



# Capital Allowances Act 2001

## 2001 CHAPTER 2

### PART 2

#### PLANT AND MACHINERY ALLOWANCES

#### CHAPTER 17

#### [<sup>F1</sup>OTHER ANTI-AVOIDANCE]

#### *[<sup>F2</sup>Disposal of plant or machinery subject to lease where income retained]*

#### Textual Amendments

- F2** Ss. 228K-228M and cross-heading inserted (with effect in accordance with s. 84(5)(6) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 84\(3\)](#)

#### **228K Disposal of plant or machinery subject to lease where income retained**

- (1) This section applies for corporation tax purposes if—
- on any day (“the relevant day”) a person (“the lessor”) carries on a business of leasing plant or machinery (the “leasing business”),
  - on the relevant day the lessor sells or otherwise disposes of any relevant plant or machinery subject to a lease to another person,
  - the lessor remains entitled immediately after the disposal to some or all of the rentals under the lease in respect of the plant or machinery which are payable on or after the relevant day, and
  - the lessor is required to bring a disposal value of the plant or machinery into account under this Part.
- (2) The disposal value to be brought into account is determined as follows.

*Status: Point in time view as at 08/04/2010.*

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- (3) If the amount or value of the consideration for the disposal exceeds the limit that would otherwise be imposed on the amount of the disposal value by section 62 (general limit) or 239 (limit on disposal value where additional VAT rebate)—
- (a) that limit is not to apply, and
  - (b) the whole of the amount or value of the consideration for the disposal is to be the disposal value to be brought into account.
- (4) In any other case, the disposal value to be brought into account is the sum of—
- (a) the amount or value of the consideration for the disposal, and
  - (b) the value of the rentals under the lease in respect of the plant or machinery (see subsections (7) and (8)) which are payable on or after the relevant day and to which the lessor remains entitled immediately after the disposal,
- but subject to the limit imposed on the amount of the disposal value by section 62 or 239.
- (5) If—
- (a) any of the rentals under the lease are receivable by the lessor on or after the relevant day, and
  - (b) the value of any of those rentals is represented in the amount of the disposal value under subsection (4)(b),
- the amount of those rentals that is equal to their value as so represented is left out of account in calculating the income of the lessor's leasing business for corporation tax purposes.
- (6) If, in determining under subsection (5) the amount of any rental to be so left out of account, it is necessary to apportion the amount of the rental, the apportionment is to be made on a just and reasonable basis.
- (7) For the purposes of this section, the value of any rentals under the lease in respect of the plant or machinery is taken to be the amount of the net present value of the rentals (see section 228L).
- (8) If any land or other asset which is not plant or machinery is subject to the lease, the value of any rentals under the lease in respect of the plant or machinery is taken to be so much of the amount of the net present value of the rentals as, on a just and reasonable basis, relates to the plant or machinery.
- (9) This section is supplemented by—
- (a) section 228L (which provides rules for determining the net present value of the rentals), and
  - (b) section 228M (which defines other expressions used in this section).

## **228L Determining the net present value of the rentals for purposes of s.228K**

- (1) For the purposes of section 228K, the amount of the net present value of the rentals is calculated as follows—

*Step 1*

Find the amount (“RI”) of each rental payment—

- (a) which is payable at any time during the term of the lease, and
- (b) which is payable on or after the relevant day.

*Step 2*

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For each rental payment find the day (“the payment day”) on which it becomes payable.

*Step 3*

For each rental payment find the number of days in the period (“P”) which—

- (a) begins with the relevant day, and
- (b) ends with the payment day.

*Step 4*

Calculate the net present value of each payment (“NPVRI”) by applying the following formula—

$$\frac{RI}{(1 + T)^i}$$

where—

- T is the temporal discount rate, and
- i is the number of days in P divided by 365.

*Step 5*

Add together each amount of NPVRI determined under step 4.

- (2) For the purposes of this section the “term” of a lease has the meaning given in Chapter 6A of this Part.
- (3) For the purposes of this section the “temporal discount rate” is 3.5% or such other rate as may be specified by regulations made by the Treasury.
- (4) The regulations may make such provision as is mentioned in subsection (3)(b) to (f) of section 178 of FA 1989 (power of Treasury to set rates of interest).
- (5) Subsection (5) of that section (power of Commissioners to specify rate by order in certain circumstances) applies in relation to regulations under this section as it applies in relation to regulations under that section.

## **228M Other definitions for the purposes of s.228K**

- (1) This section applies for the purposes of section 228K.
- (2) “Business of leasing plant or machinery”—
  - (a) has the same meaning as in [<sup>F3</sup>Chapter 3 of Part 9 of CTA 2010] (if the business is carried on otherwise than in partnership), or
  - (b) has the same meaning as in [<sup>F4</sup>Chapter 4 of that Part] (if the business is carried on in partnership).
- (3) “Lease” includes—
  - (a) an underlease, sublease, tenancy or licence, and
  - (b) an agreement for any of those things.
- (4) “Relevant plant or machinery”, in relation to a business of leasing plant or machinery, means plant or machinery on whose provision expenditure is incurred wholly or partly for the purposes of the business.]

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#### Textual Amendments

- F3** Words in s. 228M(2)(a) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 346\(a\)](#) (with [Sch. 2](#))
- F4** Words in s. 228M(2)(b) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 346\(b\)](#) (with [Sch. 2](#))

#### [<sup>F5</sup>228M] Restriction of qualifying expenditure

- (1) This section applies where capital expenditure is incurred on the provision of plant or machinery (“the asset”) and at the time the expenditure is incurred—
- (a) the asset is leased or arrangements exist under which it is to be leased, and
  - (b) arrangements have been entered into in relation to payments under the lease that have the effect of reducing the value of the asset to the lessor (“V”).
- (2) For the purposes of capital allowances the lessor's qualifying expenditure on the asset is restricted to V.
- (3) The value of the asset to the lessor is given by—

$$V = VI + VR$$

where—

VI is the present value of the lessor's income from the asset, and

VR is the present value of the residual value of the asset reduced by the amount of any rental rebate.

- (4) For this purpose—
- (a) the lessor's income from the asset is the total of all the amounts that—
    - (i) have been received by the lessor, or it is reasonable to expect the lessor will receive, in connection with the lease, and
    - (ii) have been brought into account by the lessor, or it is reasonable to expect the lessor will bring into account, as income in computing profits chargeable to tax, and
  - (b) the residual value of the asset is what it is reasonable to expect will be the market value of the lessor's interest in the asset immediately after the termination of the lease.
- (5) In determining the lessor's income from the asset, exclude—
- (a) disposal receipts brought, or to be brought, into account under Part 2, and
  - (b) so much of any amount as represents charges for services or qualifying UK or foreign tax (within the meaning of section 70YE) to be paid by the lessor.
- (6) Where capital expenditure has previously been incurred by the lessor on the provision of the asset, the reference in subsection (2) to the lessor's qualifying expenditure on the asset is to be read as a reference to the total amount of the lessor's qualifying expenditure on the asset.
- (7) The following provisions supplement this section—

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- (a) section 228MB provides for the calculation of “present value”, and
  - (b) section 228MC defines what is meant by a rental rebate.
- (8) In this section and sections 228MB and 228MC “lease” includes any arrangements which provide for plant or machinery to be leased or otherwise made available by a person (“the lessor”) to another person (“the lessee”).

#### Textual Amendments

**F5** Ss. 228MA-228MC inserted (8.4.2010) (with effect in accordance with Sch. 5 para. 1(2) to the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 5 para. 1\(1\)](#)

### 228MB Calculation of present value

- (1) For the purposes of section 228MA the “present value” of an amount is to be calculated by using the interest rate implicit in the lease.
- (2) The general rule is that the interest rate implicit in the lease is the interest rate that would apply in accordance with normal commercial criteria, including, in particular, generally accepted accounting practice (where applicable).
- (3) If the interest rate implicit in the lease cannot be determined in accordance with subsection (2), it is taken to be 1% above LIBOR.
- (4) For this purpose—
  - (a) LIBOR means the London interbank offered rate on the relevant day for deposits for a term of 12 months in the relevant currency,
  - (b) the relevant day is the day on which the lease was entered into (or if that was not a business day, the first business day after that day), and
  - (c) the relevant currency is the currency in which rentals under the lease are payable.

#### Textual Amendments

**F5** Ss. 228MA-228MC inserted (8.4.2010) (with effect in accordance with Sch. 5 para. 1(2) to the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 5 para. 1\(1\)](#)

### 228MC Rental rebate

- (1) For the purposes of section 228MA “rental rebate” means any sum payable to the lessee that is calculated by reference to the termination value of the asset.
- (2) The general rule is that the termination value of an asset is the value of the asset at or about the time when the lease terminates.
- (3) Calculation by reference to the termination value includes calculation by reference to any one or more of—
  - (a) the proceeds of sale, if the asset is sold,
  - (b) any insurance proceeds, compensation or similar sums in respect of the asset, and
  - (c) an estimate of the market value of the asset.

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- (4) Calculation by reference to the termination value also includes—
- (a) determination in a way which, or by reference to factors or criteria which, might reasonably be expected to produce a broadly similar result to calculation by reference to the termination value, or
  - (b) any other form of calculation indirectly by reference to the termination value.]

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**Textual Amendments**

- F5** Ss. 228MA-228MC inserted (8.4.2010) (with effect in accordance with Sch. 5 para. 1(2) to the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 5 para. 1\(1\)](#)

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