

## SCHEDULES

### SCHEDULE 11

#### EXPENDITURE ON PLANT AND MACHINERY FOR USE IN DESIGNATED ASSISTED AREAS

3      After section 45J insert—

**“45K Expenditure on plant and machinery for use in designated assisted areas**

- (1) Expenditure is first-year qualifying expenditure if—
  - (a) it is incurred by a company on the provision of plant or machinery for use primarily in an area which at the time the expenditure is incurred is a designated assisted area,
  - (b) it is incurred in the period of 5 years beginning with 1 April 2012,
  - (c) Conditions A to E are met.
- (2) “Designated assisted area” means an area which—
  - (a) is designated by an order made by the Treasury, and
  - (b) falls wholly within an assisted area.
- (3) An area may be designated by an order under subsection (2)(a) only if at the time the order is made—
  - (a) the area falls wholly within an enterprise zone, and
  - (b) a memorandum of understanding, in respect of the area, relating to the availability of allowances in respect of expenditure to which this section applies has been entered into by the Treasury and the responsible authority for the area.
- (4) An order made under subsection (2)(a) may provide that an area designated by the order is to be treated as having been so designated at times falling before the order is made.
- (5) But where an area has previously been designated by an order under subsection (2)(a), section 14 of the Interpretation Act 1978 does not apply, by virtue of subsection (4), so as to imply a power to make an order (“the new order”) treating that area (or any part of it) as if it were not so designated at times falling before the new order is made.
- (6) Condition A is that the company is within the charge to corporation tax.
- (7) Condition B is that the expenditure is incurred for the purposes of a qualifying activity within section 15(1)(a) or (f).
- (8) Condition C is that the expenditure is incurred for the purposes of—
  - (a) a business of a kind not previously carried on by the company,
  - (b) expanding a business carried on by the company, or

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- (c) starting up an activity which relates to a fundamental change in a product or production process of, or service provided by, a business carried on by the company.
- (9) Condition D is that the plant or machinery is unused and not second-hand.
- (10) Condition E is that the expenditure is not replacement expenditure.
- (11) “Replacement expenditure” means expenditure incurred on the provision of plant or machinery (“new plant or machinery”) intended to perform the same or a similar function, for the purposes of the qualifying activity of the company, as other plant or machinery (“replaced plant or machinery”)—
  - (a) on which the company has previously incurred qualifying expenditure, and
  - (b) which has been superseded by the new plant or machinery.
- (12) But if and to the extent that—
  - (a) the expenditure is incurred on the provision of new plant or machinery that is capable of and intended to perform a significant additional function, when compared to the replaced plant or machinery, and
  - (b) the additional function enhances the capacity or productivity of the qualifying activity in question,
 so much of the expenditure as is attributable to the additional function is not to be regarded as replacement expenditure.
- (13) The part of the expenditure attributable to the additional function is to be determined on a just and reasonable basis.
- (14) In this section—
  - “assisted area” means—
    - (a) an area specified as a development area under section 1 of the Industrial Development Act 1982, or
    - (b) Northern Ireland;
  - “enterprise zone” means an area recognised by the Treasury as an area in respect of which there is a special focus on economic development and identified on a map published by the Treasury for the purposes of this section;
  - “the responsible authority”, for an area, means—
    - (a) if the area is in England, a local authority for all or part of the area or two or more such local authorities,
    - (b) if the area is in Scotland, the Scottish Ministers,
    - (c) if the area is in Wales, the Welsh Ministers, and
    - (d) if the area is in Northern Ireland, the Department of Enterprise, Trade and Investment in Northern Ireland.
- (15) The Treasury may by order amend the definition of “assisted area” in subsection (14) in consequence of any changes made to the areas in the United Kingdom granted assisted area status by virtue of Article 107(3) of the Treaty on the Functioning of the European Union.
- (16) This section is subject to—

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section 45L (plant or machinery partly for use outside designated assisted areas),  
section 45M (exclusions from section 45K allowances),  
section 45N (effect of plant or machinery subsequently being primarily used in an area other than a designated assisted area), and  
section 46 (general exclusions).

#### **45L Exclusion of plant or machinery partly for use outside designated assisted areas**

- (1) Expenditure on plant or machinery is not first-year qualifying expenditure under section 45K if—
  - (a) at the time when it is incurred, the company incurring it intends the plant or machinery to be used partly in a non-designated area, and
  - (b) the main purpose, or one of the main purposes, for which any person is a party to 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 in a non-designated area.
- (2) For the purposes of subsection (1)(b), the part of the expenditure that is attributable to that intended use in a non-designated area is to be determined on a just and reasonable basis.
- (3) In this section—

“non-designated area” means an area which is not a designated assisted area within the meaning of section 45K;

“the relevant arrangements” means—

  - (a) the transaction under which the expenditure is incurred, and
  - (b) any scheme or arrangements of which that transaction forms part.

#### **45M Exclusions from allowances under section 45K**

- (1) Expenditure incurred by a person is not first-year qualifying expenditure under section 45K if it is within subsection (2), (4), (6) or (7).
- (2) Expenditure is within this subsection if, at the time a claim is made under section 3 for a section 45K allowance in respect of the expenditure, the person who incurred the expenditure is, or forms part of, an undertaking within subsection (3).
- (3) An undertaking is within this subsection if one or both of the following conditions are met—
  - (a) it is reasonable to assume that the undertaking would be regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02);
  - (b) the undertaking is subject to an outstanding recovery order made by virtue of Article 108(2) of the Treaty on the Functioning of the European Union (Commission Decision declaring aid illegal and incompatible with the common market).

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- (4) Expenditure is within this subsection if it is incurred for the purposes of a qualifying activity—
  - (a) in the fishery or aquaculture sector, as covered by Council Regulation (EC) No 104/2000,
  - (b) in the coal sector, steel sector, shipbuilding sector or synthetic fibres sector,
  - (c) relating to the management of waste of undertakings, or
  - (d) relating to—
    - (i) the primary production of agricultural products,
    - (ii) on-farm activities necessary for preparing an animal or plant product for the first sale, or
    - (iii) the first sale of agricultural products by a primary producer to wholesalers, retailers or processors, in circumstances where that sale does not take place on separate premises reserved for that purpose.
- (5) In subsection (4)(c) the reference to waste of undertakings does not include waste of the person who incurred the expenditure or of any other person forming part of the same undertaking as that person.
- (6) Expenditure is within this subsection if it is incurred on a means of transport or transport equipment for the purposes of a qualifying activity in the road freight sector or the air transport sector.
- (7) Expenditure is within this subsection if a relevant grant or relevant payment is made towards—
  - (a) that expenditure, or
  - (b) any other expenditure which is incurred by any person in respect of the same designated assisted area, and on the same single investment project, as that expenditure.
- (8) A section 45K allowance made in respect of first-year qualifying expenditure is to be withdrawn if—
  - (a) after it is made, a relevant grant or relevant payment is made towards that expenditure, or
  - (b) within the period of 3 years beginning when that expenditure was incurred, a relevant grant or relevant payment is made towards any other expenditure which is incurred by any person in respect of the same designated assisted area, and on the same single investment project, as that expenditure.
- (9) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (8).
- (10) 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, that person must give notice to an officer of Revenue and Customs specifying how the return needs to be amended.
- (11) 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.

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(12) In this section—

“agricultural product”, “coal sector”, “steel sector”, “shipbuilding sector” and “synthetic fibres sector” have the same meaning as in the General Block Exemption Regulation;

“General Block Exemption Regulation” means Commission Regulation (EC) No 800/2008 (General block exemption Regulation);

“management” and “waste” have the meaning given by Article 1 of Directive 2006/12/EC of the European Parliament and of the Council;

“relevant grant or relevant payment” means a grant or payment which is—

- (a) a State aid, other than an allowance under this Part, or
- (b) a grant or subsidy, other than a State aid, which the Treasury by order declares to be relevant for the purposes of the withholding of a section 45K allowance;

“section 45K allowance” means a first-year allowance in respect of expenditure that is first-year qualifying expenditure under section 45K;

“single investment project” has the same meaning as in the General Block Exemption Regulation;

“undertaking” means—

- (a) an autonomous enterprise, or
- (b) an enterprise (not within paragraph (a)) and its partner enterprises (if any) and its linked enterprises (if any),

and for this purpose “enterprise”, “autonomous enterprise”, “partner enterprises” and “linked enterprises” have the meaning given by Annex 1 to the General Block Exemption Regulation.

(13) Nothing in this section limits references to “State aid” to State aid which is required to be notified to and approved by the European Commission.

(14) For the purposes of this section references to expenditure incurred in respect of a designated assisted area includes expenditure incurred on the provision of things for use primarily in that area or on services to be provided primarily in that area.

(15) The Treasury may by order make such provision amending this section as appears to them appropriate for the purpose of giving effect to any future amendments of or instruments replacing—

- (a) the General Block Exemption Regulation,
- (b) the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02),
- (c) Council Regulation (EC) No 104/2000,
- (d) Directive 2006/12/EC of the European Parliament and of the Council, or
- (e) the Treaty on the Functioning of the European Union.

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**45N Effect of plant or machinery subsequently being primarily for use outside designated assisted areas**

- (1) Expenditure on the provision of plant or machinery is to be treated as never having been first-year qualifying expenditure under section 45K if, at any relevant time—
  - (a) the primary use to which the plant and machinery is put is other than in an area which was a designated assisted area within the meaning of section 45K at the time the expenditure was incurred, or
  - (b) the plant or machinery is held for use otherwise than primarily in an area which was such a designated assisted area at that time.
- (2) “Relevant time” means a time which—
  - (a) falls within the relevant period, and
  - (b) is a time when the plant or machinery is owned by—
    - (i) the person who incurred the expenditure, or
    - (ii) a person who is, or at any time in that period has been, connected with that person.
- (3) “The relevant period” means the period of 5 years beginning with—
  - (a) the day on which the plant or machinery in question is first brought into use for the purposes of a qualifying activity carried on by the company, or
  - (b) if earlier, the day on which it is first held for such use.
- (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, that person must give notice to an officer of Revenue and Customs specifying how the return needs to be amended.
- (6) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section.”

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2012, Paragraph 3.