



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

- (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.”