



# Capital Allowances Act 2001

## 2001 CHAPTER 2

### PART 2

#### PLANT AND MACHINERY ALLOWANCES

#### CHAPTER 17

#### ANTI-AVOIDANCE

#### *Relevant transactions*

#### **213 Relevant transactions: sale, hire-purchase (etc.) and assignment**

- (1) For the purposes of this Chapter, a person (“B”) enters into a relevant transaction with another (“S”) if—
- S sells plant or machinery to B,
  - B enters into a contract with S providing that B shall or may become the owner of plant or machinery on the performance of the contract, or
  - S assigns to B the benefit of a contract providing that S shall or may become the owner of plant or machinery on the performance of the contract.
- (2) For the purposes of this Chapter, references to B’s expenditure under a relevant transaction are references—
- in the case of a sale within subsection (1)(a), to B’s capital expenditure on the provision of the plant or machinery by purchase,
  - in the case of a contract within subsection (1)(b), to B’s capital expenditure under the contract so far as it relates to the plant or machinery, or
  - in the case of an assignment within subsection (1)(c), to B’s capital expenditure under the contract so far as it relates to the plant or machinery or is by way of consideration for the assignment.
- (3) If—

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- (a) B is treated under section 14 (use for qualifying activity of plant or machinery which is a gift) as having incurred capital expenditure on the provision of plant or machinery, and
  - (b) the donor of the plant or machinery was S,
- B is to be treated for the purposes of this Chapter as having incurred capital expenditure on the provision of the plant or machinery by purchasing it from S.

### *Restrictions on allowances*

#### **214 Connected persons**

Allowances under this Part are restricted under sections 217 and 218 if—

- (a) B enters into a relevant transaction with S, and
- (b) B and S are connected with each other.

#### **215 Transactions to obtain allowances**

Allowances under this Part are restricted under sections 217 and 218 if—

- (a) B enters into a relevant transaction with S, and
- (b) it appears that the sole or main benefit which (but for this section) might have been expected to accrue to B or S, or to any other party, from—
  - (i) the relevant transaction, or
  - (ii) transactions of which the relevant transaction is one, was obtaining an allowance under this Part.

#### **216 Sale and leaseback, etc.**

(1) Allowances under this Part are restricted under sections 217 and 218 if—

- (a) B enters into a relevant transaction with S, and
- (b) the plant or machinery—
  - (i) continues to be used for the purposes of a qualifying activity carried on by S, or
  - (ii) is used after the date of the transaction for the purposes of a qualifying activity carried on by S or by a person (other than B) who is connected with S, without having been used since that date for the purposes of any other qualifying activity except that of leasing the plant or machinery.

(2) In this section—

“the date of the transaction” means the date of the sale, the making of the contract or the assignment referred to in section 213(1)(a) to (c), and

“qualifying activity” includes any activity listed in section 15(1) even if any profits or gains from it are not chargeable to tax.

#### **217 No first-year allowance for B’s expenditure**

(1) If this section applies as a result of section 214, 215 or 216, a first-year allowance is not to be made in respect of B’s expenditure under the relevant transaction.

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- (2) Any first-year allowance which is prohibited by subsection (1), but which has already been made, is to be withdrawn.
- (3) If plant or machinery is the subject of a sale and finance leaseback (as defined in section 221) section 223 applies instead of this section.

## **218 Restriction on B’s qualifying expenditure**

- (1) If this section applies as a result of section 214, 215 or 216, the amount, if any, by which B’s expenditure under the relevant transaction exceeds D is to be left out of account in determining B’s available qualifying expenditure.  
D is defined in subsections (2) and (3).
- (2) If S is required to bring a disposal value into account under this Part because of the relevant transaction, D is that disposal value.
- (3) If S is not required to bring a disposal value into account under this Part because of the relevant transaction, D is whichever of the following is the smallest—
  - (a) the market value of the plant or machinery;
  - (b) if S incurred capital expenditure on the provision of the plant or machinery, the amount of that expenditure;
  - (c) if a person connected with S incurred capital expenditure on the provision of the plant or machinery, the amount of that expenditure.
- (4) If plant or machinery is the subject of a sale and finance leaseback (as defined in section 221), section 224 or 225 applies instead of this section.

### *Finance leases*

## **219 Meaning of “finance lease”**

- (1) In this Chapter “finance lease” means any arrangements—
  - (a) which provide for plant or machinery to be leased or otherwise made available by a person (“the lessor”) to another person (“the lessee”), and
  - (b) which, under [<sup>F1</sup>generally accepted accounting practice]—
    - (i) fall (or would fall) to be treated, in the accounts of the lessor or a person connected with the lessor, as a finance lease or a loan, or
    - (ii) are comprised in arrangements which fall (or would fall) to be so treated.
- (2) <sup>F2</sup>.....
- (3) In this section “accounts”, in relation to a company, includes any accounts which—
  - (a) relate to two or more companies of which that company is one, and
  - (b) are drawn up in accordance with—
    - (i) section 227 of the Companies Act 1985 (c. 6), or
    - (ii) Article 235 of the Companies (Northern Ireland) Order 1986 (S.I.1986/1032 (N.I.6)).

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### Textual Amendments

- F1** Words in s. 219(1) substituted (24.7.2002) by [Finance Act 2002 \(c. 23\), s. 103\(4\)\(g\)](#)  
**F2** S. 219(2) repealed (with effect as mentioned in s. 107 of the amending Act) by [Finance Act 2002 \(c. 23\), s. 141, Sch. 40 Pt. 3\(16\)](#)

## 220 Allocation of expenditure to a chargeable period

- (1) Subject to subsection (2), if a person incurs at any time in a chargeable period capital expenditure on the provision of plant or machinery for leasing under a finance lease—
- (a) the part of the expenditure which is proportional to the part of that chargeable period falling before that time is not to be taken into account in determining that person's available qualifying expenditure for that period, but
  - (b) this does not prevent that part of the expenditure being taken into account in determining that person's available qualifying expenditure for any subsequent chargeable period.
- (2) Subsection (1)(a) does not apply to a chargeable period if a disposal event occurs in that period in respect of the plant or machinery.

### *Sale and finance leasebacks*

## 221 Meaning of “sale and finance leaseback”

- (1) For the purposes of this section and sections 222 to 228, plant or machinery is the subject of a sale and finance leaseback if—
- (a) B enters into a relevant transaction with S,
  - (b) after the date of the transaction, the plant or machinery—
    - (i) continues to be used for the purposes of a qualifying activity carried on by S,
    - (ii) is used for the purposes of a qualifying activity carried on by S or by a person (other than B) who is connected with S, without having been used since that date for the purposes of any other qualifying activity except that of leasing the plant or machinery, or
    - (iii) is used for the purposes of a non-qualifying activity carried on by <sup>[F3]</sup>S or by a person (other than B) who is connected with S, without having been used since that date for the purposes of a qualifying activity except that of leasing the plant or machinery, and
  - (c) it is directly or indirectly as a consequence of having been leased under a finance lease that the plant or machinery is available to be so used after that date.
- (2) In this section—
- “the date of the transaction” means the date of the sale, the making of the contract or the assignment referred to in section 213(1)(a) to (c),
- “non-qualifying activity” means any activity which is not a qualifying activity, and
- “qualifying activity” includes any activity listed in section 15(1) even if any profits or gains from it are not chargeable to tax.

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### Textual Amendments

- F3** Words in s. 221(1)(b)(iii) substituted (with effect as mentioned in s. 69(2) of the amending Act) by Finance Act 2001 (c. 9), s. 69(1), **Sch. 21 para. 3**

## 222 Disposal value restricted

- (1) If—
- (a) plant or machinery is the subject of a sale and finance leaseback, and
  - (b) S is required to bring a disposal value into account under this Part because of the relevant transaction,
- the disposal value is whichever of the amounts in subsection (2) is the smallest.
- (2) The amounts are—
- (a) the disposal value that S would be required to bring into account apart from subsection (1);
  - (b) the market value of the plant or machinery;
  - (c) if S incurred capital expenditure on the provision of the plant or machinery, the notional written-down value of that capital expenditure;
  - (d) if a person connected with S incurred capital expenditure on the provision of the plant or machinery, the notional written-down value of that capital expenditure.
- (3) The notional written-down value is—

$$QE - A$$

where—

QE is the expenditure incurred by S, or the person connected with S, on the plant or machinery,

A is the total of all allowances which could have been made to S, or the person connected with S, in respect of that expenditure if—

- (a) that expenditure had been qualifying expenditure,
  - (b) that expenditure had been the only expenditure that had ever been taken into account in determining his available qualifying expenditure,
  - (c) that expenditure had been treated as long-life asset expenditure only if it is in fact such expenditure, and
  - (d) all allowances had been made in full.
- (4) This section does not apply if the finance lease or any transaction or series of transactions of which it forms a part makes provision such as is described in section 225(1) (sale and finance leasebacks: B's qualifying expenditure if lessor not bearing non-compliance risk).

## 223 No first-year allowance for B's expenditure

- (1) If plant or machinery is the subject of a sale and finance leaseback, a first-year allowance is not to be made in respect of B's expenditure under the relevant transaction.

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- (2) Any first-year allowance which is prohibited by subsection (1), but which has already been made, is to be withdrawn.

## **224 Restriction on B’s qualifying expenditure**

- (1) If plant or machinery is the subject of a sale and finance leaseback the amount, if any, by which B’s expenditure under the relevant transaction exceeds D is to be left out of account in determining B’s available qualifying expenditure.

D is defined in subsections (2) and (3).

- (2) If S is required to bring a disposal value into account under this Part because of the relevant transaction, D is that disposal value (determined in accordance with section 222).
- (3) If S is not required to bring a disposal value into account under this Part because of the relevant transaction, D is whichever of the following is the smallest—
- (a) the market value of the plant or machinery;
  - (b) if S incurred capital expenditure on the provision of the plant or machinery, the notional written-down value of that capital expenditure;
  - (c) if a person connected with S incurred capital expenditure on the provision of the plant or machinery, the notional written-down value of that capital expenditure.
- (4) In this section “the notional written-down value”, in relation to expenditure incurred by a person on the provision of plant or machinery, has the meaning given by section 222(3).
- (5) This section does not apply if the finance lease or any transaction or series of transactions of which it forms a part makes provision such as is described in section 225(1).

## **225 B’s qualifying expenditure if lessor not bearing non-compliance risk**

- (1) This section applies if plant or machinery is the subject of a sale and finance leaseback, and the finance lease, or any transaction or series of transactions of which it forms a part, makes provision which—
- (a) removes from the lessor the whole, or the greater part, of any risk, which would otherwise fall directly or indirectly on the lessor, of any person sustaining a loss if payments under the lease are not made in accordance with its terms, and
  - (b) does so otherwise than by means of guarantees from persons connected with the lessee.
- (2) In such a case the following are not qualifying expenditure for the purposes of this Part —
- (a) B’s expenditure under the relevant transaction;
  - (b) if the lessor is a different person from B, the expenditure incurred by the lessor on the provision of the plant or machinery.
- (3) For the purposes of determining whether this section applies, the lessor and the persons connected with the lessor are treated as the same person.

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## **226 Qualifying expenditure limited in subsequent transactions**

- (1) Subsection (2) applies if—
- (a) plant or machinery has been the subject of a sale and finance leaseback,
  - (b) S was required to bring a disposal value into account under this Part because of the relevant transaction,
  - (c) at any time after that event, a person (“P”) becomes the owner of the plant or machinery as a result of incurring capital expenditure, and
  - (d) P’s allowances are not restricted by any other provision of this Chapter.
- (2) The amount of P’s qualifying expenditure is limited to the sum of—
- (a) the amount given by section 222 as the amount of S’s disposal value, and
  - (b) so much of the actual amount of the expenditure as is treated as expenditure on the provision of plant or machinery under section 25 (building alterations connected with installation of plant or machinery).

*Sale and leaseback or sale and finance leaseback: election for special treatment*

## **227 Circumstances in which election may be made**

- (1) Section 228 applies if—
- (a) B enters into a relevant transaction with S,
  - (b) the plant or machinery—
    - (i) is within section 216(1)(b) (sale and leaseback), or
    - (ii) is the subject of a sale and finance leaseback (see section 221),
  - (c) the conditions set out in subsection (2) are met, and
  - (d) B and S elect that section 228 should apply.
- (2) The conditions are—
- (a) that S incurred capital expenditure on the provision of the plant or machinery,
  - (b) that the plant or machinery was unused and not second-hand at or after the time when it was acquired by S,
  - (c) that the plant or machinery was acquired by S otherwise than as a result of a transaction to which section 217, 218, 223 or 224 applies,
  - (d) that the relevant transaction is effected not more than 4 months after the first occasion on which the plant or machinery is brought into use by any person for any purpose, and
  - (e) that S has not—
    - (i) made a claim for an allowance under this Act in respect of expenditure incurred on the provision of the plant or machinery,
    - (ii) made a tax return in which such expenditure is taken into account in determining his available qualifying expenditure for the purposes of this Part, or
    - (iii) given notice of any such amendment of a tax return as provides for such expenditure to be so taken into account.
- (3) In subsection (2)(b) and (c), the references to the plant or machinery being acquired by S are, in a case where the relevant transaction between S and B falls within section 213(1)(c) (assignment), references to the making of the contract the benefit of which S assigns to B.

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- (4) An election under this section—
- (a) must be made by notice to the Inland Revenue no later than 2 years after the date of the transaction, and
  - (b) is irrevocable.
- (5) Nothing in—
- (a) section 42 of, or Schedule 1A to, TMA 1970 (claims and elections for income tax purposes), or
  - (b) paragraphs 54 to 60 of Schedule 18 to FA 1998 (claims and elections for corporation tax purposes),
- applies to such an election.
- (6) In subsection (4) “the date of the transaction” means the date of the sale, the making of the contract or the assignment referred to in section 213(1)(a) to (c).

**228 Effect of election: relaxation of restriction on B’s qualifying expenditure, etc.**

- (1) The effect of an election under section 227 in relation to B is that subsections (2) and (3) apply instead of section 218 or 224 (restriction on B’s qualifying expenditure).
- (2) The amount, if any, by which B’s expenditure under the relevant transaction exceeds D is to be left out of account in determining B’s available qualifying expenditure.
- (3) D is whichever of the following is the smaller—
  - (a) if S incurred capital expenditure on the provision of the plant or machinery, the amount of that expenditure;
  - (b) if a person connected with S incurred capital expenditure on the provision of the plant or machinery, the amount of that expenditure.
- (4) Nothing in subsections (1) to (3) prevents section 225 from applying.
- (5) The effect of an election under section 227 in relation to S is—
  - (a) that no allowance is to be made to S under this Act in respect of the capital expenditure on the provision of the plant or machinery, and
  - (b) that the whole of that expenditure must be left out of account in determining the amount for any period of Ss’ available qualifying expenditure for the purposes of this Part.

*[<sup>F4</sup>Finance leaseback: parties’ income and profits*

**Textual Amendments**

**F4** Ss. 228A-228J and cross-heading inserted (with effect in accordance with s. 134(3) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 134](#)

**228A Application of sections 228B to 228E**

- (1) Sections 228B to 228E apply where—
  - (a) plant or machinery is the subject of a sale and finance leaseback for the purposes of section 221, and
  - (b) section 222 (restriction of disposal value) applies.



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- (2) Sections 228B to 228D also apply, with the modifications set out in section 228F, where plant or machinery is the subject of a lease and finance leaseback (as defined in section 228F).

### **228B Lessee’s income or profits: deductions**

- (1) For the purpose of income tax or corporation tax, in calculating the lessee’s income or profits for a period of account the amount deducted in respect of amounts payable under the leaseback may not exceed the permitted maximum.
- (2) The permitted maximum is the total of—
- (a) finance charges shown in the accounts, and
  - (b) depreciation, taking the value of the plant or machinery at the beginning of the leaseback to be the restricted disposal value.
- (3) In relation to a period of account during which the leaseback terminates, the permitted maximum shall also include an amount calculated in accordance with subsection (4).
- (4) The calculation is—

$$\text{CurrentBookValue} \times \frac{\text{OriginalConsideration}}{\text{OriginalBookValue}}$$

where—

“ Current Book Value ” means the net book value of the leased plant or machinery immediately before the termination,

“ Original Consideration ” means the consideration payable to S for entering into the relevant transaction, and

“ Original Book Value ” means the net book value of the leased plant or machinery at the beginning of the leaseback.

### **228C Lessee’s income or profits: termination of leaseback**

- (1) Subsection (2) applies where the leaseback terminates.
- (2) For the purpose of the calculation of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period in which the termination occurs shall be increased by an amount calculated in accordance with subsection (3).
- (3) The calculation is—

$$\text{NetConsideration} \times \frac{\text{CurrentBookValue}}{\text{OriginalBookValue}}$$

where—

“ Net Consideration ” means—

- (a) the consideration payable to S for entering into the relevant transaction, minus

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(b) the restricted disposal value,

“ Current Book Value ” means the net book value of the leased plant or machinery immediately before the termination, and

“ Original Book Value ” means the net book value of the leased plant or machinery at the beginning of the leaseback.

- (4) In this section “ relevant qualifying activity ” means the qualifying activity for the purposes of which the leased plant or machinery was used immediately before the termination.
- (5) Section 228B has no effect on the treatment for the purposes of income tax or corporation tax of amounts received by way of refund on the termination of a leaseback of amounts payable under it.
- (6) In subsection (5), “ amounts received by way of refund ” includes any amount that would be so received in respect of the lessee’s interest under the leaseback if any amounts due to the lessor under the leaseback were disregarded.

#### **228D Lessor’s income or profits**

- (1) This section applies in relation to the calculation of the lessor’s income or profits for a period of account for the purpose of income tax or corporation tax.
- (2) Where—
- (a) an amount receivable in respect of the lessor’s interest under the leaseback falls to be taken into account in that calculation, and
  - (b) that amount is reduced by an amount due to the lessee under the leaseback, that reduction shall be disregarded when taking the amount receivable into account.
- (3) The amounts receivable in respect of the lessor’s interest under the leaseback that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the permitted threshold (whether or not subsection (2) applies).
- (4) The permitted threshold is the total of—
- (a) gross earnings, and
  - (b) the allowable proportion of the capital repayment.
- (5) In subsection (4)(a) “ gross earnings ” means the amount shown in the lessor’s accounts in respect of the lessor’s gross earnings under the leaseback.
- (6) In subsection (4)(b) “ allowable proportion of the capital repayment ” means the amount obtained by this calculation—

$$\text{RestrictedDisposalValue} \times \frac{\text{InvestmentReductionForPeriod}}{\text{NetInvestment}}$$

where—

“ Investment Reduction For Period ” means the amount shown in the lessor’s accounts in respect of the reduction in net investment in the leaseback, and

“ Net Investment ” means the amount shown in the lessor’s accounts as the lessor’s net investment in the leaseback at the beginning of its term.

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- (7) This section does not apply to a leaseback if the lessee is a lessee by way of an assignment made before 17 March 2004.

### **228E Lessor's income or profits: termination of leaseback**

- (1) Subsection (2) applies where—
- (a) the leaseback terminates,
  - (b) the lessor disposes of the plant or machinery, and
  - (c) the amount of the disposal value required to be brought into account because of that disposal is limited by section 62.
- (2) For the purpose of income tax or corporation tax, in calculating the lessor's income or profits for the period in which the termination occurs the amount deducted in respect of any amount refunded to the lessee may not exceed the amount to which the disposal value is limited by section 62.

### **228F Lease and finance leaseback**

- (1) Sections 228B, 228C and 228D apply, with the following modifications, where plant or machinery is the subject of a lease and finance leaseback.
- (2) In determining the permitted maximum for the purposes of section 228B, depreciation shall be disregarded.
- (3) In the calculation under section 228C(3), the amount of the consideration referred to in subsection (6)(b) of this section shall be substituted for the Net Consideration.
- (4) In determining the permitted threshold for the purposes of section 228D, the allowable proportion of the capital repayment shall be disregarded.
- (5) Plant or machinery is the subject of a lease and finance leaseback if—
- (a) a person (“S”) leases the plant or machinery to another (“B”),
  - (b) after the date of that transaction, the use of the plant or machinery falls within sub-paragraph (i), (ii) or (iii) of section 221(1)(b), and
  - (c) it is directly as a consequence of having been leased under a finance lease that the plant or machinery is available to be so used after that date.
- (6) For the purposes of subsection (5), S leases the plant or machinery to B only if—
- (a) S grants B rights over the plant or machinery,
  - (b) consideration is given for that grant, and
  - (c) S is not required to bring all of that consideration into account under this Part.
- (7) Plant or machinery is not the subject of a lease and finance leaseback for the purposes of this section in any case where the condition in subsection (6)(c) is met only because of an election under section 199 made before 18 May 2004.
- (8) In the application of sections 228B to 228D in relation to a lease and finance leaseback—
- (a) references to the lessee are references to the person referred to as S in this section, and
  - (b) references to the lessor are references to the person referred to as B in this section or, where appropriate, to an assignee of that person.

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## **228G Leaseback not accounted for as finance lease in accounts of lessee**

- (1) Sections 228B and 228C are subject to this section in their application in relation to a leaseback that is not accounted for as a finance lease in the accounts of the lessee.
- (2) Subsection (3) applies where the leaseback is accounted for as a finance lease in the accounts of a person connected with the lessee; and in that subsection “ relevant calculation ” means the calculation of—
  - (a) the permitted maximum for the purposes of section 228B, or
  - (b) the amount by which the income or profits of the lessee are to be increased in accordance with section 228C.
- (3) Where an amount that falls to be used for the purposes of a relevant calculation—
  - (a) cannot be ascertained by reference to the lessee’s accounts because the leaseback is not accounted for as a finance lease in those accounts, but
  - (b) can be ascertained by reference to the connected person’s accounts for one or more periods,
 that amount as ascertained by reference to the connected person’s accounts shall be used for the purposes of the relevant calculation.
- (4) Subsections (5) and (6) apply in a case where the leaseback is not accounted for as a finance lease in the accounts of a person connected with the lessee.
- (5) Sections 228B and 228C do not apply in relation to the leaseback.
- (6) If the term of the leaseback begins on or after 18 May 2004 then, for the purposes of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period of account during which the term of the leaseback begins shall be increased by—
  - (a) the net consideration for the purposes of section 228C(3) (in the case of a sale and finance leaseback), or
  - (b) the consideration referred to in section 228F(6)(b) (in the case of a lease and finance leaseback).
- (7) For the purposes of this section the leaseback is accounted for as a finance lease in a person’s accounts if—
  - (a) the leaseback falls, under generally accepted accounting practice, to be treated in that person’s accounts as a finance lease or loan, or
  - (b) in a case where the leaseback is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.

## **228H Sections 228A to 228G: supplementary**

- (1) In sections 228A to 228G—
 

“ lessee ” does not include a person who is lessee by way of an assignment;

the “ net book value ” of leased plant or machinery means the book value of the plant or machinery having regard to any relevant entry in the lessee’s accounts, but—

  - (a) also having regard to depreciation up to the time in question, and
  - (b) disregarding any revaluation gains or losses and any impairments;

“ restricted disposal value ” means the disposal value under section 222;

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- “ termination ” in relation to a leaseback includes (except in section 228E)—
- (a) the assignment of the lessee’s interest,
  - (b) the making of any arrangements (apart from an assignment of the lessee’s interest) under which a person other than the lessee becomes liable to make some or all payments under the leaseback, and
  - (c) a variation as a result of which the leaseback ceases to be a finance lease.
- (2) In a case where accounts drawn up are not correct accounts, or no accounts are drawn up—
- (a) the provisions of sections 228A to 228G apply as if correct accounts had been drawn up, and
  - (b) amounts referred to in any of those sections as shown in accounts are those that would have been shown in correct accounts.
- (3) In a case where accounts are drawn up in reliance upon amounts derived from an earlier period of account for which correct accounts were not drawn up, or no accounts were drawn up, amounts referred to in sections 228A to 228G as shown in the accounts for the later period are those that would have been shown if correct accounts had been drawn up for the earlier period.
- (4) In subsections (2) and (3) “ correct accounts ” means accounts drawn up in accordance with generally accepted accounting practice.

## **228J Plant or machinery subject to further operating lease**

- (1) This section applies where—
- (a) plant or machinery is the subject of—
    - (i) a sale and finance leaseback, or
    - (ii) a lease and finance leaseback, and
  - (b) some or all of the plant or machinery becomes, while the subject of the leaseback, also the subject of a lease in relation to which the following conditions are met—
    - (i) the term of the lease begins on or after 18 May 2004;
    - (ii) S, or a person connected with S, is the lessee under the lease;
    - (iii) the lease is not accounted for as a finance lease in the accounts of the lessee.
- (2) For the purpose of income tax or corporation tax, in calculating the lessee’s income or profits for a period of account the amount deducted in respect of amounts payable under the operating lease shall not exceed the relevant amount.
- (3) Subsections (4) and (5) apply in relation to the calculation of the lessor’s income or profits for a period of account for the purpose of income tax or corporation tax.
- (4) Where—
- (a) an amount receivable in respect of the lessor’s interest under the operating lease falls to be taken into account in that calculation, and
  - (b) that amount is reduced by an amount due to the lessee under the operating lease,
- that reduction shall be disregarded when taking the amount receivable into account.

*Status: Point in time view as at 22/07/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Capital Allowances Act 2001, Chapter 17. (See end of Document for details)*

- (5) The amounts receivable in respect of the lessor's interest under the operating lease that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the relevant amount (whether or not subsection (4) applies).
- (6) Where only some of the plant or machinery is the subject of the operating lease, subsections (2) to (5) shall apply subject to such apportionments as may be just and reasonable.
- (7) For the purposes of this section a lease is accounted for as a finance lease in a person's accounts if—
- (a) the lease falls, under generally accepted accounting practice, to be treated in that person's accounts as a finance lease or loan, or
  - (b) in a case where the lease is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.
- (8) In this section—
- “ lease and finance leaseback ” has the meaning given in section 228F;
  - “ lessee ” means the lessee under the operating lease;
  - “ lessor ” means the lessor under the operating lease;
  - “ operating lease ” means the lease referred to in subsection (1)(b);
  - “ relevant amount ” means an amount equal to the permitted maximum under section 228B as it applies in relation to the leaseback. ]

*Miscellaneous and supplementary*

**229 Hire-purchase etc.**

- (1) This section applies if—
- (a) a person carrying on a qualifying activity incurs capital expenditure on the provision of plant or machinery for the purposes of the qualifying activity, and
  - (b) the expenditure is incurred under a contract providing that the person shall or may become the owner of the plant or machinery on the performance of the contract.
- (2) If—
- (a) the person assigns the benefit of the contract to another before the plant or machinery is brought into use, and
  - (b) the circumstances are such that allowances to the assignee fall to be restricted under this Chapter,
- section 68(3) (disposal value where person ceases to be entitled to benefit of contract before plant or machinery brought into use) does not apply.
- (3) If the expenditure is incurred on the provision of plant or machinery for leasing under a finance lease—
- (a) section 67(3) (expenditure due to be incurred under contract treated as incurred when plant or machinery brought into use), and
  - (b) section 68 (disposal values where person ceases to be entitled to benefit of contract),
- do not apply.

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- (4) Subsection (5) applies if—
- (a) a person is treated under section 67(4) as ceasing to own plant or machinery, and
  - (b) as a result of subsection (2) or (3), section 68(3) or (as the case may be) section 68 does not apply.
- (5) If this subsection applies—
- (a) the disposal value is the total of—
    - (i) any relevant capital sums, and
    - (ii) any capital expenditure that the person would have incurred if he had wholly performed the contract, but
  - (b) the person is to be treated, for the purpose only of bringing the disposal value into account, as having incurred the capital expenditure mentioned in paragraph (a)(ii) in the relevant chargeable period.
- (6) “Relevant capital sums” means capital sums that the person receives or is entitled to receive by way of consideration, compensation, damages or insurance money in respect of—
- (a) his rights under the contract, or
  - (b) the plant or machinery.
- (7) The relevant chargeable period, for the purposes of subsection (5)(b), is the chargeable period in which the person is treated under section 67(4) as ceasing to own the plant or machinery.

### **230 Exception for manufacturers and suppliers**

- (1) The restrictions in sections 217 and 218 do not apply in relation to any plant or machinery if—
- (a) the relevant transaction is within section 213(1)(a) or (b), and
  - (b) the conditions in subsection (3) are met.
- (2) The restrictions in sections 222 to 225 do not apply in relation to any plant or machinery if—
- (a) the plant or machinery is the subject of a sale and finance leaseback which is within section 213(1)(a) or (b), and
  - (b) the conditions in subsection (3) are met.
- (3) The conditions are that—
- (a) the plant or machinery has never been used before the sale or the making of the contract,
  - (b) S’s business, or part of S’s business, is the manufacture or supply of plant or machinery of that class, and
  - (c) the sale is effected or the contract made in the ordinary course of that business.

### **231 Adjustments of assessments etc.**

All such assessments and adjustments of assessments are to be made as are necessary to give effect to this Chapter.

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*Status: Point in time view as at 22/07/2004.*

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## **232 Meaning of connected person**

- (1) For the purposes of this Chapter one person is to be treated as connected with another if—
- (a) they would be treated as connected under section 839 of ICTA, or
  - (b) they are to be treated as connected under subsection (2).
- (2) If—
- (a) a public authority has at any time acquired plant or machinery from another public authority otherwise than by purchase, and
  - (b) it is directly or indirectly as a consequence of having been leased under a finance lease that the plant or machinery is available for any use to which it is put,
- the authority from whom the plant or machinery was acquired is to be treated, in relation to that plant or machinery, as connected with the acquiring authority and with every person connected with the acquiring authority.
- (3) In subsection (2), “public authority” includes the Crown or any government or local authority.
- (4) Subsection (2) does not apply in relation to section 219 (meaning of “finance lease”).

## **233 Additional VAT liabilities and rebates**

This Chapter needs to be read with sections 241 to 245 (provision for cases where a person involved in a relevant transaction or a sale and finance leaseback incurs an additional VAT liability or receives an additional VAT rebate).



**Status:**

Point in time view as at 22/07/2004.

**Changes to legislation:**

There are currently no known outstanding effects for the Capital Allowances Act 2001, Chapter 17.