



# Capital Allowances Act 1990

## 1990 CHAPTER 1

### PART II

#### MACHINERY AND PLANT

#### CHAPTER I

##### ALLOWANCES AND CHARGES: GENERAL PROVISIONS

### **22 First-year allowances: transitional relief for regional projects**

- (1) Subject to the provisions of this Part, where—
- (a) a person carrying on a trade incurs capital expenditure to which this section applies on the provision of machinery or plant wholly and exclusively for the purposes of the trade, and
  - (b) in consequence of his incurring the expenditure, the machinery or plant belongs to him at some time during the chargeable period related to the incurring of the expenditure,
- there shall be made to him for that period an allowance (“a first-year allowance”) which shall be of an amount equal to the whole of that expenditure.
- (2) This section applies to so much of any expenditure as is certified by the Secretary of State for the purposes of this section to be expenditure which, in his opinion, qualifies for a regional development grant or a grant under Part IV of the relevant Order and consists of the payment of sums on a project—
- (a) either in an area which on 13th March 1984 was a development area, within the meaning of the Industrial Development Act 1982, or in Northern Ireland; and
  - (b) in respect of which a written offer of financial assistance under section 7 or 8 of that Act was made on behalf of the Secretary of State in the period beginning on 1st April 1980 and ending on 13th March 1984 or in respect of

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which a written offer of financial assistance was made in that period by the Highlands and Islands Development Board.

- (3) This section applies to so much of any expenditure as is certified by the Department of Economic Development in Northern Ireland for the purposes of this section to be expenditure which, in the opinion of that Department, qualifies for a grant under Part IV of the relevant Order and consists of the payment of sums on a project—
- (a) in Northern Ireland; and
  - (b) in respect of which a written offer of financial assistance under Article 7 or 8 of the relevant Order was made on behalf of a Department of the Government of Northern Ireland in the period beginning on 1st April 1980 and ending on 13th March 1984 or in respect of which a written offer of financial assistance was made in that period by the Local Enterprise Development Unit.
- (4) Subject to the following provisions of this section, no first-year allowance shall be made in respect of any expenditure—
- (a) if the chargeable period related to the incurring of the expenditure is also the chargeable period related to the permanent discontinuance of the trade; or
  - (b) incurred on the provision of a motor car; or
  - (c) subject to subsections (5), (6) and (11) below, on the provision of machinery or plant for leasing, whether in the course of a trade or otherwise, unless it appears that the machinery or plant will be used for a qualifying purpose in the requisite period and will not at any time in that period be used for any other purpose;
- and section 50 shall apply for the interpretation of paragraph (c) above as it applies for the interpretation of Chapter V of this Part.
- (5) Paragraph (c) of subsection (4) above does not apply to expenditure incurred at any time on the provision of machinery or plant which is to be an integral part of a building or structure if section 1 would apply to expenditure incurred at that time on the construction of that building or structure.
- (6) Nothing in paragraph (c) of subsection (4) above affects expenditure on the provision of vehicles if they are provided wholly or mainly for the use of persons in receipt of—
- (a) mobility allowance under the Social Security Act 1975 or the Social Security (Northern Ireland) Act 1975; or
  - (b) a mobility supplement under a scheme made under the Personal Injuries (Emergency Provisions) Act 1939; or
  - (c) a mobility supplement under an Order in Council made under section 12 of the Social Security (Miscellaneous Provisions) Act 1977; or
  - (d) any payment appearing to the Treasury to be of a similar kind and specified by them by order.
- (7) Where one or more first-year allowances fall to be made for any chargeable period in connection with a trade carried on by a company, the company may, by notice given to the inspector not later than two years after the end of that period, either disclaim the allowance or allowances or require that the amount, or aggregate amount, thereof be reduced to an amount specified in that behalf in the notice; and a claim for one or more first-year allowances to be made for any chargeable period in connection with a trade carried on by a person other than a company may contain a similar requirement as to the amount or aggregate amount thereof.
- (8) No disclaimer or claim under subsection (7) above may be made in respect of any ship.

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- (9) All such assessments or adjustments of assessments shall be made as may be necessary to give effect to subsection (7) above.
- (10) In this section—
- “regional development grant” means a grant under Part II of the Industrial Development Act 1982;
  - “the relevant Order” means the Industrial Development (Northern Ireland) Order 1982;
- and any reference to a particular provision of that Act or Order includes a reference to the corresponding provision of any Act or Order which was in force before and repealed by the Industrial Development Act 1982 or the Industrial Development (Northern Ireland) Order 1982.
- (11) Where expenditure is incurred on the provision of machinery or plant which is fixed to a building or land of which the person who incurs the expenditure is the lessor and the circumstances are such that a transfer of his interest in the building or land would operate to transfer his interest in the machinery or plant, then subsection (4)(c) above shall not preclude the making of a first-year allowance in respect of such expenditure.

## **23 Information relating to first-year allowances**

- (1) A claim by a person other than a company for a first-year allowance in respect of expenditure to which section 22(4)(c) applies, and a return by a company of profits in the computation of which a deduction is made on account of such an allowance, shall be accompanied by a certificate—
- (a) stating that the machinery or plant in question will be used for a qualifying purpose in the requisite period, will not be used for any other purpose and has not been used for any other purpose in any part of that period which has already elapsed; and
  - (b) containing a description of the machinery or plant in question or, if the claim or deduction relates to more than one item of machinery or plant and those items are of different kinds, a description of the different kinds and the amount claimed or deducted in respect of each of them; and
  - (c) where the claim or deduction relates to a first-year allowance which by virtue of section 45(2) is in respect of part only of any expenditure, containing a statement of the extent to which the profits or gains referred to in section 45(2) will be chargeable to tax as there mentioned.
- (2) Where a person other than a company has claimed a first-year allowance in respect of any expenditure, or a deduction on account of such an allowance has been made in computing profits in respect of which a return has been made by a company, and the machinery or plant in question is at any time in the requisite period used otherwise than for a qualifying purpose, the person to whom it then belongs shall give notice of that fact to the inspector, specifying the use to which the machinery or plant has been put; and, subject to subsection (3) below, any such notice shall—
- (a) be given within three months after the end of the chargeable period or its basis period in which the machinery or plant is first used otherwise than for a qualifying purpose; and
  - (b) relate to all the items of machinery or plant (if more than one) in respect of which that person is required to give notice under this subsection in respect of that period.

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In this subsection the reference to machinery or plant being used otherwise than for a qualifying purpose shall include a reference to machinery or plant being treated as so used by virtue of section 45(4).

- (3) If, at the end of the three months mentioned in subsection (2)(a) above, the person concerned does not know and cannot reasonably be expected to know that any item of machinery or plant in respect of which he is required to give a notice under that subsection has been used otherwise than for a qualifying purpose, he shall in respect of that item give the notice within 30 days of his coming to know that it has been so used.
- (4) Where a first-year allowance has been made in respect of any expenditure, the inspector may by notice require—
- (a) any person to whom the machinery or plant belongs or has belonged, or who is or has been in possession of it under a lease, during the requisite period; and
  - (b) the personal representatives of any such person,
- to furnish him, within such period (not being less than 30 days) as may be specified in the notice, with such information as he may require and the person to whom the notice is addressed has or can reasonably obtain about the leasing of the machinery or plant or the use to which it is being or has been put.
- (5) The obligation to give notice by virtue of subsection (2) or (3) above where the machinery or plant becomes used otherwise than for a qualifying purpose shall arise a second time when the machinery or plant becomes used—
- (a) otherwise than for a qualifying purpose, and
  - (b) for the purpose of being leased to such a person as is referred to in section 42(1)(a) and (b),
- (if it were not so used before).
- (6) Section 50 shall apply for the interpretation of this section as it applies for the interpretation of Chapter V of this Part.

## **24 Writing-down allowances and balancing adjustments**

- (1) Subject to the provisions of this Part, where—
- (a) a person carrying on a trade has incurred capital expenditure on the provision of machinery or plant wholly and exclusively for the purposes of the trade, and
  - (b) in consequence of his incurring that expenditure, the machinery or plant belongs or has belonged to him,
- allowances and charges shall be made to and on him in accordance with the following provisions of this section.
- (2) Subject to subsection (3) below, for any chargeable period for which a person within subsection (1) above has qualifying expenditure which exceeds any disposal value to be brought into account in accordance with subsection (6) below, there shall be made to him —
- (a) unless the period is the chargeable period related to the permanent discontinuance of the trade, an allowance (“a writing-down allowance”) equal to—
    - (i) 25 per cent. of the excess, or

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- (ii) a proportionately reduced percentage of the excess if the period is part only of a year, or if the period is a year of assessment but the trade has been carried on for part only of that year;
    - (b) if the period is the chargeable period related to the permanent discontinuance of the trade, an allowance (“a balancing allowance”) equal to the whole of the excess.
  - (3) A claim for a writing-down allowance to be made for any chargeable period in connection with a trade carried on by a person other than a company may require that the amount of the allowance be reduced to an amount specified in that behalf in the claim.
  - (4) For any chargeable period for which a company has qualifying expenditure, the company may, by notice given to the inspector not later than two years after the end of that period, either disclaim a writing-down allowance or require that the allowance be reduced to an amount specified in that behalf in the notice; and all such assessments and adjustments of assessments shall be made as may be necessary to give effect to this subsection.
  - (5) For any chargeable period for which a person’s qualifying expenditure is less than the disposal value which he is to bring into account, there shall be made on him a charge (“a balancing charge”), and the amount on which the charge is made shall be an amount equal to the difference.
  - (6) The disposal value to be brought into account by a person for any chargeable period is the disposal value of all machinery or plant—
    - (a) on the provision of which for the purposes of the trade he has incurred capital expenditure; and
    - (b) which belongs to him at some time in the chargeable period or its basis period; and
    - (c) in respect of which, in the chargeable period or its basis period, one of the following events occurs, namely—
      - (i) the machinery or plant ceases to belong to him;
      - (ii) he loses possession of the machinery or plant in circumstances where it is reasonable to assume that the loss is permanent or, in the case of machinery or plant which was in use for mineral exploration and access, he abandons the machinery or plant at the site where it was in use for that purpose;
      - (iii) the machinery or plant ceases to exist as such (as a result of destruction, dismantling or otherwise);
      - (iv) the machinery or plant begins to be used wholly or partly for purposes which are other than those of the trade;
      - (v) the trade is permanently discontinued (or is treated by virtue of any provision of the Tax Acts as permanently discontinued);and that is the first such event to occur;
- but this subsection shall not require a person to bring into account the disposal value of any machinery or plant which he disposes of by way of gift in such circumstances that there is a charge to tax under Schedule E.

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## 25 Qualifying expenditure

(1) Subject to subsections (2) to (9) below, for the purposes of section 24, a person's qualifying expenditure for a chargeable period is the aggregate of the following amounts—

- (a) the balance remaining after deducting any first-year allowances made in respect thereof of any capital expenditure incurred by him on the provision for the purposes of the trade of machinery or plant being expenditure incurred in the chargeable period in question or its basis period or at any previous time, and not being—
  - (i) expenditure which, or any part of which, has formed part of his qualifying expenditure for any previous chargeable period, or
  - (ii) expenditure in respect of which a first-year allowance is or could (assuming a claim therefor in the case of a person other than a company, and disregarding any notice of disclaimer in the case of a company) be made for the chargeable period in question; and
- (b) if for the chargeable period immediately preceding the chargeable period in question there was an excess of qualifying expenditure over disposal value, the balance of that excess after deducting any writing-down allowance made by reference thereto.

(2) In any case where—

- (a) a company carrying on a trade incurs capital expenditure on the provision of machinery or plant for the purposes of the trade, and
- (b) apart from any disclaimer of the allowance a first-year allowance would fall to be made for any chargeable period in respect of that expenditure, and
- (c) the company disclaims the allowance by notice under section 22(7) or, in the case of ships, 30(1)(a),

then, for the purposes of section 24, that expenditure shall not, by virtue of subsection (1)(a)(ii) above, be excluded from the capital expenditure referred to in subsection (1)(a) above.

(3) In any case where—

- (a) a person carrying on a trade, but not being a company, incurs capital expenditure on the provision of machinery or plant for the purposes of the trade, and
- (b) if a claim were made in that behalf, a first-year allowance would fall to be made in respect of that expenditure for the chargeable period related to the incurring of it, and
- (c) no claim is made but by notice given to the inspector not later than two years after the end of that chargeable period, the person concerned elects that this subsection shall apply,

then, for the purposes of section 24, that expenditure shall not, by virtue of subsection (1)(a)(ii) above, be excluded from the capital expenditure referred to in subsection (1)(a) above.

(4) In any case where—

- (a) a person (whether a company or not) carrying on a trade has incurred capital expenditure on the provision of machinery or plant for the purposes of the trade, and

- (b) a first-year allowance falls to be made to that person in respect of that expenditure (and, in the case of a person other than a company, a claim is made for that allowance), and
- (c) for the chargeable period related to the incurring of that expenditure, the amount of that first-year allowance or, as the case may be, the aggregate amount of that and other first-year allowances which fall to be made to that person is required to be reduced by virtue of section 22(7) or, in the case of ships, 30(1)(b),

then, for the purposes of section 24, an amount equal to the relevant portion of the expenditure giving rise to the first-year allowance or allowances referred to in paragraph (c) above shall be treated as expenditure in respect of which no first-year allowance is or could be made for the chargeable period in question.

- (5) Subject to subsection (6) below, where—
  - (a) a first-year allowance is made in respect of capital expenditure on the provision of machinery or plant, and
  - (b) in the chargeable period related to the incurring of that expenditure, the disposal value of that machinery or plant falls to be brought into account in accordance with section 24(6),

that expenditure shall not be virtue of subsection (1)(a)(ii) above be excluded from the capital expenditure referred to in subsection (1)(a) above.

- (6) Where the event by reason of which disposal value falls to be brought into account as mentioned in subsection (5) above is the assignment of the benefit of a contract, subsection (1) above, as modified by subsection (5) above, shall have effect as if any reference in paragraph (a) to capital expenditure incurred were a reference to the total capital expenditure which the person in question would have incurred in respect of the machinery or plant if he had wholly performed the contract.
- (7) Where an allowance is or has been made under any provision of Part V except section 122 in respect of any capital expenditure, none of that expenditure shall be taken into account in determining qualifying expenditure for the purpose of any allowance or charge under section 24.

This subsection shall not have effect in relation to any chargeable period or its basis period ending after 26th July 1989.

- (8) All such assessments and adjustments of assessments shall be made as may be necessary to give effect to subsections (5) and (6) above.
- (9) In subsection (4) above “the relevant portion” of expenditure giving rise to a first-year allowance or allowances is that which bears to the whole of that expenditure the same proportion as the amount of the reduction mentioned in subsection (4)(c) above bears to what the amount of the allowance or allowances would have been apart from that reduction.

## **26 The disposal value**

- (1) Subject to subsection (2) below, for the purposes of section 24 the disposal value of any machinery or plant depends upon the event by reason of which it falls to be taken into account and—
  - (a) unless paragraph (b) below applies, if that event is the sale of the machinery or plant, equals the net proceeds to the person in question of the sale, together

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with any insurance moneys received by him in respect of the machinery or plant by reason of any event affecting the price obtainable on the sale, and, so far as it consists of capital sums, any other compensation of any description so received,

- (b) if that event is the sale of the machinery or plant at a price lower than that which it would have fetched if sold in the open market, and otherwise than in circumstances such that—
  - (i) the buyer's expenditure on the acquisition of the machinery or plant can be taken into account in making allowances to him under this Part or under Part VII and the buyer is not a dual resident investing company which is connected with the seller within the terms of section 839 of the principal Act, or
  - (ii) there is a charge to tax under Schedule E,
 equals the price which the machinery or plant would have fetched if sold in the open market,
- (c) if that event is the demolition or destruction of the machinery or plant, equals the net amount received by the person in question for the remains of the machinery or plant, together with any insurance moneys received by him in respect of the demolition or destruction and, so far as it consists of capital sums, any other compensation of any description so received,
- (d) if that event is the permanent loss of the machinery or plant otherwise than in consequence of its demolition or destruction, equals any insurance moneys received by him in respect of the loss, and, so far as it consists of capital sums, any other compensation of any description so received,
- (e) if that event is the permanent discontinuance of the trade before the occurrence of an event within paragraph (a), (b), (c) or (d) above, is the same as the disposal value specified for the last-mentioned event, and
- (f) in the case of any other event, equals the price which the machinery or plant would have fetched if sold in the open market at the time of the event.

(2) The disposal value of any machinery or plant shall in no case exceed the capital expenditure incurred by the person in question on the provision of the machinery or plant for the purposes of the trade.

(3) Where the person mentioned in subsection (2) above has acquired the machinery or plant as a result of a transaction which was, or a series of transactions each of which was, between connected persons within the terms of section 839 of the principal Act, that subsection shall have effect as if it referred to the capital expenditure on the provision of the machinery or plant incurred by whichever party to that transaction, or to any of those transactions, incurred the greatest such expenditure.

## **27 Professions, employments, vocations etc**

- (1) Except as otherwise provided and subject in particular to subsections (2) and (3) below, the provisions of this Part shall, with any necessary adaptations, apply in relation to—
  - (a) professions, employments, vocations and offices, and
  - (b) the occupation of woodlands where the profits or gains thereof are assessable under Schedule D,

as they apply in relation to trades.

- (2) The provisions of this Part in their application in accordance with this section to an office or employment—



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- (a) shall apply only to machinery or plant which is necessarily provided for use in the performance of the duties thereof, and
  - (b) shall have effect subject to section 198(2) of the principal Act (offices and employments with duties abroad).
- (3) This section shall have effect from 6th April 1993 with the omission of subsection (1) (b).

## **28 Investment companies and life assurance companies**

- (1) Subject to subsections (2) to (6) below, this Part and such other provisions of the Corporation Tax Acts as relate to allowances or charges under this Part shall apply with any necessary adaptations in relation to machinery and plant provided for use or used for the purposes of the management of the business—
- (a) of an investment company (as defined in section 130 of the principal Act), or
  - (b) of a company carrying on the business of life assurance,
- as they apply in relation to machinery or plant provided for use or used for the purposes of a trade; and, except as provided by subsection (2) below, in relation to any allowances and balancing charges which fall to be made by virtue of this section, the Corporation Tax Acts shall apply as if they were to be made in taxing a trade.
- (2) As respects allowances or charges falling to be made by virtue of this section in relation to any business—
- (a) allowances for any accounting period shall, as far as may be, be given effect by deducting the amount of the allowance from any income for the period of the business, and in so far as effect cannot be so given, section 75(4) of the principal Act shall apply; and
  - (b) effect shall be given to any charge by treating the amount on which the charge is to be made as income of the business;
- and sections 73, 144 and 145 shall not apply.
- (3) No allowance and no balancing charge shall be made by virtue of this section for any accounting period in respect of expenditure incurred by any person on machinery or plant, except in pursuance of an election made by him for that accounting period; but an election for any chargeable period shall have effect as an election for that and all subsequent chargeable periods.
- (4) An election under subsection (3) above shall be made by notice to the inspector either for all machinery or plant provided for use or used for the purposes of the management of the relevant business, or for any class of machinery or plant so provided or used; but an election for machinery or plant of any class shall not be made for any accounting period after an assessment in respect of the business for that or a subsequent accounting period has been finally determined without such an election.
- (5) Corresponding allowances or charges in the case of the same machinery or plant shall not be made under this Part both under subsection (2) above and in some other way; and, on any assessment to tax, expenditure to which an election under this section applies shall not be taken into account otherwise than under this Part and except as provided by section 75(4) of the principal Act.
- (6) In this section references to the purposes of the management of a business are to be taken as referring to those purposes expenditure on which would, apart from this

section, be treated as expenses of management within the meaning of section 75 of the principal Act.

## **29 Furnished holiday lettings**

- (1) For the purposes of this Part—
  - (a) the commercial letting of furnished holiday accommodation in the United Kingdom in respect of which the profits or gains are chargeable under Case VI of Schedule D shall be treated as a trade; and
  - (b) all such lettings made by a particular person or partnership or body of persons shall be treated as one trade.
- (2) Subsection (1) above shall be construed as one with section 503 of the principal Act and, accordingly, section 504 of that Act shall also apply for the purposes of this section.
- (3) Where there is a letting of accommodation only part of which is holiday accommodation, such apportionments shall be made for the purposes of this section as appear to the inspector, or on appeal the Commissioners, to be just and reasonable.

## **CHAPTER II**

### **SHIPS**

## **30 First-year allowances**

- (1) Where for any chargeable period a first-year allowance falls to be made to a person carrying on a trade in respect of expenditure incurred by him on the provision of a ship, that person may, by notice given to the inspector not later than two years after the end of the period—
  - (a) require the postponement of the whole allowance or, in the case of a company, disclaim it, or
  - (b) require that the amount of the allowance be reduced to an amount specified in the notice, or
  - (c) require the postponement of so much of the allowance as is so specified,and a notice which contains a requirement under paragraph (b) above may also contain a requirement under paragraph (c) above with respect to the reduced amount of the allowance.
- (2) Where a notice has been given under subsection (1) above requiring the postponement of the whole or part of any first-year allowance—
  - (a) the allowance shall, as the case may require, be withheld or withdrawn, or partially withheld or withdrawn, and
  - (b) so much of the expenditure as is equal to the whole allowance shall be disregarded for all the purposes of sections 24, 25 and 26 except for the purposes of sections 24(6) and 26(1) and (2), and
  - (c) subject to section 47(7)(a), the person giving the notice may claim the amount withheld or withdrawn as a first-year allowance for any subsequent chargeable period in which he carries on the trade, or may claim first-year allowances not exceeding that amount in the aggregate for any two or more such periods.

- (3) All such assessments and adjustments of assessments shall be made as may be necessary to give effect to the provisions of this section.
- (4) An allowance which is postponed by virtue of this section shall not by reason only of the postponement fall within the references to allowances or amounts carried forward from an earlier year or period in sections 383(5)(d), 388(7) and 403(3) of the principal Act (loss relief and group relief).
- (5) In any case where a notice under subsection (1) above contains requirements under both paragraphs (b) and (c) of that subsection, any reference in subsections (2) to (4) above to the first-year allowance is a reference to the reduced amount of that allowance as specified in the notice.

### **31 Writing-down allowances**

- (1) This section and sections 32 and 33 apply in any case where—
  - (a) a person (“the shipowner”) carrying on a trade incurs expenditure on the provision of a ship for the purposes of that trade (the “actual trade”);
  - (b) the ship is not provided for leasing or letting on charter otherwise than by way of lease, or is so provided but it appears that the ship will be used for a qualifying purpose in the requisite period and will not at any time in that period be used for any other purpose, and the expenditure does not fall within section 42(1); and
  - (c) the actual trade is not a separate trade which the shipowner is treated as carrying on by virtue of section 61(1).
- (2) Subject to sections 32 and 33, it shall be assumed for the purposes of sections 24, 25 and 26 and subsections (3) to (10) below—
  - (a) that the shipowner incurred the expenditure on the provision of the ship wholly and exclusively for the purposes of a trade (“a single ship trade”) carried on by him separately from his actual trade and from any other trade which he may in fact carry on or is assumed for any purpose to carry on; and
  - (b) that, without prejudice to section 24(6)(c)(i) to (iii), the single ship trade is permanently discontinued when the ship begins to be used wholly or partly for purposes other than those of the actual trade or, if it is earlier, at a time within the requisite period when the ship begins to be used otherwise than for a qualifying purpose;and subject to subsections (3) to (10) below, any allowance or charge which, on those assumptions, would fall to be made for any chargeable period in the case of the single ship trade shall be made for that period in the case of the actual trade.
- (3) The shipowner may, by notice given to the inspector not later than two years after the end of a chargeable period for which he has qualifying expenditure in respect of his single ship trade, require the postponement of the whole of the writing-down allowance to be made to him for that period or of so much of it as is specified in the notice.
- (4) Where notice has been given under subsection (3) above in respect of a chargeable period—
  - (a) the writing-down allowance which would otherwise have been made to the shipowner for that period in respect of his single ship trade shall not be made

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or, as the case may be, shall be made only to the extent that the notice does not require it to be postponed; and

- (b) the amount of any writing-down allowance falling to be made to the shipowner for any subsequent chargeable period of his single ship trade shall be determined as if the writing-down allowance referred to in paragraph (a) above had been made (or, as the case may be, had been made in full) for the chargeable period concerned; and
- (c) on a claim made by the shipowner, the whole or part of the amount of that allowance or, as the case may be, of so much of it as was not made to him shall be treated as a writing-down allowance to be made to him for any subsequent chargeable period in which his actual trade is carried on (whether or not his single ship trade is treated as carried on in that period),

and, where a claim under paragraph (c) above relates to only part of the amount postponed, a further claim or claims may be made under that paragraph in relation to the balance or any part thereof until the aggregate of the amounts claimed equals the amount postponed.

- (5) A claim under subsection (4)(c) above shall not affect any right of the shipowner to (or the determination of the amount of) any writing-down allowance to which, apart from the claim, he is entitled for the chargeable period to which the claim relates.

- (6) For any chargeable period of the single ship trade for which the amount of a writing-down allowance is reduced by virtue of a requirement—

- (a) in a claim made by virtue of section 24(3), or
- (b) in a notice under section 24(4),

any reference in subsections (3) to (5) above to the writing-down allowance is a reference to the reduced amount of the allowance, as specified in the claim or notice concerned.

- (7) For any chargeable period of the single ship trade for which the disposal value of the ship falls to be brought into account in accordance with sections 24, 25 and 26, no balancing allowance or balancing charge shall be made to or on the shipowner in respect of that trade but, in such a case—

- (a) if, apart from this subsection, a balancing allowance would have fallen to be made to the shipowner, an amount equal to that allowance shall for the purposes of sections 24, 25 and 26 be added to the shipowner's qualifying expenditure for that period in respect of his actual trade; and
- (b) if, apart from this subsection, a balancing charge would have fallen to be made on the shipowner, an amount equal to that on which the charge would have been made shall be brought into account for that chargeable period as an item of disposal value referable to machinery or plant which, in respect of that chargeable period, falls within section 24(6).

- (8) In relation to old expenditure, in any case where subsection (7) above applies by reason of the ship beginning to be used otherwise than for a qualifying purpose—

- (a) any reference in that subsection to sections 24, 25 and 26 shall be construed as a reference to those sections as they have effect in accordance with section 41; and
- (b) any reference in that subsection to the shipowner's actual trade shall be construed as a reference to the separate trade referred to in section 41(2).

- (9) All such assessments and adjustments of assessments shall be made as may be necessary to give effect to the provisions of this section and sections 32 and 33.

- (10) An allowance which is postponed by virtue of this section shall not by reason of the postponement fall within the references to allowances or amounts carried forward from an earlier year or period in sections 383(5)(d), 388(7) and 403(3) of the principal Act (loss relief and group relief).
- (11) In this section “requisite period”, “qualifying purpose” and “old expenditure” have the same meanings as they have for the purposes of Chapter V of this Part.
- (12) In relation to expenditure incurred before 27th July 1989, subsection (1) shall have effect with the substitution for paragraph (b) of the following paragraph—
  - “(b) the expenditure is not such that section 22(4)(c) precludes the making of a first-year allowance in respect of it and is not expenditure falling within section 42(1);”.

### **32 Ships not used in the actual trade**

- (1) If the ship ceases to belong to the shipowner without having in fact been brought into use for the purposes of his actual trade, then—
  - (a) on that event, the single ship trade shall be treated as permanently discontinued but section 25(5) and (6) shall not apply,
  - (b) any writing-down allowances which, by virtue of section 31, have previously been made to the shipowner or have been postponed by him shall be withdrawn; and
  - (c) without prejudice to the operation of section 31(7), an amount equal to any writing-down allowances withdrawn by virtue of paragraph (b) above shall be added to the shipowner’s qualifying expenditure in respect of his actual trade for the chargeable period related to that event.
- (2) In this section “the shipowner”, “actual trade” and “single ship trade” have the same meanings as in section 31.

### **33 Exclusion of section 31**

- (1) The shipowner may by notice given to the inspector not later than two years after the end of a chargeable period of a single ship trade, not being the chargeable period relating to the permanent discontinuance of that trade, require that, with effect from the beginning of that chargeable period, section 31 shall not, or as the case may be, shall no longer apply.
- (2) Where a notice under subsection (1) above is given before any writing-down allowance has been made to the shipowner in respect of the expenditure referred to in section 31(1), the provisions of that section shall be deemed never to have applied with respect to that expenditure.
- (3) If a notice under subsection (1) above is given after any writing-down allowance has been so made, then, for the purposes of sections 24, 25, 26 and 31—
  - (a) the single ship trade shall be treated as permanently discontinued in the chargeable period to which the notice relates or, as the case may be, in its basis period, but no balancing allowance or charge shall be made to or on the shipowner by reason thereof; and
  - (b) the amount which, apart from this section, would be the shipowner’s qualifying expenditure for that chargeable period in respect of the single ship

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trade shall be added to his qualifying expenditure for that period in respect of his actual trade.

- (4) The shipowner may by notice given to the inspector not later than two years after the end of a chargeable period of a single ship trade, require that an amount of expenditure specified in the notice, being less than the amount which, apart from this subsection, would be his qualifying expenditure for that period in respect of the single ship trade, shall be attributed to his actual trade.
- (5) If a notice is given under subsection (4) above, then, for the purposes of sections 24, 25, 26 and 31—
- (a) the shipowner's qualifying expenditure for that period in respect of the single ship trade shall be reduced by deducting therefrom the amount specified in the notice; and
  - (b) the amount specified in the notice shall be added to his qualifying expenditure for that period in respect of his actual trade.
- (6) In this section "the shipowner", "actual trade" and "single ship trade" have the same meanings as in section 31.

### CHAPTER III

#### EXPENSIVE MOTOR CARS

#### 34 Writing-down allowances etc

- (1) The following provisions of this section shall have effect where capital expenditure exceeding £8,000 is incurred, or is treated under subsection (4)(b) below or section 81 as incurred, on the provision of a motor car for the purposes of a trade.
- (2) It shall be assumed for the purposes of sections 24, 25 and 26—
- (a) that the person carrying on the trade ("the actual trade") incurred the expenditure on the provision of the motor car wholly and exclusively for the purposes of a trade carried on by him separately from the actual trade and any other trade he may carry on, and
  - (b) that without prejudice to section 24(6)(c)(i) to (iii), the separate trade is permanently discontinued when the motor car begins to be used wholly or partly for purposes other than those of the actual trade;
- and, subject to subsections (3) to (5) below, the allowance or charge under section 24 which, on these assumptions, would fall to be made for any chargeable period in the case of the separate trade shall be made for that period in the case of the actual trade.
- (3) If, on the assumptions in subsection (2) above, a writing-down allowance would fall to be made for any chargeable period in the case of the separate trade, the amount thereof shall be treated as not exceeding—
- (a) except in a case falling within paragraph (b) below, £2,000 or, if the period is part only of a year, a proportionate part of £2,000,
  - (b) if, by virtue of section 153, the person carrying on the trade is regarded as having incurred a part only of the expenditure actually incurred on the provision of the motor car, a proportionate part of £2,000 or, if the period is part only of a year, that proportionate part proportionately reduced.

- (4) Where the disposal value of the motor car falls to be taken into account by reason of an event falling within section 24(6)(c)(i) and that event is such a sale or the performance of such a contract as is referred to in section 75—
- (a) the disposal value to be brought into account under sections 24, 25 and 26 in the case of the separate trade shall be an amount equal to the price which the motor car would have fetched on a sale at the same time in the open market or, if less, the capital expenditure incurred, or treated as incurred, on the provision of the motor car by the person disposing of it, and
  - (b) the person acquiring the motor car shall be treated for the purposes of this Part as having incurred on its provision capital expenditure equal to that disposal value.
- (5) If either of the following events occurs in relation to the motor car—
- (a) it is used partly for the purposes of the actual trade and partly for other purposes, or
  - (b) while it is in use for the purposes of the actual trade, there is paid to the person carrying on the trade any sum which is in respect of, or takes account of, part of the wear and tear to it occasioned by that use,

neither section 79 nor section 80 shall apply, but for the chargeable period related to the event and any subsequent period, instead of there being made in the case of the actual trade the allowance or charge which under subsections (1) to (4) above would fall to be made for that period in the case of the separate trade, there shall be made so much of that allowance or charge as, in accordance with section 79 or 80, would be just and reasonable if it were one falling to be made for that period in the case of the notional trade referred to in that section.

### **35 Contributions to expenditure, and hiring of cars**

- (1) Where capital expenditure exceeding £8,000 is incurred on the provision of a motor car and, by virtue of section 154, writing-down allowances may be made to a person as if a contribution made by him to the expenditure had been expenditure on the provision of a motor car for the purposes of a trade, the amount of the allowance to be made for any chargeable period—
- (a) shall be determined as if the contribution had been expenditure on the provision of the motor car for the purposes of a trade carried on by that person separately from any other trade carried on by him, and
  - (b) shall not exceed an amount bearing to £2,000 the same proportion as that borne by the contribution to the capital expenditure actually incurred on the provision of the motor car or, if the chargeable period is part only of a year, that amount proportionately reduced.
- (2) Where, apart from this subsection, the amount of any expenditure on the hiring of a motor car the retail price of which when new exceeds £8,000 would be allowed to be deducted in computing for the purposes of tax the profits or gains of any trade, that amount shall be reduced in the proportion which £8,000, together with one half of the excess, bears to that retail price.

### **36 Definition of “motor car”, etc**

- (1) In this Part “motor car” means any mechanically propelled road vehicle other than—

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- (a) a vehicle of a construction primarily suited for the conveyance of goods or burden of any description, or
  - (b) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used, or
  - (c) subject to subsections (2) and (4) below, a vehicle provided wholly or mainly for hire to, or for the carriage of, members of the public in the ordinary course of a trade.
- (2) Subsection (1)(c) applies to a vehicle only if—
- (a) the following conditions are satisfied—
    - (i) the number of consecutive days for which it is on hire to, or used for the carriage of, the same person will normally be less than 30; and
    - (ii) the total number of days for which it is on hire to, or used for the carriage of, the same person in any period of 12 months will normally be less than 90; or
  - (b) it is provided for hire to a person who will himself use it wholly or mainly for hire to, or the carriage of, members of the public in the ordinary course of a trade and in a manner complying with the conditions specified in paragraph (a) above.
- (3) For the purposes of subsection (2) above persons who are connected with each other within the meaning of section 839 of the principal Act shall be treated as the same person.
- (4) Subsection (2) above does not affect vehicles provided wholly or mainly for the use of persons in receipt of—
- (a) a mobility allowance under the Social Security Act 1975 or the Social Security (Northern Ireland) Act 1975;
  - (b) a mobility supplement under a scheme made under the Personal Injuries (Emergency Provisions) Act 1939;
  - (c) a mobility supplement under an Order in Council made under section 12 of the Social Security (Miscellaneous Provisions) Act 1977; or
  - (d) any payment appearing to the Treasury to be of a similar kind and specified by them by order.
- (5) The Treasury may by order increase or further increase the sums of money specified in sections 34 and 35.

## CHAPTER IV

### SHORT-LIFE ASSETS

#### **37 Election for certain machinery or plant to be treated as short-life assets**

- (1) This section applies where—
- (a) a person carrying on a trade (“the trader”) incurs capital expenditure on the provision of machinery or plant wholly and exclusively for the purposes of the trade; and
  - (b) the machinery or plant is not of a description specified in section 38; and
  - (c) the trader makes an election under this section requiring the machinery or plant to be treated as a short-life asset;



and any machinery or plant to which an election under this section applies is in the following provisions of this section referred to as a short-life asset.

- (2) An election under this section—
  - (a) shall be made in writing to the inspector;
  - (b) shall specify the short-life asset, the capital expenditure concerned and the date on which it was incurred;
  - (c) may not be made more than two years after the end of the chargeable period or its basis period in which the capital expenditure was incurred; and
  - (d) shall be irrevocable;and if different parts of the capital expenditure are incurred at different times, only that part of the expenditure which is first incurred shall be taken into account for the purposes of paragraph (c) above.
- (3) Where an election is made under this section, it shall be assumed for the purposes of sections 24, 25 and 26—
  - (a) that the trader incurred the expenditure on the provision of the short-life asset wholly and exclusively for the purposes of a trade (“the notional trade”) carried on by him separately from the trade referred to in subsection (1) above (“the actual trade”) and from any other trade which he in fact carries on or is assumed for any other purpose to carry on; and
  - (b) that, without prejudice to section 24(6)(c)(i) to (iii), the notional trade is permanently discontinued when the short-life asset begins to be used wholly or partly for purposes other than those of the actual trade.
- (4) Any allowance or charge which, on the assumptions in subsection (3) above, would fall to be made for any chargeable period in the case of the notional trade shall be made for that period in the case of the actual trade; and all such assessments and adjustments of assessments shall be made as may be necessary to give effect to an election under this section.
- (5) If the disposal value of a short-life asset does not fall to be brought into account in accordance with sections 24, 25 and 26 for any of the chargeable periods ending on or before the fourth anniversary of the end of the chargeable period related to the incurring of the capital expenditure concerned or, as the case may be, the first part of that expenditure, then—
  - (a) in the first chargeable period ending after that fourth anniversary or, as the case may be, in its basis period, the notional trade shall be treated as permanently discontinued but no balancing allowance or charge shall be made to or on the trader by reason thereof; and
  - (b) the amount which, apart from this subsection, would be the trader’s qualifying expenditure for the chargeable period referred to in paragraph (a) above in respect of the notional trade shall be added to his qualifying expenditure for that period in respect of his actual trade.
- (6) If, at a time before the notional trade would otherwise be permanently discontinued for the purposes of sections 24, 25 and 26, a short-life asset provided for leasing begins to be used otherwise than for a qualifying purpose, within the meaning of section 39 and the occasion of its being so used falls within the requisite period, within the meaning of section 40, then at that time—

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- (a) the notional trade shall be treated as permanently discontinued but no balancing allowance or charge shall be made to or on the trader by reason thereof; and
  - (b) the amount which, apart from this subsection, would be the trader's qualifying expenditure in respect of the notional trade for the chargeable period in which, or in the basis period for which, the asset began to be so used shall for the purposes of sections 24, 25 and 26 be added to the trader's qualifying expenditure for that chargeable period in respect of his actual trade.
- (7) Subsection (6)(b) above shall have effect—
- (a) in relation to any short-life asset which is a motor car, with the substitution for the words from “be added” to the end of the words “as they have effect in accordance with section 41 be, or be added to, the trader's qualifying expenditure for that chargeable period.”; and
  - (a) in relation to any short-life asset the expenditure on the provision of which is old expenditure (within the meaning of section 50)—
    - (i) with the omission of the words “in respect of the notional trade”, and
    - (ii) with the addition after the words “sections 24, 25 and 26” of the words “as they have effect in accordance with section 41”.
- (8) Subject to subsection (9) below, if, at a time before the notional trade is permanently discontinued for the purposes of sections 24, 25 and 26, the trader disposes of a short-life asset to a person with whom he is connected within the terms of section 839 of the principal Act—
- (a) the disposal shall be treated for the purposes of sections 24, 25 and 26 (in its application both to the trader and to the connected person) as a sale of the short-life asset at a price equal to the amount of the trader's qualifying expenditure in respect of the notional trade for the chargeable period related to the disposal;
  - (b) nothing in section 75 shall apply in relation to the disposal;
  - (c) immediately after his acquisition of the short-life asset, the connected person shall be taken to have made an election under this section (so that, in his hands, the machinery or plant concerned is also a short-life asset for the purposes of this section); and
  - (d) in relation to the connected person, subsection (5) above shall have effect as if any reference to the fourth anniversary of the end of the chargeable period related to the incurring of the capital expenditure concerned were a reference to the date which was (or which, by virtue of the previous operation of this paragraph, had effect as) that fourth anniversary in relation to the trader.
- (9) Paragraphs (a) and (b) of subsection (8) above do not apply in relation to a disposal unless, by notice given to the inspector not more than two years after the end of the chargeable period or its basis period in which the disposal occurred, the trader and the connected person so elect.
- (10) In the application of subsection (1) of section 26 where a short-life asset is disposed of at a price lower than that which it would have fetched if sold in the open market, paragraph (b)(i) of that subsection shall not apply unless an election is made under subsection (9) above.

### **38 Assets which cannot be treated as short-life assets**

The machinery and plant which by virtue of section 37(1)(b) cannot be treated as short-life assets are the following, that is to say—

- (a) ships;
- (b) motor cars;
- (c) machinery or plant to which section 61 applies;
- (d) machinery or plant falling within section 79(2);
- (e) machinery or plant where the capital expenditure on its provision is expenditure to which section 80 applies;
- (f) machinery or plant falling within section 81(1)(a) or (b);
- (g) machinery or plant which is used in such a way that section 22(4)(c) precludes the making of a first-year allowance in respect of expenditure incurred on the provision of it for leasing;
- (h) machinery or plant provided for leasing, except—
  - (i) machinery or plant which it appears will be used in the requisite period (within the meaning of section 40) for a qualifying purpose (within the meaning of section 39) and will not at any time in that period be used for any other purpose;
  - (ii) vehicles of the kind mentioned in section 36(4);
- (j) machinery or plant which is leased to two or more persons jointly in such circumstances that section 43 applies;
- (k) machinery or plant which is leased to two or more persons jointly in such circumstances that section 45 precludes the making of a first-year allowance in respect of the whole or part of the capital expenditure incurred on its provision;
- (l) machinery or plant in respect of expenditure on which section 42 provides only a 10 per cent. writing-down allowance;
- (m) machinery or plant in respect of which a first-year allowance continues to be available by virtue of section 22.

Paragraphs (g) and (k) above shall not have effect in relation to expenditure incurred after 26th July 1989 and paragraphs (h) and (j) shall not have effect in relation to expenditure incurred before 27th July 1989.

## **CHAPTER V**

### **LEASED ASSETS AND INEXPENSIVE CARS**

#### **39 Meaning of “qualifying purpose”**

- (1) Machinery or plant on the provision of which a person (“the buyer”) has incurred expenditure is used for a qualifying purpose at any time if at that time any of the conditions specified in subsections (2) to (5) below are satisfied.
- (2) The machinery or plant is leased to a lessee who uses it for the purposes of a trade, otherwise than for leasing, and either—
  - (a) the buyer’s expenditure was old expenditure and, disregarding the words “to which this section applies” in subsection (1) of section 22 and subsections (2) and (3) of that section, a first-year allowance could have been made to the

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lessee if he had bought the machinery or plant at that time and had incurred capital expenditure in doing so, or

- (b) the buyer's expenditure was new expenditure and, had the lessee bought the machinery or plant at that time and had incurred new expenditure in doing so, that expenditure would have fallen to be included, in whole or in part, in the lessee's qualifying expenditure for any chargeable period for the purposes of section 24(2) to (5).

For the purposes of paragraph (a) above, section 148(5) and (6) shall be disregarded.

- (3) The buyer uses the machinery or plant for short-term leasing.
- (4) The machinery or plant is leased to a lessee who uses it for short-term leasing and either is resident in the United Kingdom or so uses it in the course of a trade carried on by him there.
- (5) The buyer uses the machinery or plant for the purposes of a trade otherwise than for leasing.
- (6) Without prejudice to subsections (1) to (5) above but subject to subsection (8) below, a ship is also used for a qualifying purpose at any time when it is let on charter in the course of a trade which consists of or includes operating ships if—
  - (a) the person carrying on the trade is resident in the United Kingdom or carries on the trade there, and
  - (b) that person is responsible as principal (or appoints another person to be responsible in his stead) for navigating and managing the ship throughout the period of the charter and for defraying all expenses in connection with the ship throughout that period or substantially all such expenses other than those directly incidental to a particular voyage or to the employment of the ship during that period.
- (7) Subsection (6) above shall with the necessary modifications apply also in relation to aircraft.
- (8) Subsection (6) above does not apply if the main object, or one of the main objects, of the letting of the ship or aircraft on charter, or of a series of transactions of which the letting on charter was one, or of any of the transactions in such a series was to obtain—
  - (a) if the expenditure in question is old expenditure, a first-year allowance, or
  - (b) if the expenditure in question is new expenditure, a writing-down allowance of an amount determined without regard to section 42(2),
 in respect of expenditure incurred on the provision of the ship or aircraft whether that expenditure was incurred by the person referred to in subsection (6)(a) above or some other person.
- (9) Without prejudice to subsections (1) to (5) above, a transport container is also used for a qualifying purpose at any time when it is leased in the course of a trade which is carried on by a person who is resident in the United Kingdom or who carries on the trade there if—
  - (a) the trade consists of or includes the operation of ships or aircraft and the container is at other times used by that person in connection with the operation of ships or aircraft, or
  - (b) the container is leased under a succession of leases to different persons who, or most of whom, are not connected with each other.

- (10) For any part of the requisite period for which the machinery or plant belongs to a person falling within section 40(5)(a) or (b), that person shall be treated for the purposes of subsections (3) and (5) above as the buyer.

#### **40 Meaning of “short-term leasing” and “the requisite period”**

- (1) In this Chapter “short-term leasing”, in relation to any machinery or plant, means leasing the machinery or plant in such a manner—
- (a) that—
    - (i) the number of consecutive days for which it is leased to the same person will normally be less than 30, and
    - (ii) the total number of days for which it is leased to the same person in any period of 12 months will normally be less than 90, or
  - (b) that—
    - (i) the number of consecutive days for which it is leased to the same person will not normally exceed 365, and
    - (ii) subject to subsection (2) below, the aggregate of the periods for which it is leased in the requisite period to lessees in circumstances not falling within section 39(2) will not exceed two years.
- (2) In a case where the requisite period exceeds four years the reference in subsection (1) (b)(ii) above to that period shall be construed as a reference to any period of four consecutive years which falls within the requisite period.
- (3) For the purposes of subsection (1) above, persons who are connected with each other shall be treated as the same person and where any machinery or plant is leased as one of a number of items which form part of a pool of items of the same or a similar description and are not separately identifiable, all the items in the pool may be treated as used for short-term leasing within the meaning of that subsection if substantially the whole of the items in the pool are so used.
- (4) For the purposes of this Chapter the requisite period is—
- (a) in the case of expenditure not falling within paragraph (b) below, the period of four years beginning with the date on which the machinery or plant is first brought into use by the person who incurred the expenditure, or
  - (b) in the case of—
    - (i) new expenditure, or
    - (ii) old expenditure as respects which section 70(3) of the Finance Act 1982 had effect,the period of ten years beginning with the date on which the machinery or plant is first brought into use by the person who incurred the expenditure;
- except that where the machinery or plant ceases to belong to that person at any time before the end of those four years or ten years (as the case may be), the requisite period shall end at that time.
- If the circumstances are such that machinery or plant is used for a qualifying purpose, this subsection shall have effect with the substitution for each reference to ten years of a reference to four years.

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- (5) For the purposes of subsection (4) above, machinery or plant shall be treated as continuing to belong to the person who incurred the expenditure so long as it belongs to—
- (a) a person who is connected with him, or
  - (b) a person who acquired it from him as a result of one or more disposals on the occasion of which, or each of which, the trade carried on by the person making the disposal was treated as continuing by virtue of section 113(2) or 114(1) of the principal Act.

#### **41 Writing-down allowances etc. for leased assets and inexpensive cars**

- (1) Where—
- (a) section 42 applies to expenditure on the provision of machinery or plant for leasing in the course of a trade, or
  - (b) section 22(4)(c) precludes, or would but for section 75 preclude, the making of a first-year allowance in respect of expenditure incurred by a person on the provision of machinery or plant for leasing in the course of a trade, or
  - (c) paragraph (a) above does not apply and expenditure is incurred on the provision for the purposes of a trade of a motor car to which section 34 does not apply,

then, subject to the following provisions of this Chapter, subsections (2) to (6) below shall have effect with respect to the allowances and charges to be made in the case of the trade (“the actual trade”) under section 24.

- (2) It shall be assumed for the purposes of sections 24, 25 and 26—
- (a) that the person carrying on the trade incurred the expenditure on the provision of the machinery or plant wholly and exclusively for the purposes of a trade carried on by him separately from the actual trade and any other trade carried on by him; and
  - (b) that without prejudice to section 24(6)(c)(i) to (iii), the separate trade is permanently discontinued when the machinery or plant begins to be used wholly or partly for purposes other than those of the actual trade;

and the allowance or charge under section 24 which, on those assumptions and having regard to subsections (3) and (4) below, would fall to be made for any chargeable period in the case of the separate trade shall be made for that period in the case of the actual trade.

- (3) If an allowance under section 24 falling by virtue of this section to be made for any chargeable period in the case of the actual trade is not claimed or is disclaimed under subsection (4) of that section, or is reduced in amount in accordance with a requirement under subsection (3) or under subsection (4) of that section, then in determining the allowance or charge under that section which would fall to be made for any subsequent chargeable period in the case of the separate trade, any allowance falling to be made in the case of that trade for the first-mentioned chargeable period shall be treated as not claimed or as disclaimed or, as the case may require, as proportionately reduced.
- (4) Where in the case of any person sections 24, 25 and 26 apply in accordance with this section to different items of machinery or plant—
- (a) those sections shall apply separately in relation to expenditure falling within paragraph (a) of subsection (1) above and to expenditure falling within paragraph (b) or (c) of that subsection; and

- (b) if there is more than one item of machinery or plant falling within subsection (1)(a) above or within subsection (1)(b) or (c) or one item of machinery or plant falling within subsection (1)(b) and one falling within subsection (1)(c), those sections shall apply as if the separate trade for which each such item is treated as used were the same trade, and accordingly that trade shall not by virtue of subsection (2)(b) above be treated as permanently discontinued until all the items falling within subsection (1)(a) or subsection (1)(b) and (c) begin to be used wholly or partly for purposes other than those of the actual trade.
- (5) Where sections 24, 25 and 26 have effect in accordance with this section in respect of expenditure incurred by a person providing machinery or plant for the purposes of a trade, then, if the machinery or plant is disposed of by him to a person who is connected with him and the disposal is not on an occasion on which the trade is treated as continuing by virtue of section 113(2), 114(1) or 343(2) of the principal Act or section 77(1) of this Act—
- (a) the disposal value to be brought into account under sections 24, 25 and 26 in the case of the separate trade shall be of an amount equal to the price which the machinery or plant would have fetched on a sale at the same time in the open market or, if less, the capital expenditure incurred or treated as incurred on the provision of the machinery or plant by the person disposing of it; and
  - (b) the person acquiring it shall be treated for the purposes of this Part as having incurred on its provision expenditure equal to that disposal value.
- (6) This section does not apply to machinery or plant in relation to which sections 24, 25 and 26 apply in accordance with section 34, 79 or 80.

## **42 Assets leased outside the United Kingdom**

- (1) This section has effect with respect to expenditure on the provision of machinery or plant for leasing where the machinery or plant is at any time in the requisite period used for the purpose of being leased to a person who—
- (a) is not resident in the United Kingdom, and
  - (b) does not use the machinery or plant for the purposes of a trade carried on there or for earning profits or gains chargeable to tax by virtue of section 830(4) of the principal Act,
- and where the leasing is neither short-term leasing nor the leasing of a ship, aircraft or transport container which is used for a qualifying purpose by virtue of section 39(6) to (9).
- (2) In their application to expenditure falling within subsection (1) above, sections 24, 25 and 26 as they have effect—
- (a) in accordance with section 41, or
  - (b) in accordance with section 80, or
  - (c) in accordance with section 34, or
  - (d) with respect to any motor car to which section 35(1) applies, or
  - (e) with respect to machinery or plant to which section 61 applies,
- shall have effect, subject to subsection (3) below, as if the reference in section 24(2) to 25 per cent. were a reference to 10 per cent.

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- (3) No balancing allowances or writing-down allowances shall be available in respect of expenditure falling within subsection (1) above if the circumstances are such that the machinery or plant in question is used otherwise than for a qualifying purpose and—
- (a) there is a period of more than one year between the dates on which any two consecutive payments become due under the lease; or
  - (b) any payments other than periodical payments are due under the lease or under any agreement which might reasonably be construed as being collateral to the lease; or
  - (c) disregarding variations made under the terms of the lease which are attributable to—
    - (i) changes in the rate of corporation tax or income tax, or
    - (ii) changes in the rate of capital allowances, or
    - (iii) changes in any rate of interest where the changes are linked to changes in the rate of interest applicable to inter-bank loans, or
    - (iv) changes in the premiums charged for insurance of any description by a person who is not connected with the lessor or the lessee,any of the payments due under the lease or under any such agreement as is referred to in paragraph (b) above, expressed as monthly amounts over the period for which that payment is due, is not the same as any other such payment expressed in the same way; or
  - (d) either the lease is expressed to be for a period which exceeds 13 years or there is, in the lease or in a separate agreement, provision for extending or renewing the lease or for the grant of a new lease so that, by virtue of that provision, the machinery or plant could be leased for a period which exceeds 13 years; or
  - (e) at any time the lessor or a person connected with him will, or may in certain circumstances, become entitled to receive from the lessee or any other person a payment, other than a payment of insurance moneys, which is of an amount determined before the expiry of the lease and which is referable to a value of the machinery or plant at or after that expiry (whether or not the payment relates to a disposal of the machinery or plant).
- (4) Where a balancing allowance or a writing-down allowance has been made in respect of expenditure incurred in providing machinery or plant and, at any time in the requisite period, an event occurs such that, by virtue of subsection (3) above, there is no right to that allowance, an amount equal to any such allowance which has previously been given (less any excess reliefs previously recovered by the operation of section 46) shall, in relation to the person to whom the machinery or plant belongs immediately before the occurrence of that event, be treated as if it were a balancing charge to be made on him for the chargeable period in which, or in the basis period for which, the machinery or plant is used at the time that event occurs.
- (5) For the purposes of subsection (4) above, the allowances that have been made in respect of expenditure on any item of machinery or plant shall be determined as if that item were the only item of machinery or plant in respect of which sections 24, 25 and 26 had effect.
- (6) Subsection (7) below applies where—
- (a) by virtue of subsection (4) above any amount falls to be treated as if it were a balancing charge, and
  - (b) the person on whom the balancing charge is, by virtue of subsection (4), to be made acquired the machinery or plant in question as a result of a transaction



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which was, or a series of transactions each of which was, between connected persons, and

- (c) a first-year allowance, a balancing allowance or a writing-down allowance in respect of expenditure on the provision of that machinery or plant has been made to any of those persons;

except that it does not apply where section 113(2), 114(1) or 343(2) of the principal Act or section 77(1)(a) or (b) of this Act applied on the occasion of the transaction or transactions referred to in paragraph (b) above.

(7) Where this subsection applies—

- (a) subsection (4) above shall have effect as if it referred to the allowances specified in subsection (6)(c) above; and
- (b) for the purposes of subsection (4) any consideration paid or received on a disposal of the machinery or plant between connected persons shall be disregarded; and
- (c) if a balancing allowance or balancing charge is made in respect of the machinery or plant, there shall be made such adjustments of the relief falling to be taken into account by virtue of paragraph (a) above as are just and reasonable in the circumstances.

(8) For the purposes of the application of this section to old expenditure, this section shall have effect subject to the following modifications—

- (a) in subsection (1) for the words from “neither” to the end there shall be substituted the words “not short-term leasing”;
- (b) subsection (4) above shall have effect as if—
  - (i) it included a reference to a first-year allowance made in respect of old expenditure, and, for this purpose, subsection (3) above shall be deemed to include a reference to first-year allowances; and
  - (ii) for the reference to section 46 there were substituted a reference to section 47; and
- (c) subsection (5) shall be omitted.

### **43 Joint lessees: new expenditure**

(1) This section shall have effect in any case where machinery or plant is leased to two or more persons jointly and—

- (a) at least one of them is a person falling within section 42(1)(a) and (b); and
- (b) the leasing is not permitted leasing; and
- (c) the expenditure in question is new expenditure.

(2) If at any time when the machinery or plant is leased as mentioned in subsection (1) above the lessees use the machinery or plant for the purposes of a trade or trades, otherwise than for leasing, the expenditure on the provision of the machinery or plant shall be treated as not falling within section 42(1) if and to the extent to which it appears that the profits or gains of the trade or trades arising throughout the requisite period (or the period of the lease, if shorter) will be chargeable to income tax or corporation tax.

(3) Where, by virtue of subsection (2) above, part only of the expenditure on the provision of any machinery or plant is treated as not falling within section 42(1), then, whether or not the machinery or plant continues to be leased as mentioned in subsection (1) above, sections 24, 25, 26, 41 and 42 shall have effect as if—

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- (a) that part were expenditure on the provision of a separate item of machinery or plant; and
- (b) the remainder were expenditure (falling within section 42(1)) on the provision of another item of machinery or plant used otherwise than for a qualifying purpose;

and there shall be made all such apportionments as are necessary in consequence of this subsection.

#### **44 Further provisions relating to joint lessees in cases involving new expenditure**

- (1) Without prejudice to the operation of section 46, this section shall have effect where new expenditure is incurred on the provision of machinery or plant which is leased as mentioned in section 43(1).
- (2) Where, by virtue of section 43(2), the whole or part of the new expenditure has qualified for a normal writing-down allowance and, at any time in the requisite period while it is leased as mentioned in that subsection—
  - (a) no lessee uses the machinery or plant for the purposes of a trade or trades the profits or gains of which are chargeable to income tax or corporation tax, and
  - (b) section 42(4) does not apply at that time and has not applied at any earlier time,sections 46 and 48(2) shall have effect as if the separate item of machinery or plant referred to in section 43(3)(a) had at that time begun to be used for the purpose of being leased to a non-resident, otherwise than by permitted leasing.
- (3) Where the whole or part of any new expenditure has qualified for a normal writing-down allowance and the machinery or plant is subsequently leased in the requisite period as mentioned in section 43(1), subsection (2) above shall apply as if the whole of the expenditure had qualified for a normal writing-down allowance by virtue only of section 43(2).
- (4) Where, by virtue of section 43(2), the whole or part of the new expenditure has qualified for a normal writing-down allowance and, at the end of the requisite period, the machinery or plant in question is leased as mentioned in section 43(1) but subsection (2) above has not had effect, then, if it appears that the extent to which the machinery or plant has been used for the purposes of such a trade or trades as are referred to in subsection (2) above is less than that which was taken into account in determining the amount of the new expenditure which qualified for a normal writing-down allowance—
  - (a) section 46 shall have effect as if a part of the expenditure corresponding to the reduction in the extent of such use were expenditure on the provision of a separate item of machinery or plant used for the purpose of leasing to a non-resident, otherwise than by permitted leasing, on the last day of the requisite period; and
  - (b) any disposal value subsequently brought into account in respect of the machinery or plant under section 24 shall, instead of being apportioned in accordance with section 43(3), be apportioned by reference to the extent of such use as determined at the end of that period.

#### **45 Joint lessees: old expenditure**

- (1) Sections 22(4)(c), 23, 39, 40, 41 and 47 shall have effect in accordance with this section where the expenditure in question is not new expenditure and the machinery or plant is leased to two or more persons jointly.
- (2) Section 39(2)(a) shall not apply at any time when the machinery or plant is leased to two or more persons jointly but if the lessees use the machinery or plant for the purposes of a trade or trades, otherwise than for leasing, it shall be regarded as used for a qualifying purpose if and to the extent to which it appears that the profits or gains of the trade or trades arising throughout the requisite period (or the period of the lease, if shorter) will be chargeable to income tax or corporation tax.
- (3) Where, by virtue of subsection (2) above, a first-year allowance may be made in respect of part only of the expenditure on the provision of any machinery or plant, then, whether or not the machinery or plant continues to be leased to two or more persons jointly, sections 24, 25, 26, 41 and 47 shall have effect as if—
  - (a) that part were expenditure on the provision of a separate item of machinery or plant; and
  - (b) the remainder were expenditure on the provision of another item of machinery or plant;and there shall be made all such apportionments as are necessary in consequence of this subsection.
- (4) Where by virtue of subsection (2) above a first-year allowance has been made in respect of the whole or part of the expenditure on the provision of any machinery or plant and at any time in the requisite period while it is leased as mentioned in subsection (1) above no lessee uses it for the purpose of a trade or trades the profits or gains of which are chargeable to income tax or corporation tax, section 47 shall have effect as if the machinery or plant or, as the case may be, the separate item referred to in subsection (3)(a) above had at that time been used otherwise than for a qualifying purpose.
- (5) Where by virtue of subsection (2) above a first-year allowance has been made in respect of the whole or part of the expenditure on the provision of any machinery or plant and at the end of the requisite period the machinery or plant is leased as mentioned in subsection (1) above but subsection (4) has not had effect, then, if it appears that the extent to which the machinery or plant has been used for the purposes of a trade or trades the profits or gains of which are chargeable to income tax or corporation tax is less than that by reference to which the amount of the first-year allowance was determined—
  - (a) section 47 shall have effect as if a part of the expenditure corresponding to the reduction in the extent of such use were expenditure on the provision of a separate item of machinery or plant used otherwise than for a qualifying purpose on the last day of that period;
  - (b) any disposal value subsequently brought into account in respect of the machinery or plant under section 24 shall, instead of being apportioned in accordance with subsection (3) above, be apportioned by reference to the extent of such use as determined at the end of that period.
- (6) Where a first-year allowance has been made in respect of expenditure on the provision of machinery or plant otherwise than by virtue of subsection (2) above and the machinery or plant is subsequently leased in the requisite period to two or more persons jointly, subsections (4) and (5) above shall apply as if the first-year allowance

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had been made by virtue of subsection (2) above and had been so made in respect of the whole expenditure.

- (7) Where the machinery or plant is leased to two or more persons jointly and at least one of the joint lessees is a person falling within section 42(1)(a) and (b) (“a non-resident lessee”)—
- (a) any reference in subsections (2) to (6) above to the requisite period shall be construed in accordance with section 40(4)(b)(ii) whether or not there is also a joint lessee who is not a non-resident lessee;
  - (b) if the circumstances are such that no first-year allowance has been or may be made in respect of any part of the expenditure on the provision of the machinery or plant in question, section 42 shall apply in relation to that expenditure as if all the joint lessees were non-resident lessees; and
  - (c) if, by virtue of subsections (3), (4) or (5) above, sections 24, 25 and 26 have effect (directly or through the operation of section 47) in relation to the whole or any part of the expenditure on the machinery or plant in question, those sections shall have effect, in accordance with section 42(2), as if that expenditure were expenditure falling within section 42(1).

#### **46 Recovery of excess relief: new expenditure**

- (1) Where new expenditure incurred by any person in providing machinery or plant has qualified for a normal writing-down allowance and the machinery or plant is at any time in the requisite period used for the purpose of being leased to a non-resident, otherwise than by permitted leasing—
- (a) an amount equal to the excess relief shall, in relation to the person to whom the machinery or plant then belongs, be treated as if it were a balancing charge to be made on him for the chargeable period in which, or in the basis period for which, the machinery or plant is first so used; and
  - (b) for the purposes of sections 24, 25 and 26 (as they have effect with respect to expenditure which does not fall within section 42(1)), an amount equal to the unused expenditure shall, in relation to that person, be treated as if it were a disposal value to be brought into account for the chargeable period referred to in paragraph (a) above; and
  - (c) sections 24, 25 and 26 (as they have effect as mentioned in paragraphs (a) to (e) of section 42(2)) shall apply as if a sum equal to the aggregate of the amounts in paragraphs (a) and (b) above were qualifying expenditure of that person for the next chargeable period and, for the purpose of subsequently bringing any disposal value into account, as if the machinery or plant had always been used for the purposes of the separate trade.
- (2) The excess relief is the excess, if any, of—
- (a) any normal writing-down allowances made in respect of the new expenditure for the chargeable period related to the incurring of the expenditure and any subsequent chargeable period up to and including that mentioned in subsection (1)(a) above, over
  - (b) the maximum writing-down allowance or allowances that could have been made in respect of the expenditure for those chargeable periods if no normal writing-down allowance had been or could have been made.

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- (3) The unused expenditure is the amount by which the new expenditure incurred in providing the machinery or plant exceeds the allowances referred to in subsection (2) (a) above.
- (4) For the purposes of subsection (2) above, the normal writing-down allowances that were made in respect of new expenditure on any item of machinery or plant shall be determined as if that item were the only item of machinery or plant in relation to which sections 24, 25 and 26 had effect.
- (5) Where the person to whom any machinery or plant belongs at a time when it is first used for the purpose of being leased to a non-resident, otherwise than by permitted leasing, has acquired it as a result of a transaction which was, or a series of transactions each of which was, between connected persons and a normal writing-down allowance in respect of expenditure on the provision of the machinery or plant has been made to any of those persons—
- (a) subsection (2) above shall have effect as if it referred to that allowance and to the expenditure in respect of which it was made;
  - (b) for the purposes of subsection (2) any consideration paid or received on a disposal of the machinery or plant between connected persons shall be disregarded; and
  - (c) if a balancing allowance or balancing charge is made in respect of the machinery or plant there shall be made such adjustments of the total relief falling to be taken into account under paragraph (a) of that subsection as are just and reasonable in the circumstances;
- but this subsection does not apply where section 113(2), 114(1) or 343(2) of the principal Act or section 77 of this Act applied on the occasion of the transaction or transactions in question.
- (6) Where the person to whom any machinery or plant belongs at such a time as is mentioned in subsection (5) above acquired it as there mentioned and—
- (a) new expenditure incurred on the provision of the machinery or plant by any of the connected persons would have qualified for a normal writing-down allowance but such an allowance was not claimed or was disclaimed; and
  - (b) a balancing allowance is made to any of those persons in respect of that expenditure,
- this section shall with the necessary modifications apply as it applies where a normal writing-down allowance has been made.
- (7) If at any time in the requisite period a ship is used for the purpose of being leased to a non-resident otherwise than by permitted leasing, then, without prejudice to subsections (1) to (6) above—
- (a) no allowance shall be made in respect of it under section 31(4)(c) for the chargeable period in which it is first so used or for any subsequent chargeable period;
  - (b) nothing in section 31(7) shall affect the operation of subsection (1) above;
  - (c) sections 24, 25 and 26 (as they have effect in accordance with section 41) shall apply as if the amount of any allowance in respect of the ship which has been postponed under section 31 and not made were qualifying expenditure for the next chargeable period after that in which the ship is first so used.

#### **47 Recovery of excess relief: old expenditure**

- (1) Where a first-year allowance has been made in respect of expenditure incurred in providing machinery or plant and the machinery or plant is at any time in the requisite period used otherwise than for a qualifying purpose—
  - (a) an amount equal to the excess relief shall, in relation to the person to whom the machinery or plant then belongs, be treated as if it were a balancing charge to be made on him for the chargeable period in which, or in the basis period for which, the machinery or plant is first so used; and
  - (b) sections 24, 25 and 26 (as they have effect in accordance with section 41(1)(b)) shall apply as if that amount were qualifying expenditure of that person for the next chargeable period and, for the purpose of bringing any disposal value into account, as if the machinery or plant had always been used for the purposes of the separate trade.
- (2) The excess relief is the excess, if any, of—
  - (a) the first-year allowance made in respect of the expenditure and any writing-down allowance or allowances made in respect of it for the chargeable period related to the incurring of the expenditure and any subsequent chargeable period up to and including that mentioned in subsection (1)(a) above, over
  - (b) the maximum writing-down allowance or allowances that could have been made in respect of the expenditure for those chargeable periods if the first-year allowance had not and could not have been made.
- (3) Where as a result of a requirement under section 22(7) an aggregate amount of first-year allowances in respect of different items of machinery or plant is reduced, there shall be treated for the purposes of subsection (2) above as having been made in respect of each item a reduction proportionate to the capital expenditure on the provision of that item.
- (4) For the purposes of subsection (2) above, the writing-down allowance or allowances that were made or would have been made in respect of any item of machinery or plant shall be determined as if that item were the only item of machinery or plant in relation to which sections 24, 25 and 26 had effect.
- (5) Where the person to whom any machinery or plant belongs at a time when it is first used otherwise than for a qualifying purpose has acquired it as a result of a transaction which was, or a series of transactions each of which was, between connected persons and a first-year allowance in respect of expenditure on the provision of the machinery or plant has been made to any of those persons—
  - (a) subsection (2) above shall have effect as if it referred to that first-year allowance and to the expenditure in respect of which it was made;
  - (b) for the purposes of that subsection any consideration paid or received on a disposal of the machinery or plant between connected persons shall be disregarded; and
  - (c) if a balancing allowance or balancing charge is made in respect of the machinery or plant there shall be made such adjustments of the total relief falling to be taken into account under paragraph (a) of that subsection as are just and reasonable in the circumstances;

but this subsection does not apply where section 113(2), 114(1) or 343(2) of the principal Act or section 77 of this Act applied on the occasion of the transaction or transactions in question.

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- (6) Where the person to whom any machinery or plant belongs at such a time as is mentioned in subsection (5) above acquired it as there mentioned and—
- (a) a first-year allowance in respect of expenditure on the provision of the machinery or plant could have been made to any of the connected persons but was not claimed or was disclaimed; and
  - (b) a balancing allowance is made to any of those persons in respect of that expenditure,
- this section shall with the necessary modifications apply as it applies where a first-year allowance has been made.
- (7) If at any time in the requisite period a ship is used otherwise than for a qualifying purpose, then, without prejudice to subsections (1) to (6) above—
- (a) no allowance shall be made in respect of it under section 30(2)(c) for the chargeable period in which it is first so used or for any subsequent chargeable period;
  - (b) sections 24, 25 and 26 (as they have effect in accordance with section 41) shall apply as if the amount of any first-year allowance in respect of the ship which has been postponed under section 30 and not made were qualifying expenditure for the next chargeable period after that in which the ship is first so used.
- (8) In relation to old expenditure in relation to which section 42 has effect in accordance with subsection (8) of that section, this section shall have effect subject to the following modifications, that is to say—
- (a) any reference to machinery or plant, or to a ship, being used otherwise than for a qualifying purpose shall be construed as a reference to its being used for the purpose of being leased to such a person as is referred to in section 42(1)(a) and (b) and otherwise than for a qualifying purpose;
  - (b) any reference to a first-year allowance shall be construed as including a reference to a normal writing-down allowance;
  - (c) the reference in subsection (1)(b) above to sections 24, 25 and 26 as they have effect in accordance with section 41(1)(b) shall be construed as including a reference to those sections as they have effect as mentioned in section 42(2)(b) to (e);
  - (d) in determining the amount of any excess relief in a case where this section has previously applied, account shall be taken of the relief already recovered;
- and subsections (3) and (4) above shall apply in relation to the allowances mentioned in section 42(4) as they apply in relation to the allowances mentioned in subsection (2) above.
- (9) If section 66(7) of the Finance Act 1980 or subsection (7) above had already applied in relation to expenditure on a ship before section 70(1) of the Finance Act 1982 or section 42(1) of this Act applied to that expenditure, then, on the subsequent application of subsection (7) above by virtue of subsection (8)(a) above, subsection (7)(b) shall not again apply.
- (10) Subsections (7) to (9) above shall have effect in any case where the requisite period began before 27th July 1989 with the substitution for each reference to a ship of a reference to a new ship.

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#### **48 Information relating to allowances made in respect of new expenditure**

- (1) Where new expenditure is incurred on the provision of machinery or plant and, before the expenditure has qualified for a normal writing-down allowance, it is used for leasing to a non-resident and that leasing is permitted leasing, a claim by a person other than a company for a writing-down allowance which takes account of that expenditure and a return by a company of profits in the computation of which a deduction is made on account of such an allowance shall be accompanied by a certificate to that effect, setting out the description of permitted leasing.
- (2) If, after any new expenditure has qualified for a normal writing-down allowance, the machinery or plant in question is at any time in the requisite period used for the purpose of being leased to a non-resident, otherwise than by permitted leasing, the person to whom it belongs at that time shall give notice of that fact to the inspector.
- (3) Subject to subsection (6) below, notice under subsection (2) above shall be given within three months after the end of the chargeable period or its basis period in which the machinery or plant is first used for leasing to a non-resident otherwise than by permitted leasing.
- (4) A certificate or notice given by any person under subsection (1) or (2) above by reference to a chargeable period or its basis period shall specify the non-resident to whom the machinery or plant has been leased and shall specify all the items of machinery or plant (if more than one) in respect of which the person in question is required to give a certificate or notice under this section by reference to that period.
- (5) Subject to subsection (6) below, where new expenditure is incurred on the provision of machinery or plant which is leased as mentioned in section 43(1), the lessor shall, within three months after the end of the chargeable period or its basis period in which the machinery or plant is first so leased, give notice to the inspector specifying—
  - (a) the names and addresses of the persons to whom the asset is jointly leased;
  - (b) the portion of the new expenditure which is properly attributable to each of those persons; and
  - (c) so far as it is within his knowledge, which of those persons is resident in the United Kingdom.
- (6) If, at the end of the three months referred to in subsection (3) or (5) above, the person required to give a notice under that subsection does not know and cannot reasonably be expected to know that any item of machinery or plant in respect of which he is required to give such a notice has been used or leased as mentioned in the subsection in question, he shall in respect of that item give the notice within 30 days of his coming to know that it has been so used or leased.

#### **49 Information relating to allowances made in respect of old expenditure**

- (1) This section applies where a writing-down allowance (but no first-year allowance) has been made in respect of expenditure which is not new expenditure, and the amount of that allowance was determined without regard to section 42(2); and references below to an allowance are references to an allowance so determined.
- (2) Where a person other than a company has claimed an allowance in respect of any expenditure, or a deduction on account of an allowance has been made in computing profits in respect of which a return has been made by a company, and the machinery or plant in question is at any time in the requisite period used for the purpose of being



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leased to such a person as is referred to in section 42(1)(a) and (b) otherwise than for a qualifying purpose, the person to whom it then belongs shall give notice of that fact to the inspector, specifying the use to which the machinery or plant has been put; and, subject to subsection (3) below, any such notice shall—

- (a) be given within three months after the end of the chargeable period or its basis period in which the machinery or plant is first so used; and
- (b) relate to all the items of machinery or plant (if more than one) in respect of which that person is required to give notice under this subsection in respect of that period.

(3) If at the end of the three months mentioned in subsection (2)(a) above the person concerned does not know and cannot reasonably be expected to know that any item of machinery or plant in respect of which he is required to give such a notice has been used as mentioned in that subsection, he shall in respect of that item give the notice within 30 days of his coming to know that it has been so used.

(4) Where an allowance has been made in respect of any expenditure, the inspector may by notice require—

- (a) any person to whom the machinery or plant belongs or has belonged, or who is or has been in possession of it under a lease, during the requisite period; and
- (b) the personal representatives of any such person,

to furnish him, within such period (not being less than 30 days) as may be specified in the notice, with such information as he may require and the person to whom the notice is addressed has or can reasonably obtain about the leasing of the machinery or plant or the use to which it is being or has been put.

## **50 Interpretation of Chapter V**

(1) In this Chapter references to a lease include references to a sub-lease and references to a lessor or lessee shall be construed accordingly.

(2) For the purposes of this Chapter, letting a ship on charter or any other asset on hire shall be regarded as leasing if, apart from this subsection, it would not be so regarded.

(3) In this Chapter—

“new expenditure” means expenditure incurred after 31st March 1986 except any such expenditure which is old expenditure or which falls within section 41(1)(c);

“non-resident” means such a person as is referred to in section 42(1)(a) and (b);

“normal writing-down allowance” means a writing-down allowance of an amount determined without regard to section 42(2);

“old expenditure” means any of the following expenditure, that is to say,—

- (i) expenditure falling within section 22,
- (ii) expenditure incurred before 1st April 1986, and
- (iii) any other expenditure which by virtue of section 57(2) and (3) of the Finance Act 1986 was not new expenditure for the purposes of that section;

“permitted leasing” means short-term leasing or the leasing of a ship, aircraft or transport container which is used for a qualifying purpose by virtue of section 39(6) to (9);

“qualifying purpose” has the meaning given by section 39;

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“requisite period” has the meaning given by section 40; and  
 “short-term leasing” has the meaning given by section 40.

- (4) Where new expenditure has been incurred by any person, any reference in this Chapter to the new expenditure having qualified for a normal writing-down allowance is a reference to the expenditure having fallen to be included, in whole or in part, in that person’s qualifying expenditure for any chargeable period for the purposes of subsections (2) to (5) of section 24, as that section has effect with respect to expenditure which does not fall within section 42(1).
- (5) Without prejudice to section 27, references in this Chapter to the use of machinery or plant for the purposes of a trade include references to its use for any purpose in connection with which a writing-down allowance can be given by virtue of that section.
- (6) Section 839 of the principal Act shall apply for the purposes of this Chapter.

## CHAPTER VI

### FIXTURES

#### 51 Application and interpretation of Chapter VI

- (1) Subject to subsection (8) below, this Chapter shall apply to determine entitlement to an allowance under this Part in respect of expenditure on the provision of machinery or plant which is so installed or otherwise fixed in or to a building or any other description of land as to become, in law, part of that building or other land; and at any time when, by virtue of this Chapter, any machinery or plant is treated as belonging to any person, no other person shall be entitled to such an allowance in respect of it.
- (2) In this Chapter—
  - “equipment lessor”, “equipment lessee” and “equipment lease” have the meanings given by section 53;
  - “fixture” means any such machinery or plant as is referred to in subsection (1) above;
  - “interest in land” and “lease” shall be construed in accordance with subsection (3) below;
  - “relevant land”, in relation to a fixture, means the building or other description of land of which the fixture becomes part.
- (3) In this Chapter “interest in land” means—
  - (a) the fee simple estate in the land or an agreement to acquire that estate;
  - (b) in Scotland, the estate or interest of the proprietor of the *dominium utile* (or, in the case of property other than feudal property, of the owner) and any agreement to acquire such an estate or interest;
  - (c) any leasehold estate in, or in Scotland lease of, the land (whether in the nature of a head-lease, sub-lease or under-lease) and any agreement to acquire such an estate or, in Scotland, lease;
  - (d) an easement or servitude or any agreement to acquire an easement or servitude; and
  - (e) a licence to occupy land;

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and, except in the context of leasing machinery or plant, any reference in the following provisions of this Chapter to a lease is a reference to such a leasehold estate or, in Scotland, lease as is mentioned in paragraph (c) above or to such an agreement as is mentioned in that paragraph (and, in relation to such an agreement, the expression “grant” shall be construed accordingly).

- (4) If an interest in land is conveyed or assigned by way of security and subject to a right of redemption, then, so long as such a right subsists, the interest held by the creditor shall be treated for the purpose of this Chapter as held by the person having that right.
- (5) Any reference in this Chapter to a person being entitled to an allowance in respect of any capital expenditure incurred on the provision of a fixture is a reference to a case where—
- (a) that person is, for any chargeable period, entitled to a first-year allowance in respect of that expenditure; or
  - (b) that expenditure is taken into account in determining his qualifying expenditure for a chargeable period for the purposes of section 24(2), (3) and (5) (whether or not an allowance is made to him for that period),

and any reference to a chargeable period for which a person is so entitled is a reference—

- (i) to the chargeable period referred to in paragraph (a) above; or
  - (ii) to the chargeable period referred to in paragraph (b) above; or
  - (iii) to any chargeable period which is subsequent to that referred to in paragraph (b) above but is not later than the chargeable period in which he is required to bring the disposal value of the fixture concerned into account for the purposes mentioned in paragraph (b) above.
- (6) All such assessments and adjustments of assessments shall be made as may be necessary to give effect to the provisions of this Chapter.
- (7) Where any question arises as to whether any machinery or plant has become, in law, part of a building or other land and that question is material with respect to the liability to tax (for whatever period) of two or more persons, that question shall be determined, for the purposes of the tax of all those persons, by the Special Commissioners who shall determine the question in like manner as if it were an appeal, except that, for the purposes of the determination, all those persons shall be entitled to appear and be heard by, or to make representations in writing to, the Special Commissioners.
- (8) Subsection (1) above—
- (a) shall not affect the entitlement of any person to an allowance by virtue of section 154;
  - (b) shall not apply in relation to expenditure—
    - (i) which consists of the payment of sums payable under a contract entered into before 12th July 1984; or
    - (ii) which is incurred pursuant to an obligation contained in a lease or agreement for a lease entered into before that date.

## **52 Expenditure incurred by holder of interest in land**

- (1) Subject to subsection (2) below, in any case where—

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- (a) a person incurs capital expenditure on the provision of machinery or plant either for the purposes of a trade carried on by him or for leasing otherwise than in the course of a trade, and
- (b) the machinery or plant becomes a fixture, and
- (c) at the time the machinery or plant becomes a fixture he has an interest in the relevant land,

then, subject to sections 53 and 57, on and after that time the fixture shall be treated for the purposes of this Part as belonging to the person concerned in consequence of his incurring the expenditure.

- (2) If, in respect of the same fixture, there are two or more persons with different interests in the relevant land to whom, by virtue of subsection (1) above, the fixture would (apart from this subsection) be treated as belonging for the purposes of this Part, the only interest which shall be taken into account under that subsection is—
  - (a) if one of the interests is an interest falling within section 51(3)(d), that interest;
  - (b) if paragraph (a) above does not apply but one of the interests is an interest falling within section 51(3)(e), that interest; and
  - (c) in any other case—
    - (i) except in Scotland, that interest which is not in reversion (at law or in equity and whether directly or indirectly) on any other interest in the relevant land which is held by any of the persons referred to above; and
    - (ii) in Scotland, that of whichever of those persons has, or last had, the right of use of the relevant land.

### **53 Expenditure incurred by equipment lessor**

- (1) In any case where—
  - (a) a person (“the equipment lessor”) incurs capital expenditure on the provision of machinery or plant for leasing, and
  - (b) an agreement is entered into for the lease, directly or indirectly from the equipment lessor, of the machinery or plant (otherwise than as part of the relevant land) to another person (“the equipment lessee”) for the purposes of a trade carried on by the equipment lessee or for leasing otherwise than in the course of a trade, and
  - (c) the machinery or plant becomes a fixture, and
  - (d) if the expenditure referred to in paragraph (a) above had been incurred by the equipment lessee, the fixture would, by virtue of section 52 have been treated for the purposes of this Part as belonging to him in consequence of his incurring the expenditure, and
  - (e) the equipment lessor and the equipment lessee elect that this section should apply,

then, subject to section 57, on and after the time at which the expenditure is incurred the fixture shall be treated for the purposes of this Part as belonging to the equipment lessor in consequence of his incurring the expenditure.

- (2) An election under this section shall be made by notice to the inspector given before the expiry of the period of two years beginning at the end of the chargeable period related to the incurring of the expenditure referred to in subsection (1)(a) above; but no election may be made under this section if the equipment lessor and the equipment

lessee are connected with each other within the terms of section 839 of the principal Act.

- (3) Where an election has been made under this section with respect to a fixture, nothing in section 52 shall have the effect of treating the fixture for the purposes of this Part as belonging to the equipment lessee.
- (4) In this Chapter “equipment lease” means such an agreement as is mentioned in subsection (1)(b) above or a lease entered into pursuant to such an agreement.

#### **54 Expenditure included in consideration for acquisition of existing interest in land**

- (1) In any case where—
  - (a) after any machinery or plant has become a fixture, a person (“the purchaser”) acquires an interest in the relevant land, being an interest which was in existence prior to his acquisition of it, and
  - (b) the consideration which the purchaser gives for that interest is or includes a capital sum which, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture, and
  - (c) at the time of the purchaser’s acquisition of his interest in the relevant land, either no person has previously become entitled to an allowance in respect of any capital expenditure incurred on the provision of the fixture or, if any person has become so entitled, that person has been or is required to bring the disposal value of the fixture into account under section 24,

then, subject to section 57, on and after the purchaser’s acquisition of his interest in the relevant land, the fixture shall be treated for the purposes of this Part as belonging to him in consequence of his incurring expenditure as mentioned in paragraph (b) above.

- (2) If, in a case where subsection (1)(a) above applies—
  - (a) the machinery or plant was, prior to the purchaser’s acquisition of the interest in the relevant land, let under an equipment lease, and
  - (b) in connection with the acquisition of the interest in the relevant land, the purchaser pays a capital sum to discharge the obligations of the equipment lessee under the equipment lease,

subsection (1) above shall apply as if that capital sum were such a capital sum as is referred to in paragraph (b) of that subsection.

#### **55 Expenditure incurred by incoming lessee: transfer of allowances**

- (1) In any case where—
  - (a) after any machinery or plant has become a fixture, a person (“the lessor”) who has an interest in the relevant land grants a lease, and
  - (b) apart from section 57, the lessor would be entitled, for the chargeable period related to the grant of the lease, to an allowance in respect of expenditure incurred on the provision of the fixture, and
  - (c) the consideration which the lessee gives for the lease is or includes a capital sum which, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture, and
  - (d) the lessor and the lessee make an election under this section,

then, subject to section 57, on and after the grant of the lease, the fixture shall be treated for the purposes of this Part as belonging to the lessee in consequence of his incurring expenditure as mentioned in paragraph (c) above.

- (2) In any case where the lessor is not within the charge to tax, it shall be assumed that he is within that charge for the purpose of determining whether the condition in subsection (1)(b) above is fulfilled.
- (3) An election under this section shall be made by notice to the inspector given within two years after the date on which the lease takes effect.
- (4) No election may be made under this section if—
  - (a) the lessor and the lessee are connected with each other within the terms of section 839 of the principal Act; or
  - (b) it appears that the sole or main benefit which may be expected to accrue to the lessor from the grant of the lease and the making of an election is the obtaining of an allowance or deduction or a greater allowance or deduction or the avoidance or reduction of a charge under this Part.

## **56 Expenditure incurred by incoming lessee: lessor not entitled to allowances**

In any case where—

- (a) after any machinery or plant has become a fixture, a person (“the lessor”) who has an interest in the relevant land grants a lease, but section 55(1)(b) does not apply in his case, and
- (b) the consideration which the lessee gives for the lease is or includes a capital sum which, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture, and
- (c) at the time of the grant of the lease, no person has previously become entitled to an allowance in respect of any capital expenditure incurred on the provision of the fixture, and
- (d) the fixture has not before that time been used for the purposes of a trade by the lessor or any person connected with him within the terms of section 839 of the principal Act,

then, subject to section 57, on and after the grant of the lease, the fixture shall be treated for the purposes of this Part as belonging to the lessee in consequence of his incurring expenditure as mentioned in paragraph (b) above.

## **57 Fixtures treated as ceasing to belong to particular persons**

- (1) The provisions of this section and section 58 are without prejudice to any other circumstances in which the disposal value of a fixture falls to be brought into account in accordance with section 24.
- (2) Subject to subsection (4) below, if at any time the person to whom a fixture is treated for the purposes of this Part as belonging by virtue of any of sections 52, 54, 55 and 56 ceases (whether by reason of the transfer, surrender or expiry of the interest or otherwise) to have the qualifying interest, the fixture shall be treated for those purposes as ceasing to belong to him at that time.
- (3) In this section and section 59 “the qualifying interest” means—

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- (a) where section 52 or 54 applies, the interest in the relevant land referred to in that section; and
  - (b) where section 55 or 56 applies, the lease referred to in that section;
- but if the qualifying interest is an agreement to acquire an interest in land and that interest in land is subsequently transferred or granted to the person referred to in subsection (2) above, the interest so transferred or granted shall be treated as the same interest as the qualifying interest.
- (4) For the purposes of subsection (2) above—
- (a) if the qualifying interest ceases to exist by reason of its merger in another interest acquired by the person referred to in that subsection, that other interest shall be treated as the same interest as the qualifying interest;
  - (b) if the qualifying interest is a lease and, on its termination, a new lease of the relevant land (with or without other land) is granted to the lessee, the new lease shall be treated as the same interest as the qualifying interest;
  - (c) if the qualifying interest is a licence and, on its termination, a new licence to occupy the relevant land (with or without other land) is granted to the licensee, the new licence shall be treated as the same interest as the qualifying interest;
  - (d) if the qualifying interest is a lease and, with the consent of the lessor, the lessee remains in possession of the relevant land after the termination of the lease but without a new lease being granted to him, the qualifying interest shall be treated as continuing to subsist so long as the lessee remains in possession of the relevant land.
- (5) At the time at which, by virtue of section 55, the fixture concerned begins to be treated for the purposes of this Part as belonging to the lessee, it shall be treated for those purposes as ceasing to belong to the lessor (as defined in that section).
- (6) Where, by virtue of subsection (2) above, on the termination of a lease or licence, a fixture is treated for the purposes of this Part as ceasing to belong to the outgoing lessee or licensee, it shall, on that termination, be treated for those purposes as beginning to belong to the person who, immediately before the termination, was the lessor under the lease or, as the case may be, the licensor under the licence.
- (7) If at any time a fixture is permanently severed from the relevant land (so that it ceases to be a fixture) and, immediately before that time, it was treated for the purposes of this Part as belonging to any person by virtue of any provision of sections 51 to 56, subsections (1) to (6) above or section 58(2) or (4), then, unless on its severance the fixture does in fact belong to that person, it shall be treated for those purposes as ceasing to belong to him at that time.

## **58 Equipment lessors: special provisions**

- (1) If, by virtue of an election under section 53, a fixture is treated for the purposes of this Part as belonging to the equipment lessor and either—
- (a) the equipment lessor at any time assigns his rights under an equipment lease, or
  - (b) the financial obligations of the equipment lessee under an equipment lease are at any time discharged, on the payment of a capital sum or otherwise,
- then, at that time (or, as the case may be, the earliest of those times) the fixture shall be treated for the purposes of this Part as ceasing to belong to the equipment lessor by reason of a sale by him of the fixture.

- (2) If subsection (1)(a) above applies, then, on and after the time of the assignment referred to in that paragraph, the fixture to which the agreement in question relates shall be treated for the purposes of this Part as belonging to the assignee and the consideration given by him for the assignment shall be treated for those purposes—
- (a) as the price received for the sale of the fixture by the assignor; and
  - (b) as expenditure incurred by the assignee on acquiring the fixture.
- (3) On and after an assignment falling within paragraph (a) of subsection (1) above, that subsection shall have effect as if the machinery or plant (as a fixture) were treated for the purposes of this Part as belonging to the assignee by virtue of an election under section 53 and, accordingly, as if the assignee were the equipment lessor, as defined in that section.
- (4) Where a capital sum is paid as mentioned in subsection (1)(b) above, that capital sum shall be treated for the purposes of this Part—
- (a) as the price received for the sale of the fixture by the equipment lessor; and
  - (b) if that capital sum is paid by the equipment lessee, as expenditure incurred by him on the provision of the fixture;
- and where paragraph (b) above applies, on and after the time of that payment, the fixture shall be treated for the purposes of this Part as belonging to the equipment lessee.
- (5) Where the financial obligations of the equipment lessee under an equipment lease have become vested in any other person (by assignment, operation of law or otherwise) any reference in subsection (1)(b) or (4) above to the equipment lessee shall be construed as a reference to the person in whom those obligations are for the time being vested when the capital sum is paid.

## **59 Disposal value of fixtures in certain cases**

- (1) In any case where—
- (a) by virtue of section 57, a fixture is at any time treated for the purposes of this Part as ceasing to belong to any person (“the former owner”), and
  - (b) the qualifying interest continues in existence after that time (whether in the hands of the former owner or any other person) or would so continue but for its becoming merged in another interest, and
  - (c) the occasion of the fixture ceasing to belong to the former owner is not its permanent severance from the relevant land (whether on disposal, demolition, destruction or otherwise),
- the fixture shall be treated for the purposes of this Part as sold at that time by the former owner for a price determined in accordance with subsections (2) to (6) below.
- (2) Subject to subsection (6) below, if the occasion of the fixture ceasing to belong to the former owner is the sale of the qualifying interest, the price referred to in subsection (1) above is that portion of the sale price of the qualifying interest which falls (or, if the purchaser were entitled to an allowance, would fall) to be treated for the purposes of this Part as expenditure incurred by the purchaser on the provision of the fixture.
- (3) If the fixture ceases to belong to the former owner by virtue of section 57(5), the price referred to in subsection (1) above is so much of the capital sum referred to in section 55(1)(c) as falls to be treated for the purposes of this Part as expenditure by the lessee on the provision of the fixture.



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- (4) If neither subsection (2) nor subsection (3) above applies, the price referred to in subsection (1) above is that portion of the price which, on a sale of the qualifying interest in the open market, would fall to be treated for the purposes of this Part as expenditure by the purchaser on the provision of the fixture.
- (5) The sale referred to in subsection (4) above shall be assumed to take place immediately before the event which causes the fixture to be treated for the purposes of this Part as ceasing to belong to the former owner; but that event shall be disregarded in determining the open market price on that sale.
- (6) If the sale referred to in subsection (2) above is at a price lower than that which the qualifying interest would have fetched if sold in the open market, that subsection shall not apply unless the purchaser's expenditure on the acquisition of the fixture can be taken into account as mentioned in section 26(1)(b)(i).
- (7) If the occasion of the fixture ceasing to belong to the former owner is the expiry of the qualifying interest, then, except in so far as the former owner receives any capital sum, by way of compensation or otherwise, by reference to the fixture, the disposal value of the fixture which falls to be brought into account under section 24 shall be nil.
- (8) In any case where—
  - (a) the disposal value of a fixture falls to be brought into account in accordance with section 24 on the permanent discontinuance of the trade in circumstances where that value falls to be determined under paragraph (e) of subsection (1) of section 26; and
  - (b) before the occurrence of the later event referred to in that paragraph, the fixture is not permanently severed from the relevant land,that paragraph shall apply as if the reference therein to paragraphs (a) and (b) of that subsection were omitted; but if the event which follows the discontinuance of the trade is the sale of the qualifying interest, the disposal value of the fixture to be brought into account under those sections shall be that portion of the sale price referred to in subsection (2) above.
- (9) If the disposal value of the fixture falls to be brought into account in accordance with section 24 on its beginning to be used wholly or partly for purposes which are other than those of the trade, section 26(1)(f) shall apply as if the reference to the price which the machinery or plant would have fetched if sold on the open market were a reference to that portion of the price referred to in subsection (4) above.
- (10) If, on the occasion of the fixture being treated by virtue of section 57 as ceasing to belong to the former owner—
  - (a) another person incurs expenditure on the provision of the fixture, and
  - (b) the former owner brings a disposal value into account in accordance with section 24,there shall be disregarded for the purposes of this Part so much (if any) of that expenditure as exceeds that disposal value.
- (11) In relation to expenditure incurred before 27th July 1989, subsection (10) above shall have effect with the substitution for the words following “to the former owner” of the words “another person incurs expenditure on the provision of the fixture, there shall be disregarded so much (if any) of that expenditure as exceeds the disposal value which the former owner is required to bring into account in accordance with section 24”.

## CHAPTER VII

### MISCELLANEOUS EXPENDITURE

#### **60 Machinery and plant on hire-purchase etc**

- (1) Where a person carrying on a trade incurs capital expenditure on the provision of machinery or plant for the purposes thereof under a contract providing that he shall or may become the owner of the machinery or plant on the performance of the contract—
  - (a) the machinery or plant shall be treated for the purposes of this Part as belonging to him (and not to any other person) at any time when he is entitled to the benefit of the contract so far as it relates to that machinery or plant, and
  - (b) all capital expenditure in respect of that machinery or plant to be incurred by him under the contract after the time when the machinery or plant is brought into use for the purposes of the trade shall be treated for the purposes of this Part as having been incurred by him at that time.
- (2) Where a person to whom any machinery or plant is treated as belonging by virtue of subsection (1)(a) above ceases to be entitled to the benefit of the contract in question so far as it relates to that machinery or plant without in fact becoming the owner of the machinery or plant—
  - (a) the machinery or plant shall be treated for the purposes of this Part as ceasing to belong to him at the time when he ceases to be so entitled, and
  - (b) if he ceases to be so entitled after the machinery or plant has been brought into use for the purposes of the trade, the disposal value of the machinery or plant—
    - (i) shall not exceed the total capital expenditure which he would have incurred in respect of the machinery or plant if he had wholly performed the contract, but
    - (ii) subject to that limitation, shall be taken as an amount equal to any capital sums which he receives, or is entitled to receive, by way of consideration, compensation, damages or insurance moneys in respect of his rights under the contract, or in respect of the machinery or plant, together with so much of that capital expenditure as he has not in fact incurred.
- (3) In relation to capital expenditure incurred under contracts entered into before 27th July 1989, subsection (1)(a) shall have effect with the omission of the words “(and not to any other person)”.

#### **61 Machinery and plant on lease**

- (1) Subject to subsection (2) below, where machinery or plant is first let by any person otherwise than in the course of a trade, then, whether or not it is used for the purposes of a trade carried on by the lessee—
  - (a) the capital expenditure incurred by the lessor in providing the machinery or plant shall be treated for the purposes of this Part as having been incurred in providing it for the purposes of a trade begun to be carried on by him, separately from any other trade which he may carry on, at the commencement of the letting, and
  - (b) at the time when the lessor permanently ceases to let the machinery or plant otherwise than in the course of a trade, the machinery or plant shall be treated

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for the purposes of this Part as being used wholly for purposes other than those of the trade referred to in paragraph (a) above.

- (2) Subsection (1) above shall not apply to machinery or plant let for use in a dwelling-house.
- (3) Where subsection (1) above applies, the question whether the provision of the machinery or plant is to be treated as being wholly and exclusively or only partly for the purposes of the trade referred to in paragraph (a) of that subsection shall be determined according to whether the machinery or plant was in fact provided wholly and exclusively for the purpose of letting otherwise than in the course of a trade or only partly for that purpose.
- (4) Where—
  - (a) a lessee incurs capital expenditure on the provision for the purposes of a trade carried on by him of machinery or plant which he is required to provide under the terms of the lease, and
  - (b) the machinery or plant is not so installed or otherwise fixed in or to a building or any other description of land as to become, in law, part of that building or other land,

then, if the machinery or plant would not otherwise belong to him, the machinery or plant shall be treated for the purposes of this Part as belonging to him for so long as it continues to be used for the purposes of the trade; but, as from the determination of the lease, section 24(6) shall have effect as if the capital expenditure on providing the machinery or plant had been incurred by the lessor and not by the lessee.

In relation to any lease entered into before 12th July 1984, and any lease entered into after 11th July 1984 pursuant to an agreement made before 12th July 1984, this subsection shall have effect with the omission of the words from “and” (where it first occurs) to “belong to him”.

- (5) Where an allowance falling to be made for any chargeable period by virtue of subsection (1) above is in respect of expenditure on the provision of machinery or plant which for the whole or any part of that period or its basis period is not used for the purposes of a trade carried on by the lessee, section 145(3) shall not apply to that allowance or, as the case may require, to a proportionate part thereof.
- (6) Subsection (5) above shall not apply to any allowance in respect of expenditure incurred on the provision of machinery or plant which is fixed to a building or land of which the person who incurs the expenditure is the lessor and the circumstances are such that a transfer of his interest in the building or land would operate to transfer his interest in the machinery or plant.
- (7) Section 403(3) of the principal Act (group relief) shall not apply to an allowance if or to the extent that, by virtue of subsection (5) above, section 145(3) does not apply to it.

This subsection has effect in any case where the accounting period of the surrendering company (within the meaning of Chapter IV of Part X of the principal Act) ends after 26th July 1989.

- (8) In this section “lease” includes an agreement for a lease where the term to be covered by the lease has begun, and any tenancy, but does not include a mortgage, and “lessee” and other cognate expressions shall be construed accordingly.

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## **62 Treatment of demolition costs**

- (1) Where any machinery or plant which is in use for the purposes of a trade is demolished, then—
  - (a) if the person carrying on the trade replaces the machinery or plant by other machinery or plant, the net cost to him of the demolition shall be treated for the purposes of this Part as expenditure incurred by him on the provision of that other machinery or plant, and
  - (b) if the person carrying on the trade does not replace the machinery or plant, his qualifying expenditure for the chargeable period related to the demolition shall be treated for the purposes of sections 24 and 25 as increased by the net cost to him of the demolition.
- (2) In this section any reference to the net cost of the demolition of any machinery or plant is a reference to the excess, if any, of the cost of the demolition over any moneys received for the remains of the machinery or plant.

## **63 Mineral extraction**

- (1) In any case where—
  - (a) expenditure is incurred by any person on the provision of machinery or plant for the purposes of mineral exploration and access, and
  - (b) that expenditure is so incurred before the first day on which that person begins to carry on a trade of mineral extraction, and
  - (c) on that first day the machinery or plant belongs to him, and does not fall within section 106(1)(d),that person shall be treated for the purposes of this Part as if he had sold the machinery or plant immediately before that first day and had on that first day incurred capital expenditure on the provision of the machinery or plant wholly and exclusively for the purposes of the trade, being expenditure equal to the expenditure incurred (or, where there has been an actual previous sale and re-acquisition, last incurred) as mentioned in paragraph (a) above.
- (2) Subsection (1) above shall not apply where the expenditure was incurred by any person before 1st April 1986 on mineral exploration and access and the mineral exploration and access at the source in question had ceased before that person begins to carry on a trade of mineral extraction.

## **64 Transfers of interests in oil fields**

- (1) This section applies where—
  - (a) there is, for the purposes of Schedule 17 to the Finance Act 1980, a transfer by a participator in an oil field of the whole or part of his interest in the field; and
  - (b) in pursuance of that transfer, the old participator disposes of, and the new participator acquires, machinery or plant used, or expected to be used, in connection with the field, or a share in such machinery or plant.
- (2) In the application of this Part to expenditure incurred by the new participator in the acquisition referred to in subsection (1)(b) above, there shall be disregarded so much, if any, of that expenditure as exceeds the disposal value to be brought into account by the old participator under sections 24, 25 and 26 by reason of the disposal.

- (3) In this section “the old participator” and “the new participator” have the same meaning as in Schedule 17 to the Finance Act 1980; and, subject to that and to section 83(4), expressions used in subsection (1) above and in Part I of the Oil Taxation Act 1975 have the same meanings in this section as they have in that Part.
- (4) Nothing in this section affects the operation of section 75.

## **65 Partnership using property of a partner**

- (1) In taxing a trade carried on in partnership the same allowances, deductions and charges shall be allowed or made under this Part in respect of machinery or plant used for the purposes of that trade and belonging to one or more of the partners but not being partnership property as would fall to be allowed or made if the machinery or plant had at all material times belonged to all the partners and been partnership property and everything done by or to any of the partners in relation thereto had been done by or to all the partners.
- (2) Notwithstanding anything in section 24(6), a sale or gift of machinery or plant used for the purposes of a trade carried on in partnership, being a sale or gift by one or more of the partners to one or more of the partners, shall not be treated as an event requiring any disposal value to be brought into account if the machinery or plant continues to be used after the sale or gift for the purposes of that trade.
- (3) References in this section to use for the purposes of a trade do not include references to use in pursuance of a letting by the partner or partners in question to the partnership or to use in consideration of the making to the partner or partners in question of any payment which may be deducted in computing the profits or gains of the trade.

## **66 Building alterations connected with installation of machinery or plant**

Where a person carrying on a trade incurs capital expenditure on alterations to an existing building incidental to the installation of machinery or plant for the purposes of the trade, the provisions of this Part shall have effect as if that expenditure were expenditure on the provision of that machinery or plant and as if the works representing that expenditure formed part of that machinery or plant.

## **67 Expenditure on thermal insulation**

- (1) If a person carrying on a trade has incurred expenditure in adding any insulation against loss of heat to any industrial building or structure occupied by him for the purposes of that trade, this Part shall apply as if the expenditure were capital expenditure incurred on the provision of machinery or plant for the purposes of the trade, and as if the machinery or plant had, in consequence of his incurring the expenditure, belonged to him, and as if the disposal value of the machinery or plant were nil.
- (2) If a person has incurred expenditure in adding any insulation against any loss of heat to any industrial building or structure let by him otherwise than in the course of a trade, this Part shall apply as if the expenditure were capital expenditure incurred in providing machinery or plant first let by that person, otherwise than in the course of a trade, at the time when the expenditure was incurred, and as if the property comprised in the lease of the building or structure had as from that time included the machinery or plant, and as if the disposal value of the machinery or plant were nil.

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- (3) Any allowance made by virtue of section 61(1) in a case where it applies by virtue of subsection (2) above shall (notwithstanding section 73(2)), be available primarily against the following income, that is to say—
- (a) income taxed under Schedule A in respect of any premises which at any time in the chargeable period for which the allowance falls to be made consist of or include an industrial building or structure; or
  - (b) income which is the subject of a balancing charge under Part I.
- (4) In this section “industrial building or structure” has the meaning given by section 18.
- (5) This section applies to expenditure to which section 1 applies in accordance with section 2 but does not apply to any other expenditure to which section 1 applies or to any expenditure to which section 6 applies.
- (6) Subsection (5) above shall not have effect in relation to any chargeable period or its basis period ending after 26th July 1989.

## **68 Exclusion of certain expenditure relating to films, tapes and discs**

- (1) Expenditure which—
- (a) is incurred on the production or acquisition of a film, tape or disc, and
  - (b) would, apart from this subsection, constitute capital expenditure on the provision of machinery or plant for the purposes of this Part,
- shall be regarded for the purposes of the Tax Acts as expenditure of a revenue nature unless it is expenditure falling within subsection (9) below.
- (2) In this section—
- (a) any reference to a film is a reference to an original master negative of the film and its soundtrack, if any;
  - (b) any reference to a tape is a reference to an original master film tape or original master audio tape; and
  - (c) any reference to a disc is a reference to an original master film disc or original master audio disc;
- and any reference to the acquisition of a film, tape or disc includes a reference to the acquisition of any description of rights in a film, tape or disc.
- (3) Subject to the following provisions of this section, in computing the profits or gains accruing to any person from a trade or business which consists of or includes the exploitation of a film, tape or disc, expenditure which—
- (a) is incurred on the production or acquisition of a film, tape or disc, and
  - (b) is expenditure of a revenue nature (whether by virtue of subsection (1) above or otherwise),
- shall be allocated to relevant periods in accordance with subsections (4) to (6) below; and in this section “relevant period” means a period for which the accounts of the trade or business concerned are made up or, if those accounts are not made up for any period, a period the profits or gains of which are taken into account in assessing the income of the trade or business for any chargeable period.
- (4) Subject to the following provisions of this section, the amount of expenditure falling within subsection (3) above which falls to be allocated to any relevant period shall be such as is just and reasonable, having regard to—

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- (a) the amount of that expenditure which remains unallocated at the beginning of that period;
  - (b) the proportion which the estimated value of the film, tape or disc which is realised in that period (whether by way of income or otherwise) bears to the aggregate of the value so realised and the estimated remaining value of the film, tape or disc at the end of that period; and
  - (c) the need to bring the whole of the expenditure falling within subsection (3) above into account over the time during which the value of the film, tape or disc is expected to be realised.
- (5) In addition to any expenditure which is allocated to a relevant period in accordance with subsection (4) above, if a claim is made in that behalf not later than two years after the end of that period, there shall also be allocated to that period so much of the unallocated expenditure as is specified in the claim and does not exceed the difference between—
  - (a) the amount allocated to that period in accordance with subsection (4) above; and
  - (b) the value of the film, tape or disc which is realised in that period (whether by way of income or otherwise).
- (6) As respects any relevant period, “the unallocated expenditure” referred to in subsection (5) above is that expenditure falling within subsection (3) above—
  - (a) which does not fall to be allocated to that period in accordance with subsection (4) above; and
  - (b) which has not been allocated to any earlier relevant period in accordance with subsection (4) or (5) above.
- (7) Subsections (3) to (6) above do not apply to the profits or gains of a trade in which the film, tape or disc concerned constitutes trading stock, as defined in section 100(2) of the principal Act.
- (8) In a case where any expenditure on the production or acquisition of a film, tape or disc is expenditure to which subsection (1) above applies, the sums received from the disposal of that film, tape or disc shall be regarded for the purposes of the Tax Acts as receipts of a revenue nature (if they would not be so regarded apart from this subsection); and the reference in this subsection to sums received from the disposal of any film, tape or disc shall be construed as including—
  - (a) sums received from the disposal of any interest or right in or over the film, tape or disc, including an interest or right created by the disposal; and
  - (b) insurance or compensation moneys and other moneys of a like nature which are derived from the film, tape or disc.
- (9) Subsections (1) to (8) above do not apply to expenditure which is incurred—
  - (a) by a person who carries on a trade or business which consists of or includes the exploitation of films, tapes or discs; and
  - (b) on the production or acquisition of a film, tape or disc which is certified by the Secretary of State under Schedule 1 to the Films Act 1985 as a qualifying film, tape or disc for the purposes of this section and the value of which is expected to be realisable over a period of not less than two years.
- (10) In this section “expenditure of a revenue nature” means expenditure which, if it were incurred in the course of a trade the profits or gains of which are chargeable to tax under Case I of Schedule D, would be taken into account for the purpose of computing the

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profits, gains or losses of the trade; and “receipts of a revenue nature” means receipts which, if they were receipts of such a trade, would be taken into account for that purpose.

## **69 Expenditure on fire safety**

- (1) If a person carrying on a trade incurs expenditure in taking steps specified in a notice served on him by the fire authority under section 5(4) of the Fire Precautions Act 1971, and—
- (a) the notice was issued on an application for a fire certificate in respect of premises used by him for the purposes of the trade; and
  - (b) an allowance or deduction in respect of the expenditure could not, apart from this subsection, be made in taxing the trade or computing the profits or gains arising from it,

this Part shall apply as if the expenditure were capital expenditure incurred on the provision of machinery or plant for the purposes of the trade, and as if the machinery or plant had, in consequence of his incurring the expenditure, belonged to him, and as if the disposal value of the machinery or plant were nil.

- (2) If a person carrying on a trade incurs expenditure in taking, in respect of any premises used by him for the purposes of the trade—
- (a) steps specified, in a letter or other document sent or given to him by or on behalf of the fire authority on an application for a fire certificate under the Fire Precautions Act 1971 in respect of those premises, as steps that would have to be taken in order to satisfy the authority as mentioned in section 5(4) of that Act, being steps which might have been, but were not, specified in a notice under that subsection; or
  - (b) steps which, in consequence of the making of an order under section 10 of that Act prohibiting or restricting the use of the premises, had to be taken to enable the premises to be used without contravention of the order,

then, if an allowance or deduction in respect of the expenditure could not, apart from this subsection, be made in taxing the trade or computing the profits or gains arising from it, this Part shall apply as regards the expenditure as it would apply by virtue of subsection (1) above if the expenditure fell within that subsection.

## **70 Expenditure on safety at sports grounds**

- (1) If a person carrying on a trade incurs expenditure in taking, in respect of any sports ground used by him for the purposes of the trade or in respect of any regulated stand at a sports ground so used—
- (a) steps necessary for compliance with the terms and conditions of a safety certificate issued for the sports ground or stand; or
  - (b) steps specified in a letter or other document sent or given to him by or on behalf of the local authority for the area in which the sports ground is situated as steps the taking of which would be taken into account by them in deciding what terms and conditions to include in a safety certificate to be issued for the sports ground or stand or lead to the amendment or replacement of a safety certificate issued or to be issued for it,

then, if an allowance or deduction in respect of the expenditure could not, apart from this section, be made in taxing the trade or computing the profits or gains arising from it, this Part shall apply as if the expenditure were capital expenditure incurred on the



provision of machinery or plant for the purposes of the trade, and as if the machinery or plant had, in consequence of his incurring the expenditure, belonged to him and as if the disposal value of the machinery or plant were nil.

- (2) If a person carrying on a trade incurs expenditure in respect of a sports ground used for the purposes of the trade (not being expenditure in respect of a regulated stand), then, if—
- (a) at the time when the expenditure was incurred the sports ground was of the description specified in section 1(1) of the Safety of Sports Grounds Act 1975 but no designation order under that section had come into operation in respect of the sports ground; and
  - (b) the expenditure was incurred in taking steps which the local authority for the area in which the sports ground is situated certify would have fallen within subsection (1)(a) or (b) above if such an order had then been in operation and a safety certificate had then been issued or applied for,
- subsection (1) above shall have effect in relation to the expenditure as it has effect in relation to the expenditure mentioned in that subsection.
- (3) Except in relation to expenditure incurred in respect of a regulated stand or as provided by subsection (2) above, subsection (1) above shall not apply in relation to expenditure incurred in respect of a sports ground at any time when it is not a designated sports ground within the meaning of the Safety of Sports Grounds Act 1975.
- (4) Any provision of regulations made under section 6(1)(b) of the Safety of Sports Grounds Act 1975 (power of local authorities to charge fees) shall, with the necessary modifications, apply to the issue of a certificate for the purposes of subsection (2) above as it applies to the issue of a safety certificate.
- (5) In this section—
- (a) as it has effect in relation to expenditure incurred in respect of a regulated stand, “regulated stand”, “sports ground”, “safety certificate” and “local authority” have the same meanings as in Part III of the Fire Safety and Safety of Places of Sports Act 1987;
  - (b) as it has effect in relation to other expenditure, “sports ground”, “safety certificate” and “local authority” have the same meanings as in the Safety of Sports Grounds Act 1975.

## **71 Security**

- (1) This section applies where—
- (a) an individual, or a partnership of individuals, carries on a trade, profession or vocation,
  - (b) expenditure is incurred by the individual or partnership in connection with the provision for or use by the individual, or any of the individuals, of a security asset,
  - (c) no sum in respect of the expenditure could be deducted in computing the profits or gains of the trade, profession or vocation for the purposes of Case I or Case II of Schedule D, and
  - (d) apart from this section, paragraph (a) or paragraph (b) (or both) of section 24(1) would not apply.
- (2) In a case where this section applies, this Part shall apply as if—

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- (a) the expenditure were capital expenditure incurred on the provision of machinery or plant wholly and exclusively for the purposes of the trade, profession or vocation concerned,
  - (b) in consequence of the expenditure being incurred, the machinery or plant belonged to the individual or partnership carrying on the trade, profession or vocation, and
  - (c) the disposal value of the machinery or plant were nil.
- (3) Subsection (2) above shall not apply unless the asset is provided or used to meet a threat which—
- (a) is a special threat to the individual’s personal physical security, and
  - (b) arises wholly or mainly by virtue of the particular trade, profession or vocation concerned.
- (4) Subsection (2) above shall not apply unless the person incurring the expenditure—
- (a) has as his sole object in doing so the meeting of that threat, and
  - (b) subject to subsection (5) below, intends the asset to be used solely to improve personal physical security,
- (5) In a case where—
- (a) apart from subsection (4)(b) above, subsection (2) would apply, and
  - (b) the person incurring the expenditure intends the asset to be used partly to improve personal physical security,
- subsection (2) above shall nevertheless apply, but only so as to treat the appropriate proportion of the expenditure there mentioned as capital expenditure incurred as there mentioned.
- (6) For the purposes of subsection (5) above, the appropriate proportion of the expenditure mentioned in subsection (2) above is such proportion of that expenditure as is attributable to the intention of the person incurring it that the asset be used to improve personal physical security.

## 72 **Security: supplementary**

- (1) For the purposes of section 71—
- (a) a security asset is an asset which improves personal security,
  - (b) references to an asset do not include references to a car, a ship or an aircraft,
  - (c) references to an asset do not include references to a dwelling or grounds appurtenant to a dwelling, and
  - (d) references to an asset include references to equipment and to a structure (such as a wall).
- (2) If the person incurring the expenditure intends the asset to be used solely to improve personal physical security, but there is another use which is incidental to improving personal physical security, that other use shall be ignored in construing section 71(4)(b).
- (3) The fact that an asset improves the personal physical security of any member of the family or household of the individual concerned, as well as that of the individual, shall not prevent section 71(2) from applying.
- (4) For the purposes of section 71, it is immaterial whether or not the asset becomes affixed to land (whether constituting a dwelling or otherwise).

- (5) Section 71 applies where expenditure is incurred on or after 6th April 1989.

## CHAPTER VIII

### SUPPLEMENTARY PROVISIONS

#### **73 Manner of making allowances and charges**

- (1) Subject to subsection (2) below, any allowance or charge made to or on any person under this Part shall be made to or on that person in taxing his trade.
- (2) Any allowance made by virtue of section 61(1) shall be made by way of discharge or repayment of tax, and, subject to subsection (3) below and section 67(3), shall be available primarily against income from the letting of machinery or plant; and effect shall be given to any charge made by virtue of section 61(1)—
- (a) if a charge to income tax, by making the charge under Case VI of Schedule D,
  - (b) if a charge to corporation tax, by treating the amount on which the charge is to be made as income from the letting of machinery or plant.
- (3) Where an allowance falling to be made for any chargeable period by virtue of section 61(1) is in respect of expenditure on the provision of machinery or plant which for the whole or any part of that period or its basis period is not used for the purposes of a trade carried on by the lessee, that allowance or, as the case may require, a proportionate part thereof shall be available primarily against income from the letting of that machinery or plant only.

#### **74 Allowances not available: expenses of Members of Parliament**

No allowance shall be made under this Part in respect of any expenditure incurred by a Member of the House of Commons in or in connection with the provision or use of residential or overnight accommodation to enable him to perform his duties in or about the Palace of Westminster or his constituency.

#### **75 Further restrictions on allowances**

- (1) Subject to sections 76 and 77, where a person incurs capital expenditure on the provision by purchase of machinery or plant, and—
- (a) he and the seller are connected with each other, or
  - (b) the machinery or plant continues to be used for the purposes of a trade carried on by the seller, or
  - (c) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which, but for this subsection, might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part,
- a first-year allowance shall not be made in respect of the expenditure or, if made, shall be withdrawn, and there shall be disregarded for the purposes of sections 24, 25 and 26 so much (if any) of the expenditure as exceeds the disposal value to be brought into account under those sections by reason of the sale.

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- (2) Subject to sections 76 and 77, where a person enters into a contract under which, on the performance thereof, he will or may become the owner of machinery or plant belonging to another person, and—
- (a) he and that person are connected with each other, or
  - (b) the machinery or plant continues to be used for the purposes of a trade carried on by that person, or
  - (c) it appears with respect to the transaction, or with respect to transactions of which it is one, that the sole or main benefit which, but for this subsection, might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part,

a first-year allowance shall not be made in respect of any expenditure incurred by him under the contract so far as relating to that machinery or plant or, if made, shall be withdrawn, and there shall be disregarded for the purposes of sections 24, 25 and 26 so much (if any) of the expenditure as exceeds the disposal value to be brought into account under those sections by reason of the contract so far as relating thereto.

- (3) Subject to sections 76 and 77, where a person, being entitled to the benefit of a contract under which, on the performance thereof, he will or may become the owner of any machinery or plant, assigns the benefit of the contract so far as it relates to that machinery or plant to another person, and—
- (a) he and the assignee are connected with each other, or
  - (b) the machinery or plant continues to be used for the purposes of a trade carried on by him, or
  - (c) it appears with respect to the assignment, or with respect to transactions of which the assignment is one, that the sole or main benefit which, but for this subsection, might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part,

a first-year allowance shall not be made in respect of any expenditure incurred by him under the contract so far as so relating, or by way of consideration for the assignment or, if so made, shall be withdrawn, and there shall be disregarded for the purposes of sections 24, 25 and 26 so much (if any) of the assignee's expenditure as exceeds the disposal value to be brought into account under section 60 by reason of the assignment.

- (4) In this section references to persons connected with each other shall be construed in accordance with section 839 of the principal Act.
- (5) All such assessments and adjustments of assessments shall be made as are necessary to give effect to this section.

## **76 Extension of section 75**

- (1) Paragraph (b) of each of subsections (1) to (3) of section 75 shall have effect as if the reference to the machinery or plant continuing to be used for the purposes of a trade carried on by the person there mentioned included a reference to its being used after the date of the sale, the making of the contract or the assignment of the benefit of the contract (as the case may be) for the purposes of a trade carried on by that person or another person who is connected with him (other than the buyer, the person entering into the contract or the assignee) without having been used since that date for the purposes of any other trade except that of leasing machinery or plant.
- (2) In a case in which no disposal value falls to be brought into account as mentioned in subsection (1) of section 75, that subsection shall have effect as if for the reference to

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- the disposal value to be so brought into account there were substituted a reference to an amount equal to whichever of the following is the smallest—
- (a) the open market value of the machinery or plant;
  - (b) where capital expenditure was incurred by the seller on the provision of the machinery or plant, the amount of that expenditure;
  - (c) where capital expenditure was incurred by any person connected with the seller on the provision of the machinery or plant, the amount of the expenditure incurred by that person.
- (3) Section 75(1) shall not by virtue of paragraph (a) or (b) thereof deny a first-year allowance if the machinery or plant has not before the sale been used for the purposes of a trade by the seller or any person connected with him but for the purposes of that allowance there shall be disregarded so much (if any) of the expenditure as exceeds whichever is the smallest of the amounts mentioned in subsection (2)(a), (b) and (c) above.
- (4) Subsections (2) and (3) above shall apply in relation to section 75(2) and (3) as they apply in relation to section 75(1) but taking references—
- (a) to the sale as references to the making of the contract and to the assignment of the benefit of the contract respectively;
  - (b) to the seller as references to the person to whom the machinery or plant belongs and to the assignor respectively.
- (5) Neither subsection (1) nor subsection (2) of section 75 shall apply in relation to a sale or contract if the machinery or plant has never been used before the sale or the making of the contract and the business or part of the business of the seller or owner was the manufacture or supply of machinery or plant of that class and the sale was effected or the contract was made in the ordinary course of that business.
- (6) In this section—
- (a) “open market value” in relation to any machinery or plant means an amount equal to the price which the machinery or plant would have fetched if sold in the open market; and
  - (b) references to persons connected with each other shall be construed in accordance with section 839 of the principal Act.

## **77 Successions to trades: connected persons**

- (1) Where a person (in this subsection referred to as “the successor”) has succeeded to a trade which was until that time carried on by another person (in this subsection referred to as “the predecessor”) and the two persons are connected with each other within the terms of section 839 of the principal Act and the successor is not a dual resident investing company, those persons may by notice to the inspector elect that the provisions of this subsection shall have effect; and in that event—
- (a) for the purpose of making allowances and charges under this Part, the trade shall not be treated as discontinued;
  - (b) allowances and charges shall be so made to or on the successor as if everything done to or by the predecessor had been done to or by the successor, but with no account being taken of the sale or transfer from the predecessor to the successor of any machinery or plant which was in use for the purposes of the trade at the time of the succession.

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- (2) Subsection (1) above shall not apply in relation to successions occurring after the passing of the Finance Act 1988 (29th July 1988); and the requirement in that subsection that the successor must not be a dual resident investing company shall not apply if the successor began to carry on the trade before 1st April 1987.
- (3) Where at any time after the passing of the Finance Act 1988 a person (referred to below as “the successor”) succeeds to a trade which was until that time carried on by another person (referred to below as “the predecessor”) and—
- (a) the two persons are connected with each other;
  - (b) each of them is within the charge to tax in the United Kingdom on the profits of the trade; and
  - (c) the successor is not a dual resident investing company,
- those persons may by notice given to the inspector not later than two years after that time, elect that the provisions of subsection (4) below shall have effect.
- (4) In the event of an election under subsection (3) above—
- (a) for the purpose of making allowances and charges under this Part, any machinery or plant which—
    - (i) immediately before the time when the succession took place, belonged to the predecessor and was in use for the purposes of the trade; and
    - (ii) immediately after that time, belonged to the successor and was in use for those purposes,
 shall (notwithstanding any actual sale or transfer) be treated as sold by the predecessor to the successor at a price which does not give rise to a balancing allowance or balancing charge; and
  - (b) allowances and charges shall 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) For the purposes of subsection (3) above the predecessor and the successor are connected with each other if—
- (a) they are connected with each other within the terms of section 839 of the principal Act;
  - (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 some other person has the right to a share in both of them; or
  - (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) some other person has control over both of them.
- (6) In subsection (5) above “control” shall be construed in accordance with section 840 of the principal Act; and any reference to the right to a share in a partnership is a reference to the right to a share of the assets or income of that partnership.
- (7) All such assessments and adjustments of assessments shall be made as are necessary to give effect to subsections (3) and (4) above.
- (8) Sections 41(5) and 78(1) shall not apply in any case where an election is made under subsection (3) above.

This subsection shall not apply in relation to successions occurring before 27th July 1989.

## **78 Succession to trades where no election made under section 77**

- (1) Where a person succeeds to any trade which until that time was carried on by another person and, by virtue of section 113 or 337(1) of the principal Act (changes in persons carrying on a trade, and special rules for corporation tax), the trade is to be treated as discontinued, any property which, immediately before the succession takes place, was either in use or provided and available for use for the purposes of the discontinued trade and, without being sold, is, immediately after the succession takes place, either in use or provided and available for use for the purposes of the new trade shall, for the purposes of this Part be treated as if—

- (a) it had been sold to the successor when the succession takes place, and
- (b) the net proceeds of the sale had been the price which that property would have fetched if sold in the open market;

but no first-year allowance shall be made by virtue of this subsection.

- (2) Where a person succeeds to a trade as a beneficiary under the will or on the intestacy of a deceased person who carried on that trade and the beneficiary by notice to the inspector so elects, then, in relation to any machinery or plant which passes to him together with the trade, being machinery or plant—

- (a) previously owned by the deceased person, and
- (b) either used or provided and available for use by him for the purposes of that trade,

the reference in subsection (1) above to the price which the machinery or plant would have fetched if sold in the open market shall, in relation to the succession and any previous succession occurring on or after the death of the deceased, be deemed to be a reference to that price or, if it is less than that price, any excess of qualifying expenditure over disposal value which would have been taken into account under sections 24, 25 and 26 for making an allowance for the chargeable period related to the permanent discontinuance of the deceased person's trade if the machinery or plant had had no disposal value.

- (3) This subsection has effect as respects any allowance under this Part, other than a balancing allowance.

Where, after the setting up and before the permanent discontinuance of a trade which at any time is carried on in partnership, anything is done for the purposes thereof, any such allowance which, if the trade had at all times been carried on by one and the same person, would have fallen to be made to him shall be made to the person or persons from time to time carrying on that trade, and the amount of any such allowance shall be computed as if that person or those persons had at all times been carrying on the trade, and as if everything done to or by his or their predecessors in the carrying on thereof had been done to or by him or them.

- (4) Where, after the setting up and on or before the permanent discontinuance of a trade which at any time is carried on in partnership, any event occurs which gives rise or may give rise to a balancing allowance or balancing charge under this Part in respect of machinery or plant, any balancing allowance or balancing charge which, if the trade had at all times been carried on by one and the same person, would have fallen to be made to or on him in respect of that machinery or plant by reason of that event shall

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be made to or on the person or persons carrying on the trade at the time of that event, and the amount of any such allowance or charge shall be computed as if that person or those persons had at all times been carrying on the trade and as if everything done to or by his or their predecessors in the carrying on thereof had been done to or by him or them.

- (5) Notwithstanding section 27(1), this section shall not apply to any employment or office.

## **79 Effect of use partly for trade etc. and partly for other purposes**

- (1) A first-year allowance may be made to a person in respect of any machinery or plant notwithstanding that it appears that the provision of the machinery or plant is partly for purposes other than those of a trade carried on by him; but the allowance in any such case shall be so much only of the allowance that would fall to be made if the provision of the machinery or plant were wholly and exclusively for the purposes of the trade as may be just and reasonable having regard to all the relevant circumstances of the case and, in particular, to the extent to which it appears that the machinery or plant is likely to be used for those other purposes.
- (2) Where a person carrying on a trade incurs capital expenditure on the provision of machinery or plant partly for the purposes of a trade (in subsections (4) to (6) below referred to as “the actual trade”) and partly for other purposes, it shall be assumed for the purposes of sections 24, 25 and 26 that he incurred the expenditure on the provision of the machinery or plant wholly and exclusively for the purposes of a trade (in subsections (4) to (6) below referred to as “the notional trade”) carried on by him separately from the actual trade and any other trade carried on him.
- (3) If, for any chargeable period, a person who has incurred expenditure on the provision of machinery or plant for the purposes of a trade (in subsections (4) to (6) below referred to as “the actual trade”) is required to bring the disposal value of the machinery or plant into account by reason of it beginning in that chargeable period or its basis period to be used partly, but not wholly, for purposes other than those of the actual trade, it shall be assumed for the purposes of sections 24, 25 and 26 that, immediately after the beginning of that chargeable period or its basis period, he incurs capital expenditure equal to that disposal value on the provision of the machinery or plant wholly and exclusively for the purposes of a trade (in subsections (4) to (6) below referred to as “the notional trade”) carried on by him separately from the actual trade and any other trade carried on by him.
- (4) Without prejudice to section 24(6)(c)(i) to (iii), it shall be assumed for the purposes of that section that the notional trade is permanently discontinued on the machinery or plant beginning to be used wholly for purposes other than those of the actual trade.
- (5) The allowance or charge under section 24 which, on the above assumptions, and having regard to subsection (6) below, would fall to be made for any chargeable period in the case of the notional trade—
- (a) shall be reduced to such extent as may be just and reasonable having regard to all the relevant circumstances of the case and, in particular, to the extent to which the machinery or plant was used in that chargeable period or its basis period otherwise than for the purposes of the actual trade; and
  - (b) shall, as so reduced, be made for that chargeable period in the case of the actual trade.



- (6) If an allowance under section 24 falling to be made by virtue of this section for any chargeable period in the case of the actual trade is not claimed or is disclaimed under subsection (4) of that section, or is reduced in amount in accordance with a requirement under subsection (3) or (4) of that section then, in determining the allowance or charge under that section which would fall to be made for any subsequent chargeable period in the case of the notional trade, any allowance falling to be made in the case of that trade for the first-mentioned chargeable period shall be treated as not claimed or as disclaimed or, as the case may require, as proportionately reduced.

## **80 Effect of subsidies towards wear and tear**

- (1) If it appears that, during the period during which any machinery or plant will be used by a person for the purposes of his trade, sums which—
- (a) are in respect of, or take account of, the wear and tear to the machinery or plant occasioned by its use for those purposes, and
  - (b) do not fall to be taken into account as income of that person, or in computing the profits or gains of any trade carried on by him,
- are, or are to be, payable to that person directly or indirectly by the Crown, or by any government or public or local authority (whether in the United Kingdom or elsewhere), or by any other person, then, unless those sums are in respect of, or take account of, part only of that wear and tear, any expenditure incurred by the first-mentioned person in providing the machinery or plant shall be wholly disregarded for the purposes of this Part.
- (2) Where subsection (1) above would apply to a person's expenditure on the provision of machinery or plant but for the fact that the sums there referred to are in respect of, or take account of, part only of the wear and tear to the machinery or plant, a first-year allowance may be made in respect of the expenditure, but the amount thereof shall be reduced to such extent as may be just and reasonable having regard to all the relevant circumstances of the case.
- (3) Where sums within subsection (1) above are paid as mentioned in that subsection to a person carrying on a trade, but are in respect of, or take account of, part only of the wear and tear to the machinery or plant in respect of which they are paid, subsections (4) to (6) below shall have effect with respect to the allowances and charges to be made in the case of the trade ("the actual trade") under section 24.
- (4) If an allowance has been made under section 24 for a chargeable period prior to the relevant period, the machinery or plant shall be treated for the purposes of that section as having begun to be used wholly for purposes other than those of the actual trade immediately after the beginning of the relevant period.
- (5) Whether or not subsection (4) above applies—
- (a) it shall be assumed for the purposes of section 24—
    - (i) that (with section 81 applying where appropriate) immediately after the beginning of the relevant period, capital expenditure was incurred on providing the machinery or plant wholly and exclusively for the purposes of a trade ("the notional trade") carried on by the person carrying on the actual trade separately from that and any other trade carried on by him,
    - (ii) that from then until the notional trade is treated by virtue of subparagraph (iii) below as permanently discontinued no sums within

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- subsection (1) above are paid in respect thereof to the person carrying on that trade, and
- (iii) that without prejudice to section 24(6)(c)(i) to (iii), the notional trade is permanently discontinued on the machinery or plant beginning to be used wholly or partly for purposes other than those of the actual trade; and
- (b) the allowance or charge under section 24 which, on the assumptions set out in paragraph (a) above and having regard to subsection (6) below, would fall to be made for any chargeable period in the case of the notional trade—
- (i) shall be reduced to such extent as may be just and reasonable having regard to all the relevant circumstances of the case, and
- (ii) shall, as so reduced, be made for that chargeable period in the case of the actual trade.
- (6) If an allowance under section 24 falling by virtue of this section to be made for any chargeable period in the case of the actual trade is not claimed or is disclaimed under subsection (4) of that section, or is reduced in amount in accordance with a requirement under subsection (3) or (4) of that section then, in determining the allowance or charge under that section which would fall to be made for any subsequent chargeable period in the case of the notional trade, any allowance falling to be made in the case of that trade for the first-mentioned chargeable period shall be treated as not claimed or as disclaimed or, as the case may require, as proportionately reduced.
- (7) In subsections (4) and (5) above “the relevant period” means the chargeable period in which or, as the case may be, in the basis period for which the first sum is paid as mentioned in subsection (1) above in respect of the machinery or plant in question.

**81 Effect of use after user not attracting capital allowances, or after receipt by way of gift**

- (1) Subject to section 63, where a person—
- (a) brings into use for the purposes of a trade carried on by him machinery or plant which belongs to him in consequence of his having incurred capital expenditure on its provision, for purposes which were such that that expenditure has not been taken into account in computing any allowance falling to be made in the case of the trade under this Part, or
- (b) brings into use for the purposes of a trade carried on by him machinery or plant which belongs to him in consequence of a disposition by way of gift,
- sections 24, 25 and 26 shall have effect as if that person had incurred capital expenditure on the provision of the machinery or plant for the purposes of the trade in the chargeable period related to its bringing into use for those purposes, the amount of that expenditure being taken as the price which the machinery or plant would have fetched if sold in the open market on the date when it was so brought into use, and the machinery or plant being treated as belonging to that person in consequence of his having incurred that expenditure.
- (2) Where subsection (1) above applies, the question whether the provision of the machinery or plant is to be taken to be wholly and exclusively or only partly for the purposes of the trade shall be determined according to whether the use referred to in paragraph (a) or, as the case may be, (b) of that subsection is wholly and exclusively or only partly for those purposes.

- (3) Where a person is treated as having incurred capital expenditure on the provision of machinery or plant by virtue of subsection (1)(b) above, he shall for the purposes of section 75 be treated as having done so by way of purchase from the donor.
- (4) This section shall have effect in any case where the machinery or plant in question was brought into use before 27th July 1989—
  - (a) with the addition at the end of subsection (1)(b) of the words “by reason of which the donor was required by virtue of section 24(6) to bring into account for the purposes there mentioned a disposal value equal to the price which the machinery or plant would have fetched if sold in the open market at the time of the gift”, and
  - (b) with the omission of subsection (3).

## **82 Capital expenditure to which this Part does not apply**

This Part shall not apply to capital expenditure—

- (a) which was not eligible expenditure within the meaning of section 39 of the Finance Act 1976 (which brought expenditure previously not within Chapter I of Part III of the Finance Act 1971 within that Chapter but with certain exceptions), and
- (b) which was incurred in a chargeable period or its basis period ending before 6th April 1976,

and the repeals made by this Act shall not have effect in relation to any such expenditure.

## **83 Other interpretative provisions**

- (1) In this Part, except where the context otherwise requires—
  - “income” includes any amount on which a charge to tax is authorised to be made under this Part;
  - “mineral exploration and access” and “trade of mineral extraction” have the same meaning as in section 121;
  - “motor car” has the meaning given by section 36;
  - “new” (except in the expression “new expenditure”) means unused and not second-hand.
- (2) For the purposes of this Part, any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated as if it had been incurred by him on the first day on which he does carry it on.
- (3) Any reference in this Part to an allowance or charge is a reference to such an allowance or charge under this Part and a reference to an allowance made or postponed under this Part includes, so far as the context permits, a reference to an allowance relating to expenditure in respect of machinery or plant (or anything treated as machinery or plant) made or postponed under any enactment repealed by this Act or by any other Act, notwithstanding that this Act does not re-enact that repealed enactment.
- (4) The provisions of this Part, and the provisions applying for the purposes of this Part, shall apply in relation to a share in machinery or plant as they apply in relation to a part of machinery or plant; and for the purposes of those provisions, a share in machinery or plant shall be deemed to be used for the purposes of a trade so long as, and only so long as, the machinery or plant is used for those purposes.

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- (5) This Part has effect subject to section 577(1)(c) of the principal Act (under which the use of an asset for providing business entertainment is not to be treated as use for the purposes of a trade).
- (6) For the purposes of this Part, where a person is carrying on a trade of mineral extraction, expenditure incurred by him in connection with that trade on the provision of machinery or plant for mineral exploration and access shall be taken to be incurred on the provision of the machinery or plant wholly and exclusively for the purposes of that trade.