



# Capital Allowances Act 2001

## 2001 CHAPTER 2

### PART 2

#### PLANT AND MACHINERY ALLOWANCES

#### 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
  - [<sup>F1</sup>(c) if the qualifying activity is a trade or property business, the condition in subsection (1A) or (1B) (whichever is appropriate) is met.]

[<sup>F2</sup>(1A) For income tax purposes, the condition is that a person carrying on the trade or property business immediately before the change continues to carry it on after the change.

(1B) For corporation tax purposes, the condition is that a company carrying on the trade or property business in partnership immediately before the change continues to carry it on in partnership after the change.]

- (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,

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- “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 [<sup>F3</sup>annual investment allowance,] 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**

- F1** S. 263(1)(c) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 495\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F2** S. 263(1A)(1B) substituted for s. 263(1A) (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 495\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F3** Words in s. 263(3) inserted (with effect in accordance with Sch. 24 para. 23 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 24 para. 13](#)

## **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

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- (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
  - [<sup>F4</sup>(b) if the qualifying activity is a trade or property business, the condition in subsection (1A) or (1B) (whichever is appropriate) is met.]
- [<sup>F5</sup>(1A) For income tax purposes, the condition is that no person carrying on the trade or property business immediately before the succession continues to carry it on after the succession.
- (1B) For corporation tax purposes, the condition is that no company carrying on the trade or property business in partnership immediately before the succession continues to carry it on in partnership after the succession.]
- (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 [<sup>F6</sup>an annual investment allowance or] 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.

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### Textual Amendments

- F4** S. 265(1)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 496(2)** (with Sch. 2 Pts. 1, 2)
- F5** S. 265(1A)(1B) substituted for s. 265(1A) (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 496(3)** (with Sch. 2 Pts. 1, 2)
- F6** Words in s. 265(4) inserted (with effect in accordance with Sch. 24 para. 23 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 24 para. 14**

## 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 [<sup>F7</sup>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 [<sup>F8</sup>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 [<sup>F9</sup>104E], 108 and 265 (disposal value [<sup>F10</sup>in connection with special rate expenditure], 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 [<sup>F11</sup>(but see section 267A)].
- (8) This section does not apply if section 561 applies ([<sup>F12</sup>transfer or division of UK business]).

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#### Textual Amendments

- F7** 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)
- F8** 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](#))
- F9** Word in s. 266(7) substituted (with effect in accordance with Sch. 26 para. 14 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 26 para. 12\(a\)](#)
- F10** Words in s. 266(7) substituted (with effect in accordance with Sch. 26 para. 14 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 26 para. 12\(b\)](#)
- F11** 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)
- F12** Words in s. 266(8) substituted (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, [10\(3\)](#) (with regs. 39-41); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

## 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.

[<sup>F13</sup>(6) This section is subject to section 267A.]

#### Textual Amendments

- F13** 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)

## [<sup>F14</sup>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,

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- (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, [F15 falls within section 387(7) of CTA 2010 (if the business is carried on otherwise than in partnership) or within section 410(6) of that Act (if the business is carried on in partnership)].
- (3) In this section “business of leasing plant or machinery”—
- (a) has the same meaning as in [F16 Chapter 3 of Part 9 of CTA 2010] (if the business is carried on otherwise than in partnership), or
  - (b) has the same meaning as in [F17 Chapter 4 of that Part] (if the business is carried on in partnership).]

#### **Textual Amendments**

- F14** S. 267A inserted (with effect in accordance with s. 85(5) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 85\(4\)](#)
- F15** Words in s. 267A(2) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 6 para. 23](#)
- F16** Words in s. 267A(3)(a) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 352\(a\)](#) (with [Sch. 2](#))
- F17** Words in s. 267A(3)(b) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 352\(b\)](#) (with [Sch. 2](#))

## **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,
  - [F18](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 [F7 an 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.

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- (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

- F7** 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)
- F18** 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](#))

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