terminates.

(2) For the purpose of the calculation of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period in which the

termination occurs shall be increased by an amount calculated in accordance with subsection (3).

(3) The calculation is—

$$NetConsideration \times \frac{CurrentBookValue}{OriginalBookValue}$$

where—

“ Net Consideration ” means—

(a) the consideration payable to S for entering into the relevant transaction, minus

(b) the restricted disposal value,

“ Current Book Value ” means the net book value of the leased plant or machinery immediately before the termination, and

“ Original Book Value ” means the net book value of the leased plant or machinery at the beginning of the leaseback.

(4) In this section “ relevant qualifying activity ” means the qualifying activity for the purposes of which the leased plant or machinery was used immediately before the termination.

(5) Section 228B has no effect on the treatment for the purposes of income tax or corporation tax of amounts received by way of refund on the termination of a leaseback of amounts payable under it.

(6) In subsection (5), “ amounts received by way of refund ” includes any amount that would be so received in respect of the lessee’s interest under the leaseback if any amounts due to the lessor under the leaseback were disregarded.

228D Lessor’s income or profits

(1) This section applies in relation to the calculation of the lessor’s income or profits for a period of account for the purpose of income tax or corporation tax.

(2) Where—

(a) an amount receivable in respect of the lessor’s interest under the leaseback falls to be taken into account in that calculation, and

(b) that amount is reduced by an amount due to the lessee under the leaseback,

that reduction shall be disregarded when taking the amount receivable into account.

(3) The amounts receivable in respect of the lessor’s interest under the leaseback that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the permitted threshold (whether or not subsection (2) applies).

(4) The permitted threshold is the total of—

(a) gross earnings, and

(b) the allowable proportion of the capital repayment.

(5) In subsection (4)(a) “ gross earnings ” means the amount shown in the lessor’s accounts in respect of the lessor’s gross earnings under the leaseback.

(6) In subsection (4)(b) " allowable proportion of the capital repayment " means the amount obtained by this calculation—

$$\text{RestrictedDisposalValue} \times \frac{\text{InvestmentReductionForPeriod}}{\text{NetInvestment}}$$

where—

" Investment Reduction For Period " means the amount shown in the lessor's accounts in respect of the reduction in net investment in the leaseback, and

" Net Investment " means the amount shown in the lessor's accounts as the lessor's net investment in the leaseback at the beginning of its term.

(7) This section does not apply to a leaseback if the lessee is a lessee by way of an assignment made before 17 March 2004.

Modifications etc. (not altering text)

C37 S. 228D modified (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 5 para. 17(9)**

228E Lessor's income or profits: termination of leaseback

(1) Subsection (2) applies where—

(a) the leaseback terminates,

(b) the lessor disposes of the plant or machinery, and

(c) the amount of the disposal value required to be brought into account because of that disposal is limited by section 62.

(2) For the purpose of income tax or corporation tax, in calculating the lessor's income or profits for the period in which the termination occurs the amount deducted in respect of any amount refunded to the lessee may not exceed the amount to which the disposal value is limited by section 62.

228F Lease and finance leaseback

(1) **[**[F188]Sections 228B and 228C**]** apply, with the following modifications, where plant or machinery is the subject of a lease and finance leaseback.

(2) In determining the permitted maximum for the purposes of section 228B, depreciation shall be disregarded.

(3) In the calculation under section 228C(3), the amount of the consideration referred to in subsection (6)(b) of this section shall be substituted for the Net Consideration.

[F189](4) . . . .

(5) Plant or machinery is the subject of a lease and finance leaseback if—

(a) a person ("S") leases the plant or machinery to another ("B"),

(b) after the date of that transaction, the use of the plant or machinery falls within sub-paragraph (i), (ii) or (iii) of section 221(1)(b), and

(c) it is directly as a consequence of having been leased under a finance lease that the plant or machinery is available to be so used after that date.

(6) For the purposes of subsection (5), S leases the plant or machinery to B only if—

(a) S grants B rights over the plant or machinery,

(b) consideration is given for that grant, and

(c) S is not required to bring all of that consideration into account under this Part.

(7) Plant or machinery is not the subject of a lease and finance leaseback for the purposes of this section in any case where the condition in subsection (6)(c) is met only because of an election under section 199 made before 18 May 2004.

(8) In the application of [F190sections 228B and 228C] in relation to a lease and finance leaseback—

(a) references to the lessee are references to the person referred to as S in this section, F191...

F192(b) . . . .

Textual Amendments

F188 Words in s. 228F(1) substituted (with effect in accordance with Sch. 5 para. 17(5)-(7) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 5 para. 17(3)(a)**

F189 S. 228F(4) repealed (with effect in accordance with Sch. 5 para. 17(5)-(7) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 17(3)(b), **Sch. 27 Pt. 2(3)**

F190 Words in s. 228F(8) substituted (with effect in accordance with Sch. 5 para. 17(5)-(7) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 5 para. 17(3)(c)**

F191 Word in s. 228F(8)(a) repealed (with effect in accordance with Sch. 5 para. 17(5)-(7) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 17(3)(c), **Sch. 27 Pt. 2(3)**

F192 S. 228F(8)(b) repealed (with effect in accordance with Sch. 5 para. 17(5)-(7) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 17(3)(c), **Sch. 27 Pt. 2(3)**

228G Leaseback not accounted for as finance lease in accounts of lessee

(1) Sections 228B and 228C are subject to this section in their application in relation to a leaseback that is not accounted for as a finance lease in the accounts of the lessee.

(2) Subsection (3) applies where the leaseback is accounted for as a finance lease in the accounts of a person connected with the lessee; and in that subsection " relevant calculation " means the calculation of—

(a) the permitted maximum for the purposes of section 228B, or

(b) the amount by which the income or profits of the lessee are to be increased in accordance with section 228C.

(3) Where an amount that falls to be used for the purposes of a relevant calculation—

(a) cannot be ascertained by reference to the lessee's accounts because the leaseback is not accounted for as a finance lease in those accounts, but

(b) can be ascertained by reference to the connected person's accounts for one or more periods,

that amount as ascertained by reference to the connected person's accounts shall be used for the purposes of the relevant calculation.

(4) Subsections (5) and (6) apply in a case where the leaseback is not accounted for as a finance lease in the accounts of a person connected with the lessee.

(5) Sections 228B and 228C do not apply in relation to the leaseback.

(6) If the term of the leaseback begins on or after 18 May 2004 then, for the purposes of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period of account during which the term of the leaseback begins shall be increased by—
- (a) the net consideration for the purposes of section 228C(3) (in the case of a sale and finance leaseback), or
- (b) the consideration referred to in section 228F(6)(b) (in the case of a lease and finance leaseback).

(7) For the purposes of this section the leaseback is accounted for as a finance lease in a person's accounts if—
- (a) the leaseback falls, under generally accepted accounting practice, to be treated in that person's accounts as a finance lease or loan, or
- (b) in a case where the leaseback is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.

228H Sections 228A to 228G: supplementary

(1) In sections 228A to 228G—

" lessee " does not include a person who is lessee by way of an assignment;

the " net book value "of leased plant or machinery means the book value of the plant or machinery having regard to any relevant entry in the lessee's accounts, but—
- (a) also having regard to depreciation up to the time in question, and
- (b) disregarding any revaluation gains or losses and any impairments;

" restricted disposal value " means the disposal value under section 222;

" termination " in relation to a leaseback includes (except in section 228E)—
- (a) the assignment of the lessee's interest,
- (b) the making of any arrangements (apart from an assignment of the lessee's interest) under which a person other than the lessee becomes liable to make some or all payments under the leaseback, and
- (c) a variation as a result of which the leaseback ceases to be a finance lease.

(2) In a case where accounts drawn up are not correct accounts, or no accounts are drawn up—
- (a) the provisions of sections 228A to 228G apply as if correct accounts had been drawn up, and
- (b) amounts referred to in any of those sections as shown in accounts are those that would have been shown in correct accounts.

(3) In a case where accounts are drawn up in reliance upon amounts derived from an earlier period of account for which correct accounts were not drawn up, or no accounts were drawn up, amounts referred to in sections 228A to 228G as shown in the accounts for the later period are those that would have been shown if correct accounts had been drawn up for the earlier period.

(4) In subsections (2) and (3) " correct accounts " means accounts drawn up in accordance with generally accepted accounting practice.

228J Plant or machinery subject to further operating lease

(1) This section applies where—

(a) plant or machinery is the subject of—

(i) a sale and finance leaseback, or

(ii) a lease and finance leaseback, and

(b) some or all of the plant or machinery becomes, while the subject of the leaseback, also the subject of a lease in relation to which the following conditions are met—

(i) the term of the lease begins on or after 18 May 2004;

(ii) S, or a person connected with S, is the lessee under the lease;

(iii) the lease is not accounted for as a finance lease in the accounts of the lessee.

(2) For the purpose of income tax or corporation tax, in calculating the lessee's income or profits for a period of account the amount deducted in respect of amounts payable under the operating lease shall not exceed the relevant amount.

(3) Subsections (4) and (5) apply in relation to the calculation of the lessor's income or profits for a period of account for the purpose of income tax or corporation tax.

(4) Where—

(a) an amount receivable in respect of the lessor's interest under the operating lease falls to be taken into account in that calculation, and

(b) that amount is reduced by an amount due to the lessee under the operating lease,

that reduction shall be disregarded when taking the amount receivable into account.

(5) The amounts receivable in respect of the lessor's interest under the operating lease that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the relevant amount (whether or not subsection (4) applies).

(6) Where only some of the plant or machinery is the subject of the operating lease, subsections (2) to (5) shall apply subject to such apportionments as may be just and reasonable.

(7) For the purposes of this section a lease is accounted for as a finance lease in a person's accounts if—

(a) the lease falls, under generally accepted accounting practice, to be treated in that person's accounts as a finance lease or loan, or

(b) in a case where the lease is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.

(8) In this section—

" lease and finance leaseback " has the meaning given in section 228F;

" lessee " means the lessee under the operating lease;

" lessor " means the lessor under the operating lease;

" operating lease " means the lease referred to in subsection (1)(b);

" relevant amount " means an amount equal to the permitted maximum under section 228B as it applies in relation to the leaseback. **]**

[F193 Disposal of plant or machinery subject to lease where income retained

Textual Amendments

F193 Ss. 228K-228M and cross-heading inserted (with effect in accordance with s. 84(5)(6) of the amending Act) by Finance Act 2006 (c. 25), **s. 84(3)**

228K Disposal of plant or machinery subject to lease where income retained

(1) This section applies for corporation tax purposes if—

(a) on any day ("the relevant day") a person ("the lessor") carries on a business of leasing plant or machinery (the "leasing business"),

(b) on the relevant day the lessor sells or otherwise disposes of any relevant plant or machinery subject to a lease to another person,

(c) the lessor remains entitled immediately after the disposal to some or all of the rentals under the lease in respect of the plant or machinery which are payable on or after the relevant day, and

(d) the lessor is required to bring a disposal value of the plant or machinery into account under this Part.

(2) The disposal value to be brought into account is determined as follows.

(3) If the amount or value of the consideration for the disposal exceeds the limit that would otherwise be imposed on the amount of the disposal value by section 62 (general limit) or 239 (limit on disposal value where additional VAT rebate)—

(a) that limit is not to apply, and

(b) the whole of the amount or value of the consideration for the disposal is to be the disposal value to be brought into account.

(4) In any other case, the disposal value to be brought into account is the sum of—

(a) the amount or value of the consideration for the disposal, and

(b) the value of the rentals under the lease in respect of the plant or machinery (see subsections (7) and (8)) which are payable on or after the relevant day and to which the lessor remains entitled immediately after the disposal,

but subject to the limit imposed on the amount of the disposal value by section 62 or 239.

(5) If—

(a) any of the rentals under the lease are receivable by the lessor on or after the relevant day, and

(b) the value of any of those rentals is represented in the amount of the disposal value under subsection (4)(b),

the amount of those rentals that is equal to their value as so represented is left out of account in calculating the income of the lessor's leasing business for corporation tax purposes.

(6) If, in determining under subsection (5) the amount of any rental to be so left out of account, it is necessary to apportion the amount of the rental, the apportionment is to be made on a just and reasonable basis.

(7) For the purposes of this section, the value of any rentals under the lease in respect of the plant or machinery is taken to be the amount of the net present value of the rentals (see section 228L).

(8) If any land or other asset which is not plant or machinery is subject to the lease, the value of any rentals under the lease in respect of the plant or machinery is taken to be so much of the amount of the net present value of the rentals as, on a just and reasonable basis, relates to the plant or machinery.

(9) This section is supplemented by—
- (a) section 228L (which provides rules for determining the net present value of the rentals), and
- (b) section 228M (which defines other expressions used in this section).

228L Determining the net present value of the rentals for purposes of s.228K

(1) For the purposes of section 228K, the amount of the net present value of the rentals is calculated as follows—

Step 1

Find the amount ("RI") of each rental payment—
- (a) which is payable at any time during the term of the lease, and
- (b) which is payable on or after the relevant day.

Step 2

For each rental payment find the day ("the payment day") on which it becomes payable.

Step 3

For each rental payment find the number of days in the period ("P") which—
- (a) begins with the relevant day, and
- (b) ends with the payment day.

Step 4

Calculate the net present value of each payment ("NPVRI") by applying the following formula—

$$\frac{RI}{(1+T)^{i}}$$

where—

T is the temporal discount rate, and

i is the number of days in P divided by 365.

Step 5

Add together each amount of NPVRI determined under step 4.

(2) For the purposes of this section the "term" of a lease has the meaning given in Chapter 6A of this Part.

(3) For the purposes of this section the "temporal discount rate" is 3.5% or such other rate as may be specified by regulations made by the Treasury.

(4) The regulations may make such provision as is mentioned in subsection (3)(b) to (f) of section 178 of FA 1989 (power of Treasury to set rates of interest).

(5) Subsection (5) of that section (power of Commissioners to specify rate by order in certain circumstances) applies in relation to regulations under this section as it applies in relation to regulations under that section.

228M Other definitions for the purposes of s.228K

(1) This section applies for the purposes of section 228K.

(2) "Business of leasing plant or machinery"—

(a) has the same meaning as in Part 2 of Schedule 10 to FA 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), or

(b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership).

(3) "Lease" includes—

(a) an underlease, sublease, tenancy or licence, and

(b) an agreement for any of those things.

(4) "Relevant plant or machinery", in relation to a business of leasing plant or machinery, means plant or machinery on whose provision expenditure is incurred wholly or partly for the purposes of the business.**]**

Miscellaneous and supplementary

229 Hire-purchase etc.

(1) This section applies if—

(a) a person carrying on a qualifying activity incurs capital expenditure on the provision of plant or machinery for the purposes of the qualifying activity, and

(b) the expenditure is incurred under a contract providing that the person shall or may become the owner of the plant or machinery on the performance of the contract.

(2) If—

(a) the person assigns the benefit of the contract to another before the plant or machinery is brought into use, and

(b) the circumstances are such that allowances to the assignee fall to be restricted under this Chapter,

section 68(3) (disposal value where person ceases to be entitled to benefit of contract before plant or machinery brought into use) does not apply.

(3) If the expenditure is incurred on the provision of plant or machinery for leasing under a finance lease—

(a) section 67(3) (expenditure due to be incurred under contract treated as incurred when plant or machinery brought into use), and

(b) section 68 (disposal values where person ceases to be entitled to benefit of contract),

do not apply.

(4) Subsection (5) applies if—

(a) a person is treated under section 67(4) as ceasing to own plant or machinery, and

(b) as a result of subsection (2) or (3), section 68(3) or (as the case may be) section 68 does not apply.

(5) If this subsection applies—

(a) the disposal value is the total of—

(i) any relevant capital sums, and

(ii) any capital expenditure that the person would have incurred if he had wholly performed the contract, but

(b) the person is to be treated, for the purpose only of bringing the disposal value into account, as having incurred the capital expenditure mentioned in paragraph (a)(ii) in the relevant chargeable period.

(6) "Relevant capital sums" means capital sums that the person receives or is entitled to receive by way of consideration, compensation, damages or insurance money in respect of—

(a) his rights under the contract, or

(b) the plant or machinery.

(7) The relevant chargeable period, for the purposes of subsection (5)(b), is the chargeable period in which the person is treated under section 67(4) as ceasing to own the plant or machinery.

230 Exception for manufacturers and suppliers

(1) The restrictions in sections 217 and 218 do not apply in relation to any plant or machinery if—

(a) the relevant transaction is within section 213(1)(a) or (b), and

(b) the conditions in subsection (3) are met.

(2) The restrictions in sections 222 to 225 do not apply in relation to any plant or machinery if—

(a) the plant or machinery is the subject of a sale and finance leaseback which is within section 213(1)(a) or (b), and

(b) the conditions in subsection (3) are met.

(3) The conditions are that—

(a) the plant or machinery has never been used before the sale or the making of the contract,

(b) S's business, or part of S's business, is the manufacture or supply of plant or machinery of that class, and

(c) the sale is effected or the contract made in the ordinary course of that business.

231 Adjustments of assessments etc.

All such assessments and adjustments of assessments are to be made as are necessary to give effect to this Chapter.

232 Meaning of connected person

(1) For the purposes of this Chapter one person is to be treated as connected with another if—

(a) they would be treated as connected under [F194 section 575], or

(b) they are to be treated as connected under subsection (2).

(2) If—

(a) a public authority has at any time acquired plant or machinery from another public authority otherwise than by purchase, and

(b) it is directly or indirectly as a consequence of having been leased under a finance lease that the plant or machinery is available for any use to which it is put,

the authority from whom the plant or machinery was acquired is to be treated, in relation to that plant or machinery, as connected with the acquiring authority and with every person connected with the acquiring authority.

(3) In subsection (2), “public authority” includes the Crown or any government or local authority.

(4) Subsection (2) does not apply in relation to section 219 (meaning of “finance lease”).

Textual Amendments

F194 Words in s. 232(1)(a) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 403** (with Sch. 2)

233 Additional VAT liabilities and rebates

This Chapter needs to be read with sections 241 to 245 (provision for cases where a person involved in a relevant transaction or a sale and finance leaseback incurs an additional VAT liability or receives an additional VAT rebate).

CHAPTER 18

ADDITIONAL VAT LIABILITIES AND REBATES

Introduction

234 Introduction

For the purposes of this Chapter—

(a) "additional VAT liability" and "additional VAT rebate" have the meaning given by section 547,

(b) the time when—

(i) a person incurs an additional VAT liability, or

(ii) an additional VAT rebate is made to a person,

is given by section 548, and

(c) the chargeable period in which an additional VAT liability or an additional VAT rebate accrues is given by section 549.

Additional VAT liability

235 Additional VAT liability treated as qualifying expenditure

(1) This section applies if a person—

(a) has incurred qualifying expenditure ("the original expenditure"), and

(b) incurs an additional VAT liability in respect of the original expenditure at a time when the plant or machinery is provided for the purposes of the qualifying activity.

(2) The additional VAT liability is to be treated as qualifying expenditure—

(a) which is incurred on the same plant or machinery as the original expenditure, and

(b) which may be taken into account in determining the person's available qualifying expenditure for the chargeable period in which the additional VAT liability accrues.

236 Additional VAT liability generates first-year allowance

(1) Subsection (2) applies if—

(a) the original expenditure was first-year qualifying expenditure, and

(b) the additional VAT liability is incurred at a time when the plant or machinery is provided for the purposes of the qualifying activity.

(2) The additional VAT liability is to be regarded for the purposes of this Part as first-year qualifying expenditure which—

(a) is incurred on the same plant or machinery and is the same type of first-year qualifying expenditure as the original expenditure, and

(b) entitles the person incurring the liability to a first-year allowance for the chargeable period in which the liability accrues.

(3) Subsections (3) and (4) of section 52 apply to first-year qualifying expenditure constituted by the additional VAT liability as they apply to other first-year qualifying expenditure.

(4) This section is subject to sections 237 and 241.

237 Exceptions to section 236

(1) An additional VAT liability is not first-year qualifying expenditure if at the time when the liability is incurred the plant or machinery is used for overseas leasing which is not protected leasing.

(2) An additional VAT liability is not first-year qualifying expenditure if, at the time when the liability is incurred, the original expenditure is treated under section 43 (plant or machinery subsequently primarily for use outside Northern Ireland) as expenditure which was never first-year qualifying expenditure.

Additional VAT rebate

238 Additional VAT rebate generates disposal value

(1) This section applies if—

(a) a person has incurred qualifying expenditure ("the original expenditure"),

(b) an additional VAT rebate is made to the person in respect of the original expenditure, and

(c) the person owns the plant or machinery on which the original expenditure was incurred at any time in the chargeable period in which the rebate is made.

(2) If (apart from this section) there would not be a disposal value to be brought into account in respect of the plant or machinery for the chargeable period in which the rebate accrues, the amount of the rebate must be brought into account as a disposal value for that chargeable period.

(3) If (apart from this section) there would be a disposal value to be brought into account in respect of the plant or machinery for the chargeable period in which the rebate accrues, the amount of the rebate must be brought into account as an addition to that disposal value.

239 Limit on disposal value where additional VAT rebate

(1) Subsection (2) applies if—

(a) a person is required to bring a disposal value into account in respect of any plant or machinery, and

(b) any additional VAT rebate or rebates has or have been made to him in respect of the original expenditure.

(2) The amount of the disposal value is limited to the amount of the original expenditure reduced by the total of any additional VAT rebates accruing in previous chargeable periods in respect of that expenditure.

But this is subject to subsections (3) to (6).

(3) Subsection (4) applies if the disposal value is required to be brought into account by section 238(2) (disposal value for additional VAT rebate on its own).

(4) The amount of the disposal value to be brought into account is limited to the amount of the original expenditure reduced by the amount of any disposal values brought into account in respect of the plant or machinery as a result of any earlier event.

(5) If—

(a) the person required to bring the disposal value into account has acquired the plant or machinery as a result of a transaction which was, or a series of transactions each of which was, between connected persons, and

(b) an additional VAT rebate has been made to any party to the transaction, or to any of the transactions,

the amount of the disposal value is limited to the greatest relevant expenditure of any of the parties.

(6) The relevant expenditure of a party is that party's qualifying expenditure on the provision of the plant or machinery, less any additional VAT rebate made to that party.

Short-life assets: balancing allowance

240 Additional VAT liability

(1) This section applies if a person—

(a) was entitled to a balancing allowance for the final chargeable period for a short-life asset pool for a qualifying activity,

(b) has incurred, after the end of that period, an additional VAT liability in respect of the original expenditure on the provision of the short-life asset, and

(c) has not brought the liability into account in determining the amount of the balancing allowance.

(2) The person is entitled to a further balancing allowance, of an amount equal to the additional VAT liability, for the chargeable period of the qualifying activity in which the additional VAT liability accrues.

Anti-avoidance

241 No first-year allowance in respect of additional VAT liability

(1) This section applies if—

(a) one person ("B") enters into a transaction with another person ("S") which is a relevant transaction for the purposes of Chapter 17 (anti-avoidance), and

(b) a first-year allowance in respect of B's expenditure under the relevant transaction is prohibited by section 217(1) or 223(1).

(2) A first-year allowance is not to be made in respect of any additional VAT liability incurred by B in respect of his expenditure under the relevant transaction.

(3) Any first-year allowance which is prohibited by subsection (2), but which has already been made, is to be withdrawn.

242 Restriction on B's qualifying expenditure: general

(1) This section applies instead of section 218 (restriction on B's qualifying expenditure in case other than sale and finance leaseback) if—

(a) apart from this subsection, section 218 would apply, and

(b) an additional VAT liability has been incurred by, or an additional rebate has been made to, any of the persons mentioned in that section.

(2) The amount, if any, by which E exceeds D is to be left out of account in determining B's available qualifying expenditure.

E and D are defined in subsections (3) to (6).

(3) Except where subsection (6) applies, E is the sum of—
- (a) B's expenditure under the relevant transaction, and
- (b) any additional VAT liability incurred by B in respect of that expenditure.

(4) If S is required to bring a disposal value into account under this Part because of the relevant transaction, D is that disposal value.

(5) If S is not required to bring a disposal value into account under this Part because of the relevant transaction, D is whichever of the following is the smallest—
- (a) the market value of the plant or machinery;
- (b) if S incurred capital expenditure on the provision of the plant or machinery, the amount of that expenditure—
  - (i) increased by the amount of any additional VAT liability incurred by S in respect of that expenditure, and
  - (ii) reduced by the amount of any additional VAT rebate made to S in respect of that expenditure;
- (c) if a person connected with S incurred capital expenditure on the provision of the plant or machinery, the amount of that expenditure—
  - (i) increased by the amount of any additional VAT liability incurred by that person in respect of that expenditure, and
  - (ii) reduced by the amount of any additional VAT rebate made to that person in respect of that expenditure.

(6) If—
- (a) S is not required to bring a disposal value into account under this Part because of the relevant transaction,
- (b) the smallest amount under subsection (5) is the market value of the plant or machinery, and
- (c) that value is determined inclusive of value added tax,

E is the amount of B's expenditure under the relevant transaction.

243 Restriction on B's qualifying expenditure: sale and finance leaseback

(1) This section applies instead of section 224 (restriction on B's qualifying expenditure in case of sale and finance leaseback) if—
- (a) apart from this subsection, section 224 would apply, and
- (b) an additional VAT liability has been incurred by B.

(2) The amount, if any, by which E exceeds D is to be left out of account in determining B's available qualifying expenditure.

E and D are defined in subsections (3) to (7).

(3) Except where subsection (7) applies, E is the sum of—
- (a) B's expenditure under the relevant transaction, and
- (b) any additional VAT liability incurred by B in respect of that expenditure.

(4) If S is required to bring a disposal value into account under this Part because of the relevant transaction, D is that disposal value (determined in accordance with section 222).

(5) If S is not required to bring a disposal value into account under this Part because of the relevant transaction, D is whichever of the following is the smallest—
   (a) the market value of the plant or machinery;
   (b) if S incurred capital expenditure on the provision of the plant or machinery, the notional written-down value of that capital expenditure;
   (c) if a person connected with S incurred capital expenditure on the provision of the plant or machinery, the notional written-down value of that capital expenditure.

(6) In this section "the notional written-down value", in relation to expenditure incurred by a person on the provision of plant or machinery, has the meaning given by section 222(3).

(7) If—
   (a) S is not required to bring a disposal value into account under this Part because of the relevant transaction,
   (b) the smallest amount under subsection (5) is the market value of the plant or machinery, and
   (c) that value is determined inclusive of value added tax,

   E is the amount of B's expenditure under the relevant transaction.

244 B's qualifying expenditure if lessor not bearing non-compliance risk

An additional VAT liability is not qualifying expenditure for the purposes of this Part if—
   (a) section 225 (restriction on B's qualifying expenditure if lessor not bearing compliance risk) applies, and
   (b) the additional VAT liability is incurred—
      (i) by B, in respect of the expenditure referred to in section 225(2)(a), or
      (ii) by the lessor, in respect of the expenditure referred to in section 225(2)(b).

245 Effect of election under section 227 on additional VAT liability

(1) This section applies if—
   (a) an election is made under section 227 (sale and leaseback or sale and finance leaseback: election for special treatment), and
   (b) an additional VAT liability is incurred by S in respect of the capital expenditure incurred on the provision of the plant or machinery to which the election relates.

(2) The effect of the election is—
   (a) that no allowance is to be made to S under this Act in respect of the additional VAT liability, and
   (b) that the additional VAT liability must be left out of account in determining Ss' available qualifying expenditure for any period.

246 Miscellaneous

(1) All such assessments and adjustments of assessments are to be made as are necessary to give effect to sections 241 to 245.

(2) Section 232 (meaning of connected person) applies for the purposes of sections 242 and 243.

CHAPTER 19

GIVING EFFECT TO ALLOWANCES AND CHARGES

Trades

247 Trades

If the qualifying activity of a person who is entitled or liable to an allowance or charge for a chargeable period is a trade, the allowance or charge is to be given effect in calculating the profits of that person's trade, by treating—

(a) the allowance as an expense of the trade, and

(b) the charge as a receipt of the trade.

Property businesses

248 Ordinary [F195property] businesses

If the qualifying activity of a person who is entitled or liable to an allowance or charge for a chargeable period is an ordinary [F196property] business, the allowance or charge is to be given effect in calculating the profits of that business, by treating—

(a) the allowance as an expense of that business, and

(b) the charge as a receipt of that business.

Textual Amendments

F195 Word in s. 248 substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 546(b)** (with Sch. 2)

F196 Word in s. 248 substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 546(a)** (with Sch. 2)

249 Furnished holiday lettings businesses

(1) If the qualifying activity of a person who is entitled or liable to an allowance or charge for a chargeable period is a furnished holiday lettings business, the allowance or charge is to be given effect in calculating the profits of that business, by treating—

(a) the allowance as an expense of that business, and

(b) the charge as a receipt of that business.

(2) Section 503 of ICTA (letting of furnished holiday accommodation treated as trade for purposes of loss relief rules, etc.) applies to profits calculated in accordance with subsection (1).

250 Overseas property businesses

If the qualifying activity of a person who is entitled or liable to an allowance or charge for a chargeable period is an overseas property business, the allowance or charge is to be given effect in calculating the profits of that business, by treating—

(a) the allowance as an expense of that business, and

(b) the charge as a receipt of that business.

Activities analogous to trades

251 Professions and vocations

If the qualifying activity of a person who is entitled or liable to an allowance or charge for a chargeable period is carrying on a profession or vocation, the allowance or charge is to be given effect in calculating the profits or gains of that person's profession or vocation, by treating—

(a) the allowance as an expense of the profession or vocation, and

(b) the charge as a receipt of the profession or vocation.

252 Mines, transport undertakings etc.

If the qualifying activity of a person who is entitled or liable to an allowance or charge for a chargeable period is a concern listed in **[**[F197]section 12(4) of ITTOIA 2005 or**]** section 55(2) of ICTA (mines, transport undertakings etc.) the allowance or charge is to be given effect in calculating the profits of the concern under **[**[F198]Chapter 2 of Part 2 of ITTOIA 2005 or, as the case may be, under**]** Case I of Schedule D, by treating—

(a) the allowance as an expense of the concern, and

(b) the charge as a receipt of the concern.

Textual Amendments

F197 Words in s. 252 inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 547(a)** (with Sch. 2)

F198 Words in s. 252 inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 547(b)** (with Sch. 2)

[[F199]*Companies with investment business****]***

Textual Amendments

F199 S. 253 heading substituted (with effect in accordance with art. 1(2) of the commencing S.I.) by Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendments of Enactments) Order 2004 (S.I. 2004/2310) , art. 1(2) , **Sch. para. 54(3)**

253 [F199 Companies with investment business]

(1) This section applies if the qualifying activity of a person entitled to an allowance or liable to a charge for a chargeable period is **[**F200 managing the investment business**]**.

(2) The allowance is, as far as possible, to be given effect by deducting the amount of the allowance from any income for the period of the business; and section 75(4) of ICTA (addition of allowances to company's expenses of management) applies only in so far as it cannot be given effect in this way.

(3) The charge is to be given effect by treating the amount of the charge as income of the business.

(4) Except as provided by subsections (2) and (3), the Corporation Tax Acts apply in relation to the allowance or charge as if they were required to be given effect in calculating the profits of that person's trade for the purposes of Case I of Schedule D.

(5) Corresponding allowances or charges in the case of the same plant or machinery are not to be made under this Part both under this section and in another way.

(6) Expenditure to which this section applies is not to be taken into account otherwise than under this Part or as provided by section 75(4) of ICTA.

(7) This section is subject to sections 768B(8) and 768C(11) of ICTA.

Textual Amendments

F200 Words in s. 253(1) substituted (with effect in accordance with art. 1(2) of the commencing S.I.) by Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendments of Enactments) Order 2004 (S.I. 2004/2310) , art. 1(2) , **Sch. para. 54(2)**

Life assurance business

254 Introductory

(1) Sections 255 and 256 apply if a company which is carrying on any life assurance business is entitled or liable to any allowances or charges for a chargeable period in respect of plant or machinery consisting of a management asset.

(2) In this Chapter "management asset" has the same meaning as in Chapter 1 of Part 12 (life assurance business).

255 Apportionment of allowances and charges

[F201 (1) Except where subsection (3) applies, any allowance to which the company is entitled, and any charge to which it is liable, for a chargeable period in respect of a management asset must be apportioned between basic life assurance and general annuity business, gross roll-up business and PHI business in accordance with subsections (1A) and (1B).**]**

[F201 (1A) The allowance or charge is to be apportioned to a category of business using the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount of the allowance or charge,

B is the mean of the opening and closing liabilities of that category of business, and

C is the mean of the opening and closing liabilities of all the categories of business mentioned in subsection (1) which are carried on by the company.

(1B) If C is nil or below nil, the allowance or charge to be apportioned to a category of business is such as is just and reasonable.**]**

F202(2) . . . .

(3) If—

(a) the company is charged to tax under **[**F203section 436A of ICTA (gross roll-up business)**]**, and

(b) the management asset in respect of which it is entitled to an allowance or liable to a charge for a chargeable period is **[**F204held for the purposes of a permanent establishment outside the United Kingdom at or through which the company carries on gross roll-up business**]**,

the allowance or charge must be allocated (without any apportionment) to that business.

Textual Amendments

F201 S. 255(1)-(1B) substituted for s. 255(1)(1A) (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 69(2)** (with Sch. 7 Pt. 2)

F202 S. 255(2) repealed (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 69(3), **Sch. 27 Pt. 2(7)** (with Sch. 7 Pt. 2)

F203 Words in s. 255(3)(a) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 69(4)(a)** (with Sch. 7 Pt. 2)

F204 Words in s. 255(3)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 69(4)(b)** (with Sch. 7 Pt. 2)

Modifications etc. (not altering text)

C38 S. 255 modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **reg. 43A** (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by S.I. 2007/2134, **regs. 1(1)**, 33)

C39 S. 255 modified (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Insurance Companies (Tax Exempt Business) Regulations 2007 (S.I. 2007/2145), regs. 1(1), **15**

C40 S. 255 modified (with effect in accordance with reg. 1 of the amending S.I.) by The Overseas Life Insurance Companies Regulations 2006 (S.I. 2006/3271), **regs. 1**, 36 (as amended (with effect in accordance with reg. 1(2) of the amending S.I.) by S.I. 2007/2146, **regs. 1(1)**, 21)

256 Different giving effect rules for different categories of business

(1) Subsection (2) applies if a company—

(a) carries on basic life assurance and general annuity business, and

[F205(b) is charged to tax under the I minus E basis in respect of its life assurance business.]

(2) If this subsection applies—

(a) any allowances (or parts of allowances) to which the company is entitled in respect of the basic life assurance and general annuity business are to be given effect by treating them as [F206expenses payable which fall to brought into account at Step 3 in section 76(7)] of ICTA, and

(b) any charges (or parts of charges) to which the company is liable in respect of that business are to be given effect by treating the amount of the charges (or parts of charges) as income under Case VI of Schedule D for the chargeable period in question.

(3) Subsection (4) applies if, for a chargeable period, a company is charged to tax under [F207section 436A of ICTA (gross roll-up business)].

(4) If this subsection applies, then, for the purpose of calculating the [F208profits] under Case VI of Schedule D for the chargeable period in question—

(a) any allowances (or parts of allowances) to which the company is entitled in respect of [F209gross roll-up business] are to be given effect by treating them as an expense of [F209its gross roll-up business], and

(b) any charges (or parts of charges) to which the company is liable in respect of [F210gross roll-up business] are to be given effect by treating them as receipts of [F210its gross roll-up business].

Textual Amendments

F205 S. 256(1)(b) substituted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 23** (with Sch. 8 Pt. 2)

F206 Words in s. 256(2)(a) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendments of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 55(2)**

F207 Words in s. 256(3) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 70(2)** (with Sch. 7 Pt. 2)

F208 Word in s. 256(4) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 70(3)(a)** (with Sch. 7 Pt. 2)

F209 Words in s. 256(4)(a) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 70(3)(b)** (with Sch. 7 Pt. 2)

F210 Words in s. 256(4)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 70(3)(c)** (with Sch. 7 Pt. 2)

Modifications etc. (not altering text)

C41 S. 256 modified (1.1.2002) by S.I. 1997/473, **reg. 53C** (as inserted by S.I. 2001/3975, **reg. 8**)

C42 S. 256 modified (with effect in accordance with reg. 1(2) of the commencing S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), regs. 1(1), **44**

257 Supplementary

(1) Allowances and charges to which sections 255 and 256 apply are not to be given effect otherwise than in accordance with those sections.

(2) Subsection (1) does not prevent any allowance which is to be given effect under those sections from being taken into account in any calculation for the purposes of—

[F211(a) section 85A(3) of the Finance Act 1989 (excess adjusted Case I profits), or

(b) section 89 of that Act (policy holders' share of profits).**]**

F212(3) . . . .

Textual Amendments

F211 S. 257(2)(a)(b) substituted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 24** (with Sch. 8 Pt. 2)

F212 S. 257(3) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 10 para. 14(8)(a), **Sch. 27 Pt. 2(10)**

Special leasing of plant or machinery

258 Special leasing: income tax

(1) This section applies for income tax purposes if the qualifying activity of a person entitled or liable to an allowance or charge for a chargeable period ("the current tax year") is special leasing of plant or machinery.

(2) Subject to subsection (3), the allowance is to be given effect by deducting it from the person's income for the current tax year from any qualifying activity the person has of special leasing of plant or machinery.

(3) If the plant or machinery leased under the special leasing was not used for the whole or any part of the current tax year for the purposes of a qualifying activity carried on by the lessee—

(a) the allowance, or

(b) a proportionate part of it,

is to be given effect by deducting the allowance, or the part of the allowance, from the person's income for the current tax year from that special leasing only.

[F213(3A) The allowance or (as the case may be) the proportionate part of the allowance is given effect at Step 2 of the calculation in section 23 of ITA 2007.**]**

(4) Any charge is to be given effect by treating the charge as income to be [F214assessed to income tax**]**.

(5) If the amount to be deducted from a description of income specified in subsection (2) or (3) exceeds the person's income of that description for the current tax year, the excess must be deducted from the person's income of the same description for the next tax year, and so on for subsequent tax years.

(6) For the purposes of this section, income from special leasing of plant or machinery includes any charge treated as income under subsection (4).

(7) In this section, references to deducting an allowance (or a part of an allowance) from income include setting it off against income.

Textual Amendments

F213 S. 258(3A) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 404** (with Sch. 2)

F214 Words in s. 258(4) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 548** (with Sch. 2)

259 Special leasing: corporation tax (general)

(1) This section applies for corporation tax purposes if the qualifying activity of a company entitled or liable to an allowance or charge for a chargeable period ("the current accounting period") is special leasing of plant or machinery.

(2) Subject to subsection (3), the allowance is to be given effect by deducting it from the company's income for the current accounting period from any qualifying activity it has of special leasing of plant or machinery.

(3) If the plant or machinery leased under the special leasing was not used for the whole or any part of the current accounting period for the purposes of a qualifying activity carried on by the lessee—

(a) the allowance, or

(b) a proportionate part of it,

is to be given effect by deducting the allowance, or the part of the allowance, from the company's income for the current accounting period from that special leasing only.

(4) Any charge is to be given effect by treating the charge as income from special leasing of plant or machinery.

260 Special leasing: corporation tax (excess allowance)

(1) This section applies if the amount to be deducted from a description of income specified in section 259(2) or (3) exceeds the company's income of that description for the current accounting period.

(2) Subject to subsections (3) to (6), the excess must (if the company remains within the charge to tax) be deducted from the company's income of the same description for the next accounting period (and so on for subsequent accounting periods).

(3) The company may, on making a claim, require the excess to be deducted from any profits—

(a) of the current accounting period, and

(b) if the company was then within the charge to tax, of any previous accounting period ending within the carry-back period.

(4) The carry-back period is a period which—

(a) is of the same length as the current accounting period, and

(b) ends at the start of the current accounting period.

(5) If the preceding accounting period began before the start of the carry-back period, the total amount of deductions that may be made from the profits of the preceding accounting period under—

(a) subsection (3), and

(b) any corresponding provision of the Corporation Tax Acts relating to losses,

must not exceed a part of those profits proportionate to the part of the period falling within the carry-back period.

(6) A claim under subsection (3) must be made no later than 2 years after the end of the current accounting period.

(7) If the deduction of the allowance (or of part of it) was subject to the restriction in section 259(3)—

(a) subsections (3) to (6), and

(b) section 403 of ICTA (group relief),

do not apply in relation to the allowance (or part of it).

(8) In this section "profits" has the same meaning as in section 6 of ICTA (charge to corporation tax etc.).

261 Special leasing: life assurance business

In the case of a company which is carrying on any life assurance business—

(a) subsections (3) to (6) of section 260, and

(b) section 403 of ICTA (group relief),

do not apply in relation to an allowance to which the company is entitled under section 19 (special leasing of plant or machinery).

[F215 261A Special leasing: leasing partnerships

(1) This section applies for corporation tax purposes if—

(a) a company carries on a business in partnership with other persons in a chargeable period of the partnership,

(b) the business ("the leasing business") is, on any day in that period, a business of leasing plant or machinery,

(c) the company is entitled to an allowance under section 19 (special leasing of plant or machinery) for any chargeable period comprised (wholly or partly) in the chargeable period of the partnership, and

(d) the interest of the company in the leasing business during the chargeable period of the partnership is not determined on an allowable basis.

(2) Subsections (3) to (6) of section 260 do not apply in relation to the allowance.

(3) For the purposes of this section—

(a) "business of leasing plant or machinery" has the same meaning as in Part 3 of Schedule 10 to FA 2006 (sale etc of lessor companies etc), and

(b) section 785ZA of ICTA applies for determining whether the interest of the company in the leasing business during the chargeable period of the partnership is determined on an allowable basis.]

Textual Amendments

F215 S. 261A inserted (with effect in accordance with s. 83(4)-(6) of the amending Act) by Finance Act 2006 (c. 25), **s. 83(3)**

Employments and offices

262 Employments and offices

If the qualifying activity of a person who is entitled or liable to an allowance or charge for a chargeable period is an employment or office, the allowance or charge is to be given effect, by treating—

(a) the allowance as **[**F216a deduction from the taxable earnings from**]** the employment or office, and

(b) the charge as **[**F217earnings**]** of the employment or office.

Textual Amendments

F216 Words in s. 262(a) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1) , s. 723 , **Sch. 6 para. 253(a)** (with Sch. 7)

F217 Word in s. 262(b) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1) , s. 723 , **Sch. 6 para. 253(b)** (with Sch. 7)

CHAPTER 20

SUPPLEMENTARY PROVISIONS

Partnerships and successions

263 Qualifying activities carried on in partnership

(1) This section applies if—

(a) a qualifying activity has been set up and is at any time carried on in partnership,

(b) there has been a change in the persons engaged in carrying on the qualifying activity, and

[F218(c) the following condition is met.**]**

[F219(1A) The condition is that—

(a) the change does not involve all of the partners permanently ceasing to carry on the qualifying activity, or

(b) the change does not result in the qualifying activity being treated under section 18 or 362 of ITTOIA 2005 as permanently ceasing to be carried on by a company or treated as discontinued under section 337(1) of ICTA (companies beginning or ceasing to carry on trade etc.). **]**

(2) In this section—

"the present partners" means the person or persons for the time being carrying on the qualifying activity,

"the partners at the time of the event" means the person or persons carrying on the qualifying activity at the time of the event in question,

"predecessors"—

(a) in relation to the present partners, means their predecessors in carrying on the qualifying activity, and

(b) in relation to the partners at the time of the event, means their predecessors in carrying on the qualifying activity, and

"qualifying activity"—

(a) does not include an employment or office, but

(b) includes any other activity listed in section 15(1) even if any profits or gains from it are not chargeable to tax.

(3) Any first-year allowance or writing-down allowance under this Part is to be made to the present partners.

(4) The amount of any allowance arising under subsection (3) is to be calculated as if—

(a) the present partners had at all times been carrying on the qualifying activity, and

(b) everything done to or by their predecessors in carrying on the qualifying activity had been done to or by the present partners.

(5) If any event occurs which gives rise or may give rise to a balancing allowance or a balancing charge under this Part, the allowance or charge is to be made to or on the partners at the time of the event.

(6) The amount of any allowance or charge arising under subsection (5) is to be calculated as if—

(a) the partners at the time of the event had at all times been carrying on the qualifying activity, and

(b) everything done to or by their predecessors in carrying on the qualifying activity had been done to or by the partners at the time of the event.

Textual Amendments

F218 S. 263(1)(c) substituted(with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 549(2)** (with Sch. 2)

F219 S. 263(1A) inserted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 549(3)** (with Sch. 2)

264 Partnership using property of a partner

(1) Subsection (2) applies if—

(a) a qualifying activity is carried on in partnership,

(b) plant or machinery is used for the purposes of the qualifying activity, and

(c) the plant or machinery is owned by one or more of the partners but is not partnership property.

(2) The same allowances, deductions and charges are to be made under this Part in respect of the plant or machinery as would fall to be made if—

(a) the plant or machinery had at all material times been owned by all the partners and been partnership property, and

(b) everything done by or to any of the partners in relation to that plant or machinery had been done by or to all the partners.

(3) The disposal value of plant or machinery is not required to be brought into account if—

(a) the plant or machinery is used for the purposes of a qualifying activity carried on in partnership,

(b) a sale or gift of the plant or machinery is made by one or more of the partners to one or more of the partners, and

(c) the plant or machinery continues to be used after the sale or gift for the purposes of the qualifying activity.

(4) The references in this section to use for the purposes of a qualifying activity do not include use—

(a) as a result of a letting by the partner or partners in question to the partnership, or

(b) in consideration of the making to the partner or partners in question of any payment which may be deducted in calculating the profits of the qualifying activity.

265 Successions: general

(1) This section applies if—

(a) a person ("the successor") succeeds to a qualifying activity which until that time was carried on by another person ("the predecessor"), and

[[F220](b) the following condition is met.**]**

[[F221](1A) The condition is that—

(a) all of the persons carrying on the qualifying activity before the succession permanently cease to carry it on, or

(b) the qualifying activity is treated under section 18 or 362 of ITTOIA 2005 as permanently ceasing to be carried on by a company or treated as discontinued under section 337(1) of ICTA (companies beginning or ceasing to carry on trade etc.). **]**

(2) Relevant property is to be treated for the purposes of this Part as if—

(a) it had been sold to the successor when the succession takes place, and

(b) the net proceeds of the sale were the market value of the property.

(3) "Relevant property" means any property which—

(a) immediately before the succession, was owned by the predecessor and was either in use or provided and available for use for the purposes of the discontinued qualifying activity, and

(b) immediately after the succession, and without being sold, is either in use or provided and available for use for the purposes of the new qualifying activity.

(4) No entitlement to a first-year allowance arises under this section.

(5) In this section "qualifying activity"—

(a) does not include an employment or office, but

(b) includes any other activity listed in section 15(1) even if any profits or gains from it are not chargeable to tax.

Textual Amendments

F220 S. 265(1)(b) substituted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 550(2)** (with Sch. 2)

F221 S. 265(1A) inserted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 550(3)** (with Sch. 2)

266 Election where predecessor and successor are connected persons

(1) This section applies if a person ("the successor") succeeds to a qualifying activity which was until that time carried on by another person ("the predecessor") and—

- (a) the two persons are connected with each other,
- (b) each of them is within the charge to tax on the profits of the qualifying activity, and
- (c) the successor is not a dual resident investing company.

(2) If this section applies, the predecessor and the successor may jointly elect for the provisions of section 267 to have effect.

(3) The election may be made whether or not any plant or machinery has actually been sold or transferred.

(4) The election must be made by notice to the **[**[F39]an officer of Revenue and Customs**]** within 2 years after the date on which the succession takes effect.

(5) For the purposes of this section, the predecessor and the successor are connected with each other if any of the following conditions is met—

- (a) they would be treated as connected persons under **[**[F222] section 575**]**;
- (b) one of them is a partnership and the other has the right to a share in that partnership;
- (c) one of them is a body corporate and the other has control over that body;
- (d) both of them are partnerships and another person has the right to a share in both of them;
- (e) both of them are bodies corporate, or one of them is a partnership and the other is a body corporate, and (in either case) another person has control over both of them.

(6) In subsection (5) any reference to a right to a share in a partnership is to be read as a reference to a right to a share of the assets or income of the partnership.

(7) Sections 104, 108 and 265 (disposal value of long-life assets, effect of disposal to connected person on overseas leasing pool and general provisions about successions) do not apply if an election is made under this section **[**[F223](but see section 267A)**]**.

(8) This section does not apply if section 561 applies (transfer of UK trade to a company in another member State).

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

F222 Words in s. 266(5)(a) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 405** (with Sch. 2)

F223 Words in s. 266(7) inserted (with effect in accordance with s. 85(5) of the amending Act) by Finance Act 2006 (c. 25), **s. 85(2)**

267 Effect of election

(1) If an election is made under section 266, the following provisions have effect.

(2) For the purposes of making allowances and charges under this Part, relevant plant or machinery is treated as sold by the predecessor to the successor—

(a) when the succession takes place, and

(b) at a price which gives rise to neither a balancing allowance nor a balancing charge.

(3) "Relevant plant or machinery" means any plant or machinery which—

(a) immediately before the succession, was owned by the predecessor, and was either in use or provided and available for use for the purposes of the qualifying activity, and

(b) immediately after the succession, is owned by the successor, and is either in use or provided and available for use for the purposes of the qualifying activity.

(4) Allowances and charges are to be made under this Part to or on the successor as if everything done to or by the predecessor had been done to or by the successor.

(5) All such assessments and adjustments of assessments are to be made as are necessary to give effect to the election.

[[F224](6) This section is subject to section 267A.**]**

Textual Amendments

F224 S. 267(6) inserted (with effect in accordance with s. 85(5) of the amending Act) by Finance Act 2006 (c. 25), **s. 85(3)**

[[F225]267A Restriction on effect of election

(1) This section applies for corporation tax purposes if—

(a) on any day ("the relevant day") a person ("the predecessor") carries on a business of leasing plant or machinery,

(b) on the relevant day another person ("the successor") succeeds to the business, and

(c) the predecessor and the successor make an election under section 266.

(2) Neither—

(a) section 266(7), nor

(b) the provisions of section 267,

have effect in relation to any plant or machinery which, in determining whether the business is a business of leasing plant or machinery on the relevant day, is qualifying leased plant or machinery.

(3) In this section "business of leasing plant or machinery"—

(a) has the same meaning as in Part 2 of Schedule 10 to FA 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), or

(b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership).**]**

Textual Amendments

F225 S. 267A inserted (with effect in accordance with s. 85(5) of the amending Act) by Finance Act 2006 (c. 25), **s. 85(4)**

268 Successions by beneficiaries

(1) This section applies if—

(a) a person succeeds to a qualifying activity as a beneficiary under the will or on the intestacy of a deceased person who carried on the qualifying activity,

[F226(b) all of the persons carrying on the qualifying activity before the succession permanently cease to carry it on, and]

(c) the beneficiary elects by notice to [F39an officer of Revenue and Customs] for this section to apply.

(2) In relation to the succession and any previous succession occurring on or after the death of the deceased, relevant plant or machinery is treated as if it had been sold to the beneficiary when the succession takes place.

(3) The net proceeds of the sale are treated as being the lesser of—

(a) the market value of the plant or machinery, and

(b) the unrelieved qualifying expenditure which would have been taken into account in calculating the amount of a balancing allowance for the appropriate chargeable period if the disposal value of the plant or machinery had been nil.

"Appropriate chargeable period" means the chargeable period in which the deceased person's qualifying activity was permanently discontinued.

(4) "Relevant plant or machinery" means plant or machinery which—

(a) was previously owned by the deceased,

(b) passes to the beneficiary with the qualifying activity, and

(c) is either used or provided and available for use by the beneficiary for the purposes of the qualifying activity.

(5) Subsections (6) and (7) apply if the beneficiary is required to bring a disposal value into account in respect of relevant plant or machinery.

(6) The provisions limiting the amount of the disposal value of property, that is—

(a) section 62 (limit on disposal value: general), and

(b) section 239 (limit on disposal value where additional VAT rebate),

apply in relation to the beneficiary to limit the disposal value by reference to expenditure incurred by the deceased or additional VAT rebates made to the deceased.

(7) Section 73 (limit on disposal value: software and rights to software) applies as if the previous disposal values to be taken into account in determining whether the limit under those provisions is exceeded were those of the deceased.

(8) In this section "qualifying activity"—

(a) does not include an employment or office, but

(b) includes any other activity listed in section 15(1) even if any profits or gains from it are not chargeable to tax.

Textual Amendments

F39 Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

F226 S. 268(1)(b) substituted for s. 268(1)(b) (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 551** (with Sch. 2)

Miscellaneous

269 Use of plant or machinery for business entertainment

(1) If—

(a) a person carrying on a qualifying activity, or

(b) an employee of that person,

provides business entertainment in connection with that activity, the use of plant or machinery for providing the entertainment is to be treated as use for purposes other than those of that activity.

(2) For the purposes of this section—

(a) "entertainment" includes hospitality of any kind, and

(b) the use of an asset for providing entertainment includes the use of an asset for providing anything incidental to the entertainment.

(3) "Business entertainment" does not include anything provided by a person for employees unless its provision for them is incidental to its provision for others.

(4) "Business entertainment" does not include the use of plant or machinery for the provision of anything by a person if—

(a) it is a function of that person's qualifying activity to provide it, and

(b) it is provided by that person in the ordinary course of that qualifying activity—

(i) for payment, or

(ii) free of charge with the object of advertising to the public generally.

(5) For the purposes of this section—

(a) directors of a company, or

(b) persons engaged in the management of a company,

are to be regarded as employed by the company.

270 Shares in plant or machinery

(1) This Part applies in relation to a share in plant or machinery as it applies (under section 571) in relation to a part of plant or machinery.

(2) For the purposes of this Part, a share in plant or machinery is treated as used for the purposes of a qualifying activity so long as, and only so long as, the plant or machinery is used for the purposes of the qualifying activity.