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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2010, Paragraph 2. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 4

#### CAPITAL ALLOWANCE BUYING

2 After Chapter 16 insert—

#### “CHAPTER 16A

#### AVOIDANCE INVOLVING ALLOWANCE BUYING

##### *Introduction*

##### **Scope of Chapter**

212A This Chapter provides for restrictions on the ways in which effect may be given to an allowance in certain circumstances where there has been a qualifying change in relation to a company (“C”).

##### **Where Chapter applies**

212B) This Chapter applies where—

- (a) C carries on a trade (“the relevant trade”) (whether or not in partnership with another person or other persons),
  - (b) there is a qualifying change in relation to C on any day (“the relevant day”),
  - (c) C, or (where the relevant trade is carried on in partnership) the partnership (“P”), has a relevant excess of allowances in relation to the relevant trade, and
  - (d) the qualifying change has an unallowable purpose.
- (2) Sections 212C to 212I specify when there is a qualifying change in relation to C on the relevant day.
- (3) Sections 212J to 212L specify when C or P has a relevant excess of allowances in relation to the relevant trade.
- (4) Section 212M specifies when the qualifying change has an unallowable purpose.
- (5) Sections 212N to 212S make provision about what happens when this Chapter applies.

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### *Qualifying change*

#### **When there is qualifying change in relation to C**

212(1) There is a qualifying change in relation to C on the relevant day if one or more of conditions A to D is met.

- (2) Condition A is that—
- (a) the principal company or companies of C at the beginning of the relevant day is not, or are not, the same as at the end of that day, or
  - (b) there is no principal company of C at the beginning of the relevant day but there is one, or are more than one, at the end of the relevant day.
- (3) Condition B is that—
- (a) any principal company of C is a consortium principal company (“CPC”), and
  - (b) CPC's ownership proportion at the end of the relevant day is more than at the beginning of the relevant day.
- (4) Condition C is that on the relevant day—
- (a) C ceases to carry on the whole or part of the relevant trade, and
  - (b) it begins to be carried on in partnership by two or more companies, in circumstances in which Chapter 1 of Part 22 of CTA 2010 (transfers of trade without change of ownership) applies in relation to the transfer of the relevant trade.
- (5) Condition D is that—
- (a) the relevant trade is, at the beginning of the relevant day, carried on by C in partnership, and
  - (b) C's relevant percentage share in the relevant trade at the end of the relevant day is less than at the beginning of the relevant day (or is nil).

#### **Guide to sections explaining section 212C**

- 212(1) Section 212E explains—
- (a) what are principal companies of C, and
  - (b) which are consortium principal companies of C,
- for the purposes of section 212C(2) and (3).
- (2) Section 212F explains—
- (a) when a company is owned by a consortium, and
  - (b) who are the members of the consortium,
- for the purposes of section 212E.
- (3) Section 212G explains the meaning of “qualifying 75% subsidiary” for the purposes of sections 212E and 212F.
- (4) Section 212H explains the meaning of “ownership proportion” in section 212C(3).

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- (5) Section 212I explains the meaning of “relevant percentage share” in section 212C(5).

### **Principal companies**

- 212E) A company (“U”) is a principal company of C if—
- (a) C is a qualifying 75% subsidiary of U, and
  - (b) U is not a qualifying 75% subsidiary of another company.
- (2) A company (“V”) is a principal company of C if—
- (a) C is a qualifying 75% subsidiary of U,
  - (b) U is a qualifying 75% subsidiary of V, and
  - (c) V is not a qualifying 75% subsidiary of another company.
- (3) If V is a qualifying 75% subsidiary of another company (“W”), W is a principal company of C unless W is a qualifying 75% subsidiary of another company, and so on.
- (4) A company (“X”) is a principal company of C if—
- (a) C is owned by a consortium of which X is a member, or
  - (b) C is a qualifying 75% subsidiary of a company owned by a consortium of which X is a member,
- and X is not a qualifying 75% subsidiary of another company.
- (5) A company (“Y”) is a principal company of C if—
- (a) C is owned by a consortium of which X is a member, or
  - (b) C is a qualifying 75% subsidiary of a company owned by a consortium of which X is a member,
- and X is a qualifying 75% subsidiary of Y but Y is not a qualifying 75% subsidiary of another company.
- (6) If Y is a qualifying 75% subsidiary of another company (“Z”), Z is a principal company of C unless Z is a qualifying 75% subsidiary of another company, and so on.
- (7) A company that is a principal company of C by virtue of any of subsections (4) to (6) is a consortium principal company of C.

### **When company is owned by consortium and consortium members**

- 212F) This section defines what a company being owned by, or a member of, a consortium means for the purposes of section 212E.
- (2) A company is owned by a consortium if—
- (a) it is not a qualifying 75% subsidiary of another company,
  - (b) at least 75% of its ordinary share capital is beneficially owned between them by other companies, and
  - (c) none of those other companies owns less than 5% of that capital.
- (3) Those other companies are the members of the consortium.

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### **Qualifying 75% subsidiaries**

212(G) For the purposes of sections 212E and 212F a company (“the subsidiary company”) is a qualifying 75% subsidiary of another company (“the parent company”) if condition 1 or 2 is met and condition 3 is met.

(2) Condition 1 is that—

- (a) the subsidiary company has ordinary share capital, and
- (b) the subsidiary company is a 75% subsidiary of the parent company (see section 1154(3) of CTA 2010).

(3) Condition 2 is that—

- (a) the subsidiary company does not have ordinary share capital, and
- (b) the parent company has control of the subsidiary company.

(4) Condition 3 is that the parent company—

- (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.

(5) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (4) as that Chapter applies for the purposes of section 151(4)(a) and (b) of that Act (meaning of “75% subsidiary”).

(6) But in a case where the subsidiary company does not have ordinary share capital, Chapter 6 of Part 5 of that Act applies for those purposes as if the members of that company were equity holders of that company for the purposes of that Chapter.

### **Ownership proportion**

212(H) For the purposes of section 212C(3) CPC’s “ownership proportion” is the lowest of—

- (a) the percentage of the ordinary share capital of C that is beneficially owned by CPC,
- (b) the percentage to which CPC is beneficially entitled of any profits available for distribution to equity holders of C, and
- (c) the percentage to which CPC would be beneficially entitled of any assets of C available for distribution to its equity holders on a winding-up.

(2) Chapter 6 of Part 5 of CTA 2010 applies for the purposes of subsection (1) as that Chapter applies for the purposes of section 143(3)(b) and (c) (condition 1: surrendering company owned by consortium) and section 144(3)(b) and (c) (condition 1: claimant company owned by consortium) of that Act.

(3) But in a case where the subsidiary company does not have ordinary share capital, Chapter 6 of Part 5 of that Act applies for those purposes as if the members of that company were equity holders of that company for the purposes of that Chapter.

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### Relevant percentage share

- 212J) For the purposes of section 212C(5) C's "relevant percentage share" is C's percentage share in the profits or losses of the trade.
- (2) For this purpose C's percentage share in the profits or losses of a trade at any time is determined on a just and reasonable basis.
  - (3) In making that determination regard must be had, in particular, to any matter that would be taken into account in determining under section 1262 of CTA 2009 (but without regard to sections 1263 and 1264 of that Act) the company's share at that time in the profits or losses of the trade.

### *Relevant excess of allowances*

### Relevant excess of allowances

- 212K) C or P has a relevant excess of allowances in relation to the relevant trade if—

$$RTWDV > BSV$$

- (2) Section 212K defines RTWDV and section 212L defines BSV.
- (3) References in this Chapter to plant and machinery do not include excluded plant and machinery.
- (4) Plant and machinery is "excluded plant and machinery" if—
  - (a) expenditure incurred on the provision of it is not, as a result of section 34A, qualifying expenditure for the purposes of this Part, or
  - (b) it is, as a result of section 67, treated for the purposes of this Part as owned otherwise than by C or P.

### Relevant tax written-down value

- 212L) RTWDV is the relevant tax written-down value and is to be found by adding together amounts 1 and 2.
- (2) Amount 1 is the total amount of any unrelieved qualifying expenditure in respect of plant and machinery contained in—
    - (a) single asset pools,
    - (b) class pools, or
    - (c) the main pool,which is available to be carried forward (in accordance with section 59) from the old period and used in calculating the profits of the relevant trade.
  - (3) Amount 2 is the total of any qualifying expenditure incurred on the provision of a ship for the purposes of the relevant trade which, at the end of the old period, is unrelieved by virtue of notice having been given under section 130.

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- (4) For the purposes of this Part the amount of unrelieved qualifying expenditure contained in any pool which is available to be carried forward (in accordance with section 59) from the old period and used in calculating the profits of the relevant trade is to be calculated on the assumptions—
- (a) that any qualifying expenditure that could have been (but was not) allocated to the pool before the end of the old period had been so allocated at the end of the old period,
  - (b) that any qualifying expenditure prevented from being allocated to the pool by section 58(5) had been so allocated at the end of the old period, and
  - (c) that any transaction taking place on the relevant day that has the effect of reducing the amount of unrelieved qualifying expenditure in the pool had not taken place.
- (5) Where condition C in section 212C is met—
- (a) references in subsection (2) to any unrelieved qualifying expenditure in respect of plant and machinery contained in a pool which is available to be carried forward (in accordance with section 59) from the old period and used in calculating the profits of the relevant trade, and
  - (b) the reference in subsection (3) to any qualifying expenditure incurred on the provision of a ship for the purposes of the relevant trade which, at the end of the old period, is unrelieved by virtue of notice having been given under section 130,
- are to what it would have been but for the qualifying change.
- (6) In this section “the old period” means the period which is the old period for the purposes of section 212O (or would be if this Chapter applied): see section 212N(3).
- (7) The plant and machinery in respect of which there is unrelieved qualifying expenditure such as is mentioned in subsection (2), or qualifying expenditure such as is mentioned in subsection (3), is referred to in the following provisions as “the relevant plant and machinery”.

### **Balance sheet value**

- 212(1) BSV is the balance sheet value of the relevant plant and machinery and is to be found by adding together the amounts (if any) which would be shown in respect of it in the appropriate balance sheet of C or P.
- (2) For this purpose the amounts shown in the appropriate balance sheet in respect of the relevant plant or machinery are—
- (a) the amounts shown in that balance sheet as the net book value (or carrying amount) in respect of it, and
  - (b) the amounts shown in that balance sheet as the net investment in respect of finance leases of it.
- (3) If—
- (a) any of the relevant plant or machinery is a fixture in any land, and

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- (b) the amount which falls (or would fall) to be shown in the appropriate balance sheet as the net book value (or carrying amount) of the land would include an amount in respect of the fixture,  
the amount of the net book value (or carrying amount) in respect of the fixture is determined on a just and reasonable basis.
- (4) If—
- (a) any of the relevant plant or machinery is subject to a finance lease, and
- (b) any land or asset which is not plant or machinery is subject to that lease,
- the amount of the net investment in respect of the finance lease of that plant or machinery is determined on a just and reasonable basis.
- (5) In this section any reference to any amount shown in the appropriate balance sheet of C or P is the amount which, assuming that a balance sheet of C or P were drawn up in accordance with subsection (6), would fall to be shown in that balance sheet.
- (6) A balance sheet is drawn up in accordance with this subsection if it is drawn up in accordance with generally accepted accounting practice so as to reflect the position as at the beginning of the relevant day but adjusted to reflect the disposal of any of the relevant plant or machinery which is disposed of on the relevant day.
- (7) In this section—
- “finance lease” means a lease which, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as a finance lease or loan in accounts of C or P;
- “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.

### *Unallowable purpose*

#### **Unallowable purpose**

- 212M1) The qualifying change has an unallowable purpose if the main purpose, or one of the main purposes, of change arrangements is to obtain a relevant tax advantage (for any person).
- (2) “Change arrangements” means any arrangements made to bring about, or otherwise connected with, the qualifying change; and “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (3) “Obtain a relevant tax advantage” means become entitled to a reduction in profits, or an increase in losses, for the purposes of corporation tax in consequence of a claim to allowances in respect of qualifying expenditure in

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respect of the relevant plant and machinery or qualifying expenditure within section 212K(3).

*What happens when Chapter applies*

**Old and new accounting periods**

212N) The accounting period of C which is current on the relevant day ends with that day and a new accounting period of C begins with the following day (but subject to subsection (2)).

(2) In a case in which condition A, B or D in section 212C is met and the relevant trade was, at the beginning of the relevant day, carried on by C in partnership with another company or other companies subsection (1) does not apply but—

(a) the period which, for the purposes of Part 17 of CTA 2009, is the accounting period of the partnership current on the relevant day ends with that day, and

(b) there begins with the following day a new accounting period—

(i) of the partnership, or

(ii) where condition D is met and C's relevant percentage share in the relevant trade is nil after the qualifying change, of the company or partnership by which the relevant trade is carried on after the relevant change.

(3) For the purposes of section 212O “the old period” means the accounting period of C or the partnership in which C carries on the relevant trade which ends with the relevant day.

(4) For the purposes of section 212P “the new period” means the accounting period—

(a) of C or that partnership, or

(b) where condition D is met and C's relevant percentage share in the relevant trade is nil after the qualifying change, of the company or partnership by which the relevant trade is carried on after the relevant change,

which begins with the following day.

**When there is excess of allowances in pool: amount of excess**

212O) Section 212P has effect where C or P has an excess of allowances in any single asset pool, any class pool or the main pool at the end of the old period; and a pool in the case of which there is an excess of allowances is referred to in this section and section 212P as a “relevant pool”.

(2) For the purposes of this section C or P has an excess of allowances in a pool if—

$$PA > BSVP$$



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- (3) In this section and section 212Q—  
PA, in relation to a pool, is the amount specified in section 212K(2) in relation to the pool, and  
BSVP, in relation to a pool, is so much of BSV as, on a just and reasonable apportionment, it is appropriate to attribute to the pool.
- (4) For the purposes of section 212P the amount of the excess of allowances in relation to any relevant pool (“the relevant pool in question”) is the difference between PA and BSVP.
- (5) But if, in relation to any other pool—

$$BSVP > PA$$

what would otherwise be the amount of the excess of allowances in relation to the relevant pool in question for the purposes of section 212P is reduced by so much of the difference between BSVP and PA as is not taken into account under this subsection in relation to another relevant pool or under section 212Q(8).

#### **Effect of excess of allowances on pools**

- 212(1) The unrelieved qualifying expenditure in each relevant pool is to be taken to be reduced at the beginning of the new period by the amount of the excess of allowances in relation to the pool.
- (2) The amount of the excess of allowances is to be treated from the beginning of the new period as if it were qualifying expenditure in a new pool of the same description as the relevant pool (and so subject to the same provisions of this Part, other than this Chapter).
- (3) Where, following the qualifying change, a person ceases to carry on a trade (or part of a trade) and C begins to carry on (whether or not in partnership) the activities of that trade (or part of a trade) as part of its trade, for the purposes of claiming any allowance in respect of qualifying expenditure in the new pool the carrying on of those activities by C is to be regarded as the carrying on of a separate trade.
- (4) A loss attributable to an allowance claimed in respect of qualifying expenditure in the new pool may not be set off under section 37 of CTA 2010 (trade loss relief against total profits of same or earlier accounting period) otherwise than against the profits of a qualifying activity carried on by C, or any company that is a member of P, at the beginning of the relevant day.
- (5) And the amount of such a loss which may be so set off by any person is not to exceed the amount of the loss which would have been available for such set off by the person but for the qualifying change.
- (6) A loss attributable to an allowance claimed in respect of qualifying expenditure in the new pool may not be set off by way of group relief in accordance with Part 5 of CTA 2010 (surrender of losses by way of group

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relief) by a company (“the claimant company”) unless it would have been available for such set off but for the qualifying change.

- (7) And the amount of such a loss which is available for such set off by the claimant company is not to exceed the amount of the loss which would have been available for such set off by the claimant company but for the qualifying change.
- (8) Where any activity not carried on by C, or a company that is a member of P, at the beginning of the relevant day would otherwise be regarded for the purposes of corporation tax as forming part of a qualifying activity carried on by C or the member of P at that time it is not to be so regarded for the purposes of subsection (4).
- (9) In a case in which condition C in section 212C is met, the references in subsections (1) and (2) to the beginning of the new period are to the time of the qualifying change (and section 948 of CTA 2010 has effect subject to this section).

#### **When there are postponed capital allowances**

212Q(1) This section has effect where C or P has relevant postponed capital allowances.

- (2) C or P has relevant postponed capital allowances if amount 2 in section 212K(3) is an amount other than nil.
- (3) Where, following the qualifying change, a person ceases to carry on a trade (or part of a trade) and C begins to carry on (whether or not in partnership) the activities of that trade (or part of a trade) as part of its trade, for the purposes of claiming any allowance in respect of qualifying expenditure such as is mentioned in section 212K(3) the carrying on of those activities by C is to be regarded as the carrying on of a separate trade.
- (4) A loss attributable to an allowance claimed in respect of qualifying expenditure such as is mentioned in section 212K(3) may not be set off under section 37 of CTA 2010 otherwise than against the profits of a qualifying activity carried on by C, or any company that is a member of P, at the beginning of the relevant day.
- (5) And the amount of such a loss which may be so set off by any person is not to exceed the amount of the loss which would have been available for such set off by the person but for the qualifying change.
- (6) A loss attributable to an allowance claimed in respect of qualifying expenditure such as is mentioned in section 212K(3) may not be set off by way of group relief in accordance with Part 5 of CTA 2010 by a company (“the claimant company”) unless it would have been available for such set off but for the qualifying change.
- (7) And the amount of such a loss which is available for such set off by the claimant company is not to exceed the amount of the loss which would have been available for such set off by the claimant company but for the qualifying change.
- (8) If, in relation to any pool—

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# *BSVP > PA*

what would otherwise be the amount of qualifying expenditure such as is mentioned in section 212K(3) is to be treated for the purposes of this section as reduced by so much of the difference between BSVP and PA in relation to the pool as is not taken into account under section 212O(5) in relation to a relevant pool.

- (9) Where any activity not carried on by C, or a company that is a member of P, at the beginning of the relevant day would otherwise be regarded for the purposes of corporation tax as forming part of a qualifying activity carried on by C or the member of P at that time it is not to be so regarded for the purposes of subsection (4).

## **Apportionment of proceeds of disposal of relevant plant and machinery**

212R Any amount required to be brought into account in connection with a disposal event in respect of any relevant plant and machinery is to be apportioned between the new pool and the relevant pool concerned on a just and reasonable basis.

## **Transactions on relevant day**

212S) This section applies if any plant and machinery is transferred on the relevant day and (apart from subsection (4)(c) of section 212K) the transfer would have the effect of reducing RTWDV (as determined in accordance with that section).

- (2) No person other than C or P is entitled to claim an allowance in respect of the plant or machinery after the transfer.”

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