



# Capital Allowances Act 1990

## 1990 CHAPTER 1

### PART II

#### MACHINERY AND PLANT

### 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

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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.

(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 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

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- (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.
- (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—

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- (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

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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 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

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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 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



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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;

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“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.
- (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.