



# Finance Act 1995

## 1995 CHAPTER 4

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

##### *Capital allowances: ships*

#### **94 Deferment of balancing charges in respect of ships**

In Chapter II of Part II of the Capital Allowances Act 1990 (ships), after section 33 there shall be inserted the following sections—

*“Balancing charges in respect of ship disposals etc.*

#### **33A Deferment of balancing charge**

- (1) This section applies in any case where—
- (a) a balancing charge of any amount would, apart from this section, be made for any chargeable period (“the relevant period”) on any person (“the shipowner”) in respect of a trade carried on by him (his “actual trade”);
  - (b) there is, in the relevant period, an event falling within section 24(6)(c) (i) to (iii);
  - (c) that event is one occurring on or after 21st April 1994 with respect to a ship (“the old ship”) provided by the shipowner for the purposes of his actual trade and belonging to him at some time in the relevant period;
  - (d) the old ship was a qualifying ship immediately before that event;
  - (e) the shipowner’s expenditure on the provision of the old ship is not expenditure treated for any purposes by virtue of section 41(2), 61(1), 79(2) or 80(5) as expenditure incurred for the purposes of a trade carried on separately from his actual trade; and

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- (f) the old ship has not begun, and is not treated as having begun, before the event mentioned in paragraph (b) above, to be used partly, but not wholly, for purposes other than those of the shipowner's actual trade.

(2) If—

- (a) the shipowner makes a claim in respect of the event mentioned in subsection (1)(b) above for the deferment under this section of the whole or part of the charge which would be made on him, and
- (b) none of the amounts specified in subsection (3) below is nil,

the amount for which deferment is claimed, so far as it does not exceed the smallest of those amounts, shall for the purposes of sections 24, 25 and 26 be added to the shipowner's qualifying expenditure for the relevant period in respect of his actual trade.

(3) Subject to the following provisions of this section, those amounts are—

- (a) the amount which, in accordance with section 33B, is treated as brought into account in respect of the old ship;
- (b) the amount of expenditure which is or is to be incurred by the shipowner on new shipping in the period of six years beginning with the day on which the event mentioned in subsection (1)(b) above occurs;
- (c) the amount of the balancing charge which, apart only from the claim in question, would be made on the shipowner for the relevant period in respect of his actual trade; and
- (d) the amount which, on the assumption—
  - (i) that any other additions under this section to the shipowner's qualifying expenditure for the relevant period are taken into account, but
  - (ii) that amounts carried forward under section 385 or 393 of the principal Act (losses carried forward) are disregarded,

would have the effect of reducing to nil the amount (if any) falling to be taken into account, in computing the shipowner's total profits or total income for that period, as the trading income of that trade or, as the case may be, as profits or gains arising from that trade.

(4) If—

- (a) an addition is made under this section to the shipowner's qualifying expenditure for the relevant period in respect of his actual trade, but
- (b) the shipowner does not, in the period of six years mentioned in subsection (3)(b) above, incur expenditure on new shipping of an amount equal to or exceeding the addition,

the shipowner shall be assumed not to have been entitled to so much of the addition as exceeds the amount in fact incurred.

(5) Where an addition is made under this section to the shipowner's qualifying expenditure for the relevant period in respect of his actual trade, so much of the expenditure incurred or to be incurred by the shipowner on new shipping, being expenditure of an amount equal to the addition, as for the purposes of subsection (3)(b) or (4) above is (in accordance with section 33D(6)) either—

- (a) identified by the shipowner in his claim or by notice to the inspector as the expenditure to which the addition is to be attributed, or

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- (b) in default of being so identified by the shipowner, determined by the inspector to be the expenditure to which that addition is to be attributed, shall be disregarded for the purposes of subsections (3)(b) and (4) above in determining the shipowner's entitlement to any other addition under this section to his qualifying expenditure for any period.
- (6) A balancing charge falling by virtue of section 41(2), 79(5) or 80(5) to be made for the relevant period in the case of the shipowner's actual trade shall be disregarded in determining the amount referred to in subsection (3)(c) above.
- (7) In consequence of paragraph (d) of subsection (3) above, no addition shall be made under this section to the shipowner's qualifying expenditure for the relevant period in respect of his actual trade if—
  - (a) the amount falling (after disregarding any amounts carried forward under section 385 or 393 of the principal Act) to be taken into account as mentioned in that paragraph would have been nil even apart from this section, or
  - (b) he has, apart from this section, incurred a loss in that trade for the relevant period.

### **33B Amount brought into account in respect of the old ship**

- (1) For the purposes of section 33A where—
  - (a) the old ship is, by virtue of section 31(2), assumed for the purposes of sections 24, 25 and 26 to have been provided wholly and exclusively for the purposes of a single ship trade,
  - (b) in consequence of the event mentioned in section 33A(1)(b), a disposal value of the old ship falls for the purposes of section 31(7) to be brought into account for the chargeable period of the single ship trade which corresponds to the relevant period, and
  - (c) no notice has been given in relation to the single ship trade under section 33(1) or (4),the amount treated as brought into account in respect of the old ship shall be the amount which under section 31(7)(b) falls to be brought into account for the relevant period of the shipowner's actual trade as an item of disposal value referable to machinery or plant.
- (2) In any other case, the amount treated as brought into account in respect of the old ship shall be the amount equal to the amount which, on the assumptions specified in subsection (3) below, would have been the balancing charge for the relevant period in respect of the shipowner's actual trade.
- (3) Those assumptions are—
  - (a) that section 31(2) did not apply with respect to expenditure on the provision of the old ship;
  - (b) that the old ship was the only item of machinery or plant in respect of which sections 24, 25 and 26 have effect for chargeable periods of the shipowner's actual trade; and
  - (c) that the allowances made to the shipowner in respect of the provision of the old ship are—
    - (i) the first-year allowance (if any) which was actually made to the shipowner;

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- (ii) any first-year allowance falling to be made to him that was postponed under section 30(1)(a) or (c); and
  - (iii) the maximum amount of any writing-down allowances which, on the preceding assumptions, could have been made for the chargeable periods of that trade ending with the relevant period.
- (4) Where a notice under section 33(1) or (4) is given in the case of a single ship trade after the determination for the purposes of section 33A of the amount treated as brought into account in respect of the old ship, subsection (2) above, instead of subsection (1), shall apply, and be deemed always to have applied, in relation to that ship.
- (5) In this section and the following provisions of this Chapter “single ship trade” has the same meaning as in section 31.”

## **95 Reimposition of deferred charge**

In Chapter II of Part II of the Capital Allowances Act 1990 (ships), after the sections inserted by section 94 above there shall be inserted the following section—

### **“33C Reimposition of deferred charge**

- (1) Notwithstanding anything in section 31(2), the assumption specified in subsection (2) below shall apply, for the purposes of sections 24, 25 and 26 wherever—
- (a) an addition is made under section 33A to the shipowner’s qualifying expenditure for the relevant period;
  - (b) the shipowner incurs expenditure on new shipping within the period mentioned in section 33A(3)(b); and
  - (c) an identification or determination of the whole or any part of the expenditure on new shipping is made as mentioned in section 33A(5) in relation to the whole or any part of the addition.
- (2) That assumption is that an amount equal to so much of the expenditure incurred on new shipping as is expenditure to which the whole or any part of the addition is to be attributed is to be brought into account—
- (a) for the chargeable period in which that expenditure is incurred, and
  - (b) in respect of the single ship trade in respect of which that expenditure falls to be taken into account in determining qualifying expenditure of the shipowner,
- as an item of disposal value referable to machinery or plant which in respect of that chargeable period and that trade falls within section 24(6).”

## **96 Ships in respect of which charge may be deferred**

In Chapter II of Part II of the Capital Allowances Act 1990 (ships), after the section inserted by section 95 above there shall be inserted the following sections—

### **“33D Expenditure to which deferrals attributed**

- (1) Subject to the following provisions of this section, expenditure is expenditure on new shipping for the purposes of sections 33A to 33C in so far as it is both—
  - (a) capital expenditure incurred on the provision, wholly and exclusively for the purposes of the shipowner’s actual trade, of a ship which it appears—
    - (i) will be brought into use for the purposes of that trade as a qualifying ship, and
    - (ii) will continue to be a qualifying ship throughout a period of at least three years after that; and
  - (b) expenditure falling, by virtue of section 31(2), to be taken into account for the purposes of sections 24, 25 and 26, in determining qualifying expenditure, as an amount of expenditure incurred by the shipowner wholly and exclusively for the purposes of a single ship trade.
- (2) Expenditure on the provision of a ship shall not be, and shall be deemed never to have been, expenditure on new shipping if the ship—
  - (a) is brought into use for the purposes of any trade of the shipowner or (without having been so brought into use) for the purposes of any trade of a person connected with him;
  - (b) there is a time after it is first so brought into use when that ship is not a qualifying ship; and
  - (c) that time is before whichever is the earlier of—
    - (i) the end of the period of three years beginning with the time when it is first so brought into use, and
    - (ii) the first occasion after the beginning of that period when neither the shipowner nor any person connected with him is a person to whom the ship belongs.
- (3) Where—
  - (a) a notice under section 33(1) or (4) has the effect, in relation to any expenditure which satisfies the conditions in subsection (1)(a) and (b) above, of requiring any of that expenditure to be attributed for the purposes of sections 24, 25 and 26 to a trade which is not a single ship trade, or
  - (b) section 42 has effect with respect to expenditure on the provision of a ship in a case where the expenditure would have fallen to be taken into account as mentioned in subsection (1)(b) above if the ship had not been leased as mentioned in section 42(1),the expenditure which falls to be so attributed or, as the case may be, with respect to which section 42 has effect shall not be, and shall be deemed never to have been, expenditure on new shipping.
- (4) Expenditure on the provision of a ship is not expenditure on new shipping if—
  - (a) the ship had already belonged to the shipowner at some time in the period of six years ending with the time when it first belongs to him in consequence of his incurring that expenditure;
  - (b) the ship has at any time in that period belonged to a person who has, at a material time, been a person connected with the shipowner; or

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- (c) the main object, or one of the main objects, of—
  - (i) the transaction by which the ship was provided for the purposes of the shipowner's actual trade,
  - (ii) any series of transactions of which that transaction was one, or
  - (iii) any transaction in such a series,
 was to secure the deferment of a charge under section 33A.
  
- (5) In subsection (4)(b) above “a material time”, in relation to any expenditure, means the time when the expenditure is incurred or any earlier time in the period of six years which is applicable in the case in question for the purposes of section 33A(3)(b).
  
- (6) An addition made under section 33A to the shipowner's qualifying expenditure for any period shall not for the purposes of that section or section 33C be attributed to the whole or any part of any expenditure on new shipping if there is other expenditure incurred by the shipowner which—
  - (a) was incurred before that expenditure in the period of six years which is applicable, in the case of that addition, for the purposes of section 33A(3)(b), and
  - (b) is expenditure on new shipping or would fall to be treated as such expenditure but for any notice under section 33(1) or (4),
 unless the whole amount of the other expenditure has been used for the purposes of attributions made in the case of that addition and of any other additions made under section 33A in respect of events occurring before the beginning of that period of six years.
  
- (7) Notwithstanding any changes in the persons engaged in carrying on any trade previously carried on by the shipowner, expenditure shall be treated for the purposes of this Chapter as incurred by the shipowner if—
  - (a) it is incurred by the persons for the time being carrying on that trade, and
  - (b) the only changes in the persons so engaged, between the time when the trade was carried on by the shipowner and the time when the expenditure is incurred, are changes in respect of which that trade is to be treated by virtue of section 113(2) or 343(2) of the principal Act (continuity of trade) as not having been discontinued.
  
- (8) For the purposes of this section a person is connected with the shipowner at any time if—
  - (a) at that time he is, within the terms of section 839 of the principal Act, connected either with the shipowner or with a person who is connected with the shipowner by virtue of paragraph (b) below, or
  - (b) any expenditure incurred by him at that time would fall, by virtue of subsection (7) above, to be treated as expenditure incurred by the shipowner.

### **33E Qualifying ships**

- (1) Subject to the following provisions of this section, a ship is a qualifying ship for the purposes of sections 33A to 33D if it is a ship of a sea-going kind and is registered, in any register of shipping established and maintained under the

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law of the United Kingdom or of any other country or territory, as a ship with a gross tonnage of or in excess of 100 tons.

- (2) In any case where the event mentioned in section 33A(1)(b) consists in or results from either—
- (a) the total loss of the old ship, or
  - (b) damage to the old ship that puts it in a condition in which it is impossible, or not commercially worthwhile, for the repair required for restoring it to its previous use to be undertaken,
- the references to a qualifying ship in section 33A(1)(d) and section 33D(1) and (2) shall have effect as if in subsection (1) above the words “as a ship with a gross tonnage of or in excess of 100 tons” were omitted.
- (3) A ship is not a qualifying ship if the primary use to which ships of the same kind as that ship are put by the persons to whom they belong or, where their use is made available to others, by those others is use for sport or recreation.
- (4) A ship is not a qualifying ship at any time when—
- (a) it is an offshore installation for the purposes of the Mineral Workings (Offshore Installations) Act 1971; or
  - (b) it would be such an installation if the activity for the carrying on of which it is or is to be established or maintained were carried on in or under controlled waters (within the meaning of that Act).
- (5) Where, in the case of any ship which has been brought into use for the purposes of a trade of the shipowner or a person connected with him but was not so brought into use before 20th July 1994—
- (a) there is a time in the qualifying period when the ship is not registered in a relevant register, and
  - (b) that time is more than three months after that period began,
- the ship shall not, in relation to times after the time mentioned in paragraph (a) above, be a qualifying ship.
- (6) In subsection (5) above “the qualifying period” means the period between—
- (a) the time when the ship is first brought into use for the purposes of any trade of the shipowner or (without having been so brought into use) for the purposes of any trade of a person connected with him; and
  - (b) whichever is the earlier of—
    - (i) the end of the period of three years beginning with that time, and
    - (ii) the first occasion after that time when neither the shipowner nor any person connected with him is a person to whom the ship belongs.
- (7) In subsection (5) above “relevant register”, in relation to any ship, means any register of shipping established and maintained under the law of any part of the British Islands or of any country or territory which, at a time in the period which in the case of that ship is the qualifying period for the purposes of that subsection, is a member State, another State within the European Economic Area or a colony.
- (8) References in subsections (5) and (6) above to a person connected with the shipowner shall be construed in accordance with section 33D(8) but shall have

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effect in relation to the old ship as if a trade carried on at any time by any person were carried on at that time by a person so connected wherever—

- (a) it was subsequently carried on by the shipowner or a person connected with him; and
- (b) it underwent, between that time and the time when it was carried on by the shipowner or a person connected with him, only such changes in the persons engaged in carrying it on as are changes in respect of which it is to be treated by virtue of section 113(2) or 343(2) of the principal Act as not having been discontinued.”

## 97 **Procedural provisions relating to deferred charges**

- (1) In Chapter II of Part II of the Capital Allowances Act 1990 (ships), after the sections inserted by section 96 above there shall be inserted the following section—

### **“33F Procedural provisions relating to deferred charges**

- (1) Schedule A1 to this Act shall apply for the purposes of corporation tax in relation to the making of a claim under section 33A as it applies in relation to the making of a claim for an allowance.
- (2) No claim under section 33A shall be allowed for the purposes of income tax unless it is made within twelve months from the 31st January next following the year of assessment in which the relevant period ends.
- (3) No claim under section 33A may be made at any time before such date as the Treasury may by order appoint; and where by virtue of anything in subsection (1) or (2) above the period for making any such claim would have expired (but for this subsection) before the end of the period of twelve months beginning with that date, it shall expire, instead, at the end of that period of twelve months.
- (4) An attribution made for the purposes of section 33A(5) or 33C may be varied by notice given by the shipowner to the inspector at any time before the end of the period for the making, by the person giving the notice, of claims under section 33A above in respect of events occurring in the earliest chargeable period affected; and for the purposes of this subsection a chargeable period is an affected chargeable period, in relation to a variation, if it is one in which expenditure to which the variation relates was incurred.
- (5) Where—
  - (a) a claim for the deferment of any charge has been made under section 33A, and
  - (b) circumstances subsequently arise that require the deferment claimed to be treated as one to which the shipowner was not entitled, either in whole or in part,
 the shipowner shall, no later than three months after the end of the chargeable period in which those circumstances first arise, give notice of that fact, specifying the circumstances, to the inspector.
- (6) All such assessments and adjustments shall be made as may be necessary to give effect to the provisions of sections 33A to 33C and subsection (4) above; and, notwithstanding any limitation on the time for making assessments, an



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assessment to tax chargeable in consequence of any such circumstances as are mentioned in subsection (5) above may be made at any time between—

- (a) the time when those circumstances arise, and
- (b) the time 12 months after notice of the circumstances is given to the inspector by the shipowner.

(7) In this section references to the shipowner, in relation to the giving of any notice, shall have effect where there have been any such changes as are mentioned in section 33D(7)(b) in the persons engaged in carrying on the shipowner's actual trade, as references to the persons who, in consequence of those changes, are carrying on that trade at the time of the giving of the notice or, as the case may be, when the notice is required to be given."

- (2) In section 42(7)(c) of the Management Act (procedure for making claims under the Capital Allowances Act 1990 in the case of a partnership), so far as that section has effect as inserted by paragraph 13 of Schedule 19 to the Finance Act 1994 (self-assessment cases), after "33," there shall be inserted "33A,".
- (3) In the second column of the Table in section 98 of the Management Act (penalties in respect of certain information provisions), in the entry relating to sections 23(2), 48 and 49(2) of the Capital Allowances Act 1990, after "23(2)," there shall be inserted "33F(5),".

## **98 Deferred charges: commencement and transitional provisions**

- (1) Sections 94 to 97 above shall have effect, subject to the following provisions of this section, in relation to every chargeable period ending on or after 21st April 1994.
- (2) Those sections do not apply for the purposes of income tax in relation to a chargeable period if—
  - (a) that period is a year of assessment as respects which Chapter IV of Part IV of the Finance Act 1994 (changes for facilitating self-assessment) does not apply to the shipowner's actual trade ("a transitional year"); and
  - (b) the basis period for that chargeable period ended before 21st April 1994.
- (3) Where the relevant period is a transitional year the references in paragraphs (b) and (c) of section 33A(1) of the Capital Allowances Act 1990 ("the 1990 Act") to the relevant period shall have effect for the purposes of income tax as if they were references to the basis period for the relevant period.
- (4) Where the relevant period is a transitional year or any other year of assessment as respects which section 140 of the 1990 Act has effect without the substitution made by section 211 of the Finance Act 1994, section 33A(3)(d) and (7) of the 1990 Act shall have effect for the purposes of income tax—
  - (a) subject to the assumption for which subsection (5) below provides; and
  - (b) as if the reference to the shipowner incurring a loss in his actual trade for the relevant period were a reference to his incurring a loss in that trade for the period ("the assessment period") any profits or gains of which would have been the profits or gains on which income tax chargeable for the relevant period in respect of that trade would finally have fallen to be computed.
- (5) That assumption is that in computing the profits or gains of the assessment period which arise from the shipowner's actual trade, and in computing whether he has

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incurred a loss in that trade for that period, all such deductions and additions were to be made as would have to be made if—

- (a) allowances falling to be made under the 1990 Act for the relevant period in taxing that trade (excluding any allowances carried forward to the relevant period by virtue of section 140(4) of the 1990 Act) were trading expenses of the trade for the assessment period; and
  - (b) charges falling to be so made (apart from any allowances so carried forward) were charges on amounts falling to be treated as trading receipts of that trade for the assessment period.
- (6) In relation to expenditure incurred in the basis period for a transitional year—
- (a) the reference in section 33C(2)(a) of the 1990 Act to the chargeable period in which the expenditure is incurred shall have effect as a reference to the chargeable period in the basis period for which it was incurred; and
  - (b) the reference in section 33F(4) of the 1990 Act to a chargeable period shall include a reference to a basis period.
- (7) Section 33F(2) of the 1990 Act shall not apply to any claim under section 33A for the deferment of the whole or any part of any charge for a transitional year, but no such claim shall be allowed for the purposes of income tax unless it is made—
- (a) within two years of the end of the relevant period; and
  - (b) in a case where the shipowner's actual trade is carried on by two or more persons jointly, by the person required under section 9 of the Management Act (partnership return) to make a return for that period in respect of that trade.
- (8) Expressions used in this section and in the provisions inserted by sections 94 to 97 above in the 1990 Act shall have the same meanings in this section as in those provisions.