



Capital Allowances Act 2001

2001 CHAPTER 2

PART 2

PLANT AND MACHINERY ALLOWANCES

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—

Status: This is the original version (as it was originally enacted).

- (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.

Finance leases

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 normal accountancy 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.
- (2) For the purpose of applying subsection (1)(b), the lessor and any person connected with the lessor are to be treated as being companies which are incorporated in a part of the United Kingdom.
- (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
 - (b) are drawn up in accordance with—
 - (i) section 227 of the Companies Act 1985 (c. 6), or
 - (ii) Article 235 of the Companies (Northern Ireland) Order 1986 (S.I.1986/1032 (N.I.6)).

Status: This is the original version (as it was originally enacted).

220 Allocation of expenditure to a chargeable period

- (1) Subject to subsection (2), if a person incurs at any time in a chargeable period capital expenditure on the provision of plant or machinery for leasing under a finance lease—
 - (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 person'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 person'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.

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 any person, 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.

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—

$$QE - A$$

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).

Status: This is the original version (as it was originally enacted).

- (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 the Inland Revenue 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.

Status: This is the original version (as it was originally enacted).

- (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).

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.

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 section 839 of ICTA, 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”).

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).