



# Capital Allowances Act 1990

## 1990 CHAPTER 1

### PART II

#### MACHINERY AND PLANT

#### CHAPTER V

##### LEASED ASSETS AND INEXPENSIVE CARS

#### **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.

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*Status: This is the original version (as it was originally enacted).*

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- (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.
- (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.