

SCHEDULES

SCHEDULE 16

Section 86.

CAPITAL ALLOWANCES ON FIXTURES

PART I

AMENDMENTS OF THE CAPITAL ALLOWANCES ACT 1990

Introductory

- 1 The Capital Allowances Act 1990 shall be amended in accordance with the following provisions of this Part of this Schedule.

Interpretation of Chapter VI of Part II

- 2 (1) In subsection (2) of section 51 (definitions), after the definition of “relevant land” there shall be inserted the following definition—

““return” means (subject to section 59C(10)) any return required to be made under the Taxes Management Act 1970 for income tax or corporation tax purposes.”

- (2) In subsection (5) of that section—

- (a) in paragraph (b), for “that expenditure is” there shall be substituted “that person is entitled to have that expenditure”; and
- (b) in sub-paragraph (iii), for “he is required” there shall be substituted “he would be required (disregarding section 24(7))”.

- (3) After that subsection there shall be inserted the following subsection—

“(5A) In this Chapter references to making a claim for an allowance in respect of any expenditure include references—

- (a) to making a return in which the expenditure is taken into account, as expenditure on the provision of a fixture, in determining a person’s qualifying expenditure for the purposes of section 24, and
- (b) to giving notice of any such amendment of a return as provides for that expenditure to be so taken into account.”

- (4) After subsection (6) of that subsection there shall be inserted the following subsection—

“(6A) Where a person who has made a return becomes aware that anything contained in that return has, after being made, become incorrect by reason of—

- (a) the making an election under section 59B, or

Status: This is the original version (as it was originally enacted).

- (b) the operation, in his case, of section 56A(1), section 56B(1) or section 59C(3),
he shall, within three months of first becoming so aware, give notice to an officer of the Board of the amendments that are necessitated in his return in the light of the matter of which he has become aware.”
- (5) In subsection (8), paragraph (b) (expenditure under commitments made before 12th July 1984 not subject to the provisions of the Chapter) shall cease to have effect.
- (6) Subject to sub-paragraphs (7) and (8) below, this paragraph has effect for chargeable periods ending on or after 24th July 1996.
- (7) Where, but for this sub-paragraph, the latest time for the giving of a notice under subsection (6A) of section 51 would be before the end of the period of three months beginning with the day on which this Act is passed, that subsection shall have effect as if the latest time for the giving of that notice were the end of that period of three months.
- (8) Section 59(10) shall not apply by virtue of sub-paragraph (5) above in any case where it would not have applied apart from that sub-paragraph and the fixture is treated as having ceased to belong to the former owner before 24th July 1996.

Allowances in respect of expenditure by equipment lessors

- 3 (1) In subsection (1) of section 53 (cases where allowance may be made in respect of expenditure of an equipment lessor), at the beginning there shall be inserted “Subject to subsections (1A) to (1C) below,”.
- (2) In paragraph (b) of that subsection (agreement must be entered into for the purposes of a trade carried on by the equipment lessee etc.), after the word “trade”, in the first place where it occurs, there shall be inserted “which is or is to be”.
- (3) After paragraph (b) of that subsection there shall be inserted the following paragraphs—
 “(ba) that agreement is not an agreement for the lease of the machinery or plant for use in a dwelling-house, and
 (bb) the equipment lessee is within the charge to tax in the United Kingdom on the profits of, as the case may be—
 (i) the trade for the purposes of which he has entered into that agreement, or
 (ii) the leasing of the machinery or plant by him to another,
 and”.
- (4) In paragraph (d) of that subsection, for the words from “the fixture” to the end of the paragraph there shall be substituted “the equipment lessee would, by virtue of section 52, have been entitled to an allowance in respect of the expenditure, as expenditure incurred on the provision of that fixture, and”.
- (5) After that subsection there shall be inserted the following subsections—
 “(1A) Where the condition specified in paragraph (b) of subsection (1) above is satisfied in any case by reference to an agreement entered into for the purposes of a trade which the equipment lessee has not begun to carry on at the time of the agreement, that subsection shall have effect in that case

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

as if the reference in the words after paragraph (e) to the time at which the expenditure is incurred were a reference to whichever is the later of that time and the time when the equipment lessee begins to carry on that trade.

(1B) Where the conditions set out in subsection (1C) below are satisfied in any case, subsection (1) above shall have effect in that case as if the following were omitted, that is to say—

- (a) in paragraph (b), the words from “for the purposes of” to “course of a trade”; and
- (b) paragraphs (bb) and (d).

(1C) Those conditions are as follows—

- (a) that the machinery or plant becomes a fixture by virtue of being fixed to land that is neither a building nor part of a building;
- (b) that the equipment lessee has an interest in that land at the time when he takes possession of the machinery or plant under the agreement for the lease of it;
- (c) that, under the terms of that agreement, the equipment lessor is entitled to sever the machinery or plant, at the end of the period for which it is leased, from the land to which it is fixed at that time;
- (d) that, under the terms of that agreement, the machinery or plant will belong to the equipment lessor on its severance from that land in accordance with that agreement;
- (e) that the nature of the machinery or plant and the way in which it is fixed to land are such that its use on one set of premises does not, to any material extent, prevent it from being used, once severed, for the same purposes on a different set of premises; and
- (f) that the agreement for the lease of the machinery or plant is such as falls, for the purposes of the accounts of equipment lessors who are companies incorporated in a part of the United Kingdom, to be treated, in accordance with normal accountancy practice, as an operating lease.”

(6) Sub-paragraphs (1), (2) and (5) above have effect for chargeable periods ending on or after the day on which this Act is passed in relation to any case in which the agreement for the lease of the machinery or plant is entered into on or after that day.

(7) Sub-paragraphs (3) and (4) above have effect for chargeable periods ending on or after 24th July 1996 in relation to any case in which the expenditure incurred by the equipment lessor is expenditure incurred on or after that date.

Fixtures in respect of which more than one person gets an allowance

4 (1) After section 56 there shall be inserted the following sections—

“56A Restriction on duplicate allowances under sections 54 and 56

(1) Where the relevant conditions are satisfied in relation to any case in which the provisions of section 54(1) or section 56 would (but for this section) be treated as applying, those provisions shall not apply in that case, and shall be treated as never having applied in that case.

(2) The relevant conditions are as follows—

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

- (a) that an interest in any land in which the whole or any part of the relevant land is comprised is held by any person immediately after the relevant time;
 - (b) that that interest is not the one which—
 - (i) in a case falling within section 54(1)(a), is acquired by the purchaser; or
 - (ii) in a case falling within section 56(a), is acquired by the lessee in consequence of the grant of the lease;
 - (c) that the person with that interest is a person falling to be treated for the purposes of this Part as a person to whom the fixture belonged immediately before the relevant time in consequence of the incurring by him of expenditure on the provision of the fixture;
 - (d) that that person does not fall to be so treated by virtue of section 154;
 - (e) that that person is entitled to an allowance in respect of that expenditure and makes or has made a claim for that allowance; and
 - (f) that the relevant time is on or after 24th July 1996.
- (3) In this section “the relevant time” means, as the case may be—
- (a) the time when the purchaser acquires his interest in the relevant land; or
 - (b) the time of the grant of the lease.

56B Fixtures on which a former owner had an allowance

- (1) Where—
- (a) any machinery or plant falls to be treated for the purposes of this Part as a fixture belonging to any person (“the new claimant”) in consequence of his incurring capital expenditure on the provision of that machinery or plant, and
 - (b) the requirements of subsection (2) below are satisfied in the case of that machinery or plant,
- so much (if any) of that expenditure as exceeds the maximum allowable amount shall be disregarded for the purposes of this Part or, as the case may be, shall be taken to be expenditure that should never have been taken into account for those purposes.
- (2) The requirements of this subsection are satisfied in the case of any machinery or plant where—
- (a) it falls or has fallen, otherwise than by virtue of section 154, to be treated as having belonged at a relevant earlier time to any person (“the prior claimant”) in consequence of his incurring expenditure (“the other expenditure”) which is not the expenditure mentioned in subsection (1)(a) above;
 - (b) the prior claimant, as a consequence of having made a claim for an allowance in respect of the other expenditure, is or has been required to bring a disposal value of the machinery or plant into account; and
 - (c) the event by reason of which that disposal value has been or is to be brought into account is an event occurring on or after 24th July 1996.
- (3) For the purposes of this section the new claimant and the prior claimant may be the same person.

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

- (4) Subject to subsection (5) below, the maximum allowable amount for the purposes of this section is the sum of—
- (a) the disposal value of the machinery or plant which the prior claimant has been or is required to bring into account; and
 - (b) so much (if any) of the expenditure mentioned in subsection (1)(a) above as is deemed by virtue of section 66 (installation costs) to be expenditure on the provision of the machinery or plant.
- (5) Subsection (4) above shall have effect where the requirements of subsection (2) above are satisfied by reference to more than one such event as is mentioned in subsection (2)(c) above as if they were satisfied by reference only to the most recent of those events.
- (6) In this section “a relevant earlier time” means a time which—
- (a) is before the time which is taken for the purposes of this Part to be the earliest time when the machinery or plant belonged to the new claimant in consequence of his incurring the expenditure mentioned in subsection (1)(a) above; and
 - (b) does not fall to be disregarded under subsection (7) below.
- (7) For the purposes of subsection (6) above a time must be disregarded if—
- (a) in consequence of any sale of the machinery or plant, it has ceased, at any time after that time and before the time mentioned in paragraph (a) of that subsection, to belong to any person;
 - (b) that person and the purchaser were not connected with each other, within the terms of section 839 of the principal Act, at the time of sale; and
 - (c) the sale was not a sale of the machinery or plant as a fixture.

56C Fixtures on which an allowance has been given under Part I

- (1) Where—
- (a) a person has at any time made a claim for an allowance to which he is entitled under Part I in respect of expenditure incurred on the construction of a building or structure,
 - (b) that expenditure was or included expenditure on the provision of machinery or plant,
 - (c) that person has made a transfer of the relevant interest in the building or structure (“the relevant transfer”),
 - (d) the person to whom the relevant transfer is made, or any person to whom for the purposes of this Part the machinery or plant is subsequently treated as belonging, makes a claim for an allowance under this Part, and
 - (e) that claim is for an allowance in respect of capital expenditure incurred, at a time on or after 24th July 1996 when it is a fixture in the building or structure, on the provision of the machinery or plant,
- the amount taken for the purposes of the claim mentioned in paragraph (d) above to have been incurred on the provision of the fixture shall not exceed the relevant amount.

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

- (2) In subsection (1) above “the relevant amount” means the amount equal, on the relevant assumption, to the portion of the consideration for the relevant transfer which would have been attributable to the fixture.
- (3) The relevant assumption for the purposes of subsection (2) above is that the relevant transfer was a sale of the relevant interest in the building or structure for the amount which immediately after that transfer represented the residue of the expenditure incurred on the construction of the building or structure.
- (4) Expressions used both in this section and in Part I have the same meanings in this section as in that Part.

56D Fixtures on which an allowance has been given under Part VII

- (1) Where—
 - (a) a person has at any time made a claim for an allowance to which he is entitled under Part VII in respect of any allowable scientific research expenditure of a capital nature (“the Part VII expenditure”),
 - (b) the Part VII expenditure was or included expenditure on the provision of machinery or plant,
 - (c) an asset representing the whole or any part of the Part VII expenditure (“the Part VII asset”) has ceased, on any occasion, to belong to that person,
 - (d) the person who acquired the Part VII asset on that occasion, or any person to whom for the purposes of this Part the machinery or plant is subsequently treated as belonging, makes a claim for an allowance under this Part, and
 - (e) that claim is for an allowance in respect of capital expenditure incurred, at a time on or after 24th July 1996 when it is a fixture, on the provision of the machinery or plant,

the amount taken for the purposes of the claim mentioned in paragraph (d) above to have been incurred on the provision of the fixture shall not exceed the relevant amount.
 - (2) In subsection (1) above “the relevant amount” means the amount equal, on the relevant assumption, to the portion of the consideration for the disposal of the Part VII asset which would have been attributable to the fixture.
 - (3) The relevant assumption for the purposes of subsection (2) above is that the occasion mentioned in subsection (1)(c) above was a disposal of the Part VII asset for the amount equal to whichever is the smaller of—
 - (a) the disposal value of the asset on that occasion; and
 - (b) so much of the Part VII expenditure as related to the provision of the Part VII asset.
 - (4) Expressions used both in subsection (1) above and in Part VII have the same meanings in that subsection as in that Part.”
- (2) In section 54(1)—
- (a) paragraph (c) (cases where another person has had an entitlement), and the word “and” immediately preceding it, shall cease to have effect; and

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

- (b) in the words after that paragraph, for “section 57” there shall be substituted “the following provisions of this Chapter”.
- (3) In section 56—
- (a) paragraph (c) (cases where another person has had an entitlement) shall cease to have effect;
 - (b) in paragraph (d), for “that time” there shall be substituted “the time of the grant of the lease”; and
 - (c) in the words after paragraph (d), for “section 57” there shall be substituted “the following provisions of this Chapter”.
- (4) This paragraph has effect, subject to sub-paragraphs (5) and (6) below, for chargeable periods ending on or after 24th July 1996.
- (5) Sub-paragraph (2)(a) above does not apply where the purchaser acquired the relevant interest before 24th July 1996.
- (6) Sub-paragraph (3)(a) above does not apply where the lease was granted before 24th July 1996.

Disposal value in avoidance cases

- 5 (1) In subsection (1) of section 59 (disposal value of fixtures determined in accordance with subsections (2) to (6)), after “determined” there shall be inserted “(subject to sections 59A and 59B)”.
- (2) In Chapter VI of Part II, after that section there shall be inserted the following section—

“59A Disposal values in avoidance cases

- (1) If, in a case where machinery or plant has been treated by virtue of this Chapter as belonging to any person (“the charged person”) in consequence of his incurring any expenditure—
- (a) an event occurs by reason of which a disposal value of that machinery or plant is to be brought into account by the charged person in accordance with section 24,
 - (b) the amount of the disposal value to be so brought into account would (but for this section) be less than the notional written-down value of the machinery or plant, and
 - (c) the event is comprised in, or occurs in pursuance of, any scheme or arrangement which has avoidance as its main object, or as one of its main objects,

this Part shall have effect in relation to the charged person as if the amount of the disposal value to be brought into account were equal to the notional written-down value of the machinery or plant.

- (2) In this section “the notional written-down value”, in relation to any machinery or plant, means the amount which, if—
- (a) it were the disposal value falling to be brought into account as mentioned in subsection (1) above, and
 - (b) the assumptions set out in subsection (3) below were made,

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

would give rise to neither a balancing allowance nor a balancing charge for the chargeable period for which that disposal value is to be brought into account.

- (3) Those assumptions are—
- (a) that expenditure on the provision of the machinery or plant were the only expenditure ever taken into account in determining the charged person's qualifying expenditure for the purposes of section 24; and
 - (b) that the full amount of every allowance to which that person was entitled in respect of that expenditure had been made to him.
- (4) The reference in subsection (1) above to avoidance is a reference to—
- (a) the obtaining under this Part for the charged person of an allowance or deduction or of a greater allowance or deduction, or
 - (b) the avoidance or reduction of a charge under this Part on the charged person.”

- (3) This paragraph has effect for chargeable periods ending on or after 24th July 1996 wherever the time of the occurrence of the event by virtue of which the disposal value falls to be brought into account is a time on or after that date.

Apportionment of expenditure by election

- 6 (1) In Chapter VI of Part II, after the section 59A inserted by paragraph 5 above there shall be inserted the following sections—

“59B Election to use alternative apportionment

- (1) This section applies where, in a case in which a disposal value of a fixture is required to be brought into account by the former owner, the price referred to in subsection (1) of section 59 falls to be determined in accordance with subsection (2) or (3) of that section.
- (2) Subject to sections 56C, 56D and 59A and to the following provisions of this section, the purchaser and the former owner may jointly, by an election under this section, fix the amount which, for all the purposes of this Part, is to be taken—
- (a) in a case to which subsection (2) of section 59 applies, to be the portion of the sale price referred to in that subsection; or
 - (b) in a case to which subsection (3) of that section applies, to be the portion of the capital sum referred to in section 55(1)(c) that falls to be treated as expenditure by the purchaser on the provision of the fixture.
- (3) The amount fixed by an election under this section shall not exceed either of the following amounts, that is to say—
- (a) the amount of the capital expenditure which was taken for the purposes of this Part to have been incurred by the former owner on the provision of the fixture or of the machinery or plant which became the fixture; and
 - (b) the actual amount of the sale price or capital sum referred to in section 59(2) or, as the case may be, section 55(1)(c).

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

- (4) Where the portion of any amount which is to be taken as attributable to the provision of a fixture is fixed by an election under this section—
 - (a) the remainder (if any) of that amount shall be taken for the purposes of this Act to be expenditure attributable to the acquisition of the property which is not the fixture but is acquired for that amount;
 - (b) if there is no remainder, the expenditure so attributable shall be taken for those purposes to be nil.
- (5) An apportionment by virtue of an election under this section shall have effect in place of any apportionment that would otherwise be made under section 150.
- (6) In this section—
 - “the former owner” shall be construed in accordance with subsection (1) of section 59; and
 - “the purchaser” means the purchaser or lessee referred to in subsection (2) or, as the case may be, subsection (3) of that section.

59C Elections under section 59B: supplemental

- (1) A section 59B election must be made by notice given to an officer of the Board.
- (2) A notice containing a section 59B election (in addition to specifying the amount fixed by the election) must contain the following information—
 - (a) the name of each of the persons making the election;
 - (b) information sufficient to identify the machinery or plant;
 - (c) information sufficient to identify the relevant land;
 - (d) particulars of the interest acquired by the purchaser or, as the case may be, of the lease granted to him; and
 - (e) the tax district references of each of the persons making the election.
- (3) The amount specified as the amount fixed by a section 59B election must be quantified at the time when the election is made; but if, as a result of circumstances arising after the making of the election, the maximum amount which could be fixed by the election is reduced to an amount which is less than the amount specified in the election, that election shall be deemed for the purposes of this Act to have specified the amount to which the maximum is reduced.
- (4) A section 59B election shall not be made more than two years after the time when the purchaser acquires the interest in question or, as the case may be, is granted the lease in question.
- (5) Where a person who has joined in making a section 59B election subsequently makes a return for his relevant period, a copy of the notice containing the election must accompany the return.
- (6) A section 59B election shall be irrevocable once made.
- (7) Nothing in section 42 of, or Schedule 1A to, the Taxes Management Act 1970 (claims in returns and claims not included in returns) shall apply to a section 59B election.

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

- (8) Where any question relating to a section 59B election falls to be determined by any body of Commissioners for the purposes of any proceedings before them—
- (a) each of the persons who has joined in making the election shall be entitled to appear and be heard by the Commissioners, or to make representations to them in writing;
 - (b) the Commissioners shall determine that question separately from any other questions in those proceedings; and
 - (c) their determination on that question shall have effect as if made in an appeal to which each of those persons was a party.
- (9) In this section—
- “relevant period”, in relation to any person who has joined in making a section 59B election, means the period for which a return is made by that person which is the first such period in which the election has an effect in his case for the purposes of income tax or corporation tax; and
- “a section 59B election” means an election under section 59B; and subsection (6) of section 59B applies for the purposes of this section as it applies for the purposes of that section.
- (10) In the case of an election for the purposes of a trade, profession or business carried on by persons in partnership, the references in this section to a return shall be construed, in relation to those persons, as references to a return under section 12AA of the Taxes Management Act 1970 (partnership returns).”
- (2) This paragraph has effect for chargeable periods ending on or after the day on which this Act is passed wherever the time when the fixture in question is or would be treated as ceasing to belong to the former owner is a time on or after that day.

Prohibition of double allowances

- 7 (1) In section 147 (exclusion of double allowances), after subsection (2) there shall be inserted the following subsections—
- “(2A) Subject to subsection (2B) below, where—
- (a) a person entitled to do so has at any time made a claim for an allowance under any of the preceding Parts of this Act, other than Part II, and
 - (b) that claim is for an allowance in respect of capital expenditure relating, in whole or in part, to the construction, acquisition or provision of an asset,
- no capital expenditure (whenever incurred) relating to the provision of that asset shall, by virtue of Chapter VI of Part II, be brought into account at any time after that time by any person at all.
- (2B) Subsection (2A) above shall not prevent capital expenditure from being brought into account by virtue of Chapter VI of Part II where—
- (a) the only claim made under a provision of this Act not contained in Part II is a claim under Part I or Part VII; and
 - (b) section 56C or 56D would apply by reference to that claim in relation to any claim for that expenditure to be so brought into account.

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

(2C) Where capital expenditure relating to the provision of any asset has at any time been brought into account by virtue of Chapter VI of Part II by any person entitled to do so, no capital expenditure (whenever incurred) relating to the construction, acquisition or provision of that asset shall, at any time after that time, be the subject of a claim made, by any person at all, for an allowance under any of the preceding Parts of this Act other than Part II.

(2D) For the purposes of subsections (2A) to (2C) above a person shall be taken to bring an amount of capital expenditure into account by virtue of Chapter VI of Part II if—

- (a) he makes a claim for an allowance in respect of that expenditure, as expenditure on the provision of a fixture within the meaning of that Chapter,
- (b) he makes a return in which that expenditure is taken into account, as expenditure on the provision of such a fixture, in determining his qualifying expenditure for the purpose of an allowance or charge under section 24, or
- (c) he gives notice of any such amendment of a return as provides for that expenditure to be taken into account as mentioned in paragraph (b) above.”

(2) In subsection (3) of that section after the definition of “capital expenditure” there shall be inserted “and

“return” means any return required to be made under the Taxes Management Act 1970 for income tax or corporation tax purposes,”.

(3) This paragraph has effect for chargeable periods ending on or after 24th July 1996 but shall not be taken to prevent any allowance from being made, or any amount from being taken into account, in respect of expenditure incurred before that date.

Construction of amendments

8 Notwithstanding anything in subsection (1) of section 163 of the Capital Allowances Act 1990 (continuity of the law), subsection (2) of that section (under which references in that Act to provisions of that Act include references to repealed enactments) applies for construing that Act as amended by this Schedule as it applies for construing the provisions of that Act as originally enacted.

PART II

CONSEQUENTIAL AMENDMENT OF THE TAXES MANAGEMENT ACT 1970

9 In the second column of the Table in section 98 of the Taxes Management Act 1970 (penalties in respect of certain information provisions), in the entry relating to sections 23(2), 33F(4), 48 and 49(2) of the Capital Allowances Act 1990, for “and 49(2)” there shall be substituted “, 49(2) and 51(6A)”.