



# Capital Allowances Act 2001

## 2001 CHAPTER 2

### PART 2

#### PLANT AND MACHINERY ALLOWANCES

### 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—

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section 40	expenditure incurred for Northern Ireland purposes by small or medium-sized enterprises,
section 44	expenditure incurred by small or medium-sized enterprises, <sup>F1</sup>
	...
section 45	ICT expenditure incurred by small enterprises [ <sup>F2</sup> , or
section 45A	expenditure on energy-saving plant or machinery. <sup>F2]</sup>

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*Status: Point in time view as at 11/05/2001. This version of this chapter contains provisions that are not valid for this point in time.*  
**Changes to legislation:** *There are currently no known outstanding effects for the Capital Allowances Act 2001, Chapter 4. (See end of Document for details)*

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#### Textual Amendments

- F1** Word in s. 39 repealed (with effect in accordance with s. 65 of the amending Act) by [Finance Act 2001 \(c. 9\), s. 110, Sch. 33 Pt. 2\(4\)](#) Note
- F2** 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](#)

#### *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.

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(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—

“agriculture” and “agricultural produce” have the same meaning as in section 6 of the European Communities Act 1972 (c. 68),

“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.

#### **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

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- (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 Inland Revenue 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.

**Modifications etc. (not altering text)**

- C1** 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).

**45 ICT expenditure incurred by small enterprises**

- (1) Expenditure is first-year qualifying expenditure if—
- (a) it is incurred on or before 31st March 2003,
  - (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).
- (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—

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- (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.

**[<sup>F3</sup>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).

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### Textual Amendments

- F3** 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 the Inland Revenue 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

- F3** 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](#))

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## 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

- F3** 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](#))

VALID FROM 24/07/2002

### [<sup>F4</sup>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<sub>2</sub> 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<sub>2</sub> emissions is a car which satisfies the conditions in subsections (3) and (4).

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- (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<sub>2</sub> emissions figure in terms of grams per kilometre driven, or
  - (b) in the case of a bi-fuel car, separate CO<sub>2</sub> emissions figures in terms of grams per kilometre driven for different fuels.
- (4) The second condition is that the applicable CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> emissions figure, that figure, and
  - (b) where the certificate specifies more than one CO<sub>2</sub> emissions figure, the figure specified as the CO<sub>2</sub> emissions (combined) figure.
- (6) For the purposes of subsection (4) the applicable CO<sub>2</sub> 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<sub>2</sub> emissions figure in relation to each fuel, the lowest CO<sub>2</sub> emissions (combined) figure specified, and
  - (b) in any other case, the lowest CO<sub>2</sub> 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;



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“ 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

- F4** 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](#)

VALID FROM 24/07/2002

#### [<sup>F5</sup>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. ]

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#### Textual Amendments

- F5** 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

VALID FROM 24/07/2002

#### [<sup>F6</sup>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

- F6** 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

VALID FROM 24/07/2002

#### [<sup>F7</sup>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

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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 the Inland Revenue 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

- F7** 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](#)

#### 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—
  - section 40 (expenditure incurred for Northern Ireland purposes by small or medium-sized enterprises),
  - section 44 (expenditure incurred by small or medium-sized enterprises), <sup>F8</sup>...
  - section 45 (ICT expenditure incurred by small enterprises) [<sup>F9</sup>, or
  - section 45A (expenditure on energy-saving plant or machinery).]

- <sup>F9</sup>(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*

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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*

Either of the following sections applies—

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

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).

**Textual Amendments**

**F8** 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

**F9** 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](#)

*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—

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- (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) Except in the case of a company formed and registered in Northern Ireland—
- (a) “the relevant companies legislation” means section 247 of the Companies Act 1985 (c. 6), and
  - (b) “financial year” has the same meaning as in Part VII of the 1985 Act.
- (5) In the case of such a company—
- (a) “the relevant companies legislation” means Article 255 of the Companies (Northern Ireland) Order 1986 (S.I.1986/1032 (N.I.6)), and
  - (b) “financial year” has the same meaning as in Part VIII of the 1986 Order.
- (6) “Company” means—
- (a) a company, or an oversea company, within the meaning of the 1985 Act, or
  - (b) a company, or a Part XXIII company, within the meaning of the 1986 Order.

#### **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,

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- (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) Except in the case of a business carrying on a qualifying activity wholly or mainly in Northern Ireland—
- (a) “the relevant companies legislation” means section 247 of the Companies Act 1985 (c. 6), and
  - (b) “financial year” has the same meaning as in Part VII of that Act;
- and the reference in subsection (5)(d) to accounts being duly drawn up is to their being drawn up in accordance with that Act.
- (9) In the case of such a business—
- (a) “the relevant companies legislation” means Article 255 of the Companies (Northern Ireland) Order 1986 (S.I.1986/1032 (N.I.6)), and
  - (b) “financial year” has the same meaning as in Part VIII of that Order;
- and the reference in subsection (5)(d) to accounts being duly drawn up is to their being drawn up in accordance with that Order.

#### **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

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- (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—
- (a) except in the case of a company formed and registered in Northern Ireland, section 249 of the Companies Act 1985 (c. 6);
  - (b) in the case of such a company, Article 257 of the Companies (Northern Ireland) Order 1986 (S.I.1986/1032 (N.I.6)).
- (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).
- (8) In this section “financial year”, “group”, “parent undertaking” and “subsidiary undertaking” have the same meaning as in—
- (a) except in the case of a company formed and registered in Northern Ireland, Part VII of the 1985 Act;
  - (b) in the case of such a company, Part VIII of the 1986 Order.

### *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—

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- (a) the Inland Revenue 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 the Inland Revenue.
- (2) The purpose is assisting—
- (a) the Board of Inland Revenue, in carrying out its 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 the Inland Revenue, 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 the Board of Inland Revenue or the Department carry out the functions mentioned in subsection (2)(a) or (b).



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