

## SCHEDULES

### SCHEDULE 18

Section 66.

#### CAPITAL ALLOWANCES: FIXTURES PROVIDED IN CONNECTION WITH ENERGY MANAGEMENT SERVICES

1 In section 172(3) of the Capital Allowances Act 2001 (c. 2) (scope of Chapter 14 of Part 2)—

- (a) for “195” substitute “195B”; and
- (b) for “192” substitute “192A”.

2 After section 175 of that Act insert—

#### “175A Meaning of “energy services agreement”

(1) In this Chapter “energy services agreement” means an agreement entered into by an energy services provider (“the energy services provider”) and another person (“the client”) that makes provision, with a view to saving energy or using energy more efficiently, for—

- (a) the design of plant or machinery, or one or more systems incorporating plant or machinery,
- (b) obtaining and installing the plant or machinery,
- (c) the operation of the plant or machinery,
- (d) the maintenance of the plant or machinery, and
- (e) the amount of any payments in respect of the operation of the plant or machinery to be linked (wholly or in part) to energy savings or increases in energy efficiency resulting from the provision or operation of the plant or machinery.

(2) In this Chapter “energy services provider” means a person carrying on a qualifying activity consisting wholly or mainly in the provision of energy management services.”.

3 In section 176(4) of that Act (treatment of fixture where expenditure incurred by person with interest in relevant land), for “section 177(4)” substitute “sections 177(4) and 180A(4)”.

4 After section 180 of that Act insert—

#### “180A Energy services providers

(1) If—

- (a) an energy services agreement is entered into,
- (b) the energy services provider incurs capital expenditure under the agreement on the provision of plant or machinery,
- (c) the plant or machinery becomes a fixture,
- (d) at the time the plant or machinery becomes a fixture—

- (i) the client has an interest in the relevant land, and
  - (ii) the energy services provider does not,
  - (e) the plant or machinery—
    - (i) is not provided for leasing, and
    - (ii) is not provided for use in a dwelling-house,
  - (f) the operation of the plant or machinery is carried out wholly or substantially by the energy services provider or a person connected with him,
  - (g) the energy services provider and the client are not connected persons, and
  - (h) they elect that this section should apply,
- the energy services provider is to be treated, on and after the time at which he incurs the expenditure, as the owner of the fixture as a result of incurring the expenditure.
- (2) But if the client would not have been entitled to a section 176 allowance in respect of the expenditure if he had incurred it, subsection (1) does not apply unless the plant or machinery belongs to a class of plant or machinery specified by Treasury order.
- (3) In subsection (2) a “section 176 allowance” means an allowance to which a person is entitled as a result of section 176.
- (4) If an election is made under this section, the client is not to be treated under section 176 as the owner of the fixture.
- (5) An election under this section must be made by notice to the Inland Revenue—
- (a) for income tax purposes, on or before the normal time limit for amending a tax return for the tax year in which the relevant chargeable period ends;
  - (b) for corporation tax purposes, no later than 2 years after the end of the relevant chargeable period.
- (6) The “relevant chargeable period” means the chargeable period in which the capital expenditure was incurred.”.
- 5 In section 181(4) of that Act (purchaser of land giving consideration for fixture), for “section 182” substitute “sections 182 and 182A”.
- 6 After section 182 of that Act insert—

**“182A Purchaser of land discharging obligations of client under energy services agreement**

- (1) If—
- (a) after any plant or machinery has become a fixture, a person (“the purchaser”) acquires an interest in the relevant land,
  - (b) that interest was in existence before the purchaser’s acquisition of it,
  - (c) before that acquisition, the plant or machinery was provided under an energy services agreement, and

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

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- (d) in connection with that acquisition, the purchaser pays a capital sum to discharge the obligations of the client under the energy services agreement,  
the purchaser is to be treated, on and after the time of the acquisition, as the owner of the fixture as a result of incurring expenditure, consisting of that capital sum, on the provision of the fixture.
- (2) Subsection (1) does not apply, and is to be treated as never having applied, if, immediately after the time of the acquisition, a person has a prior right in relation to the fixture.
- (3) Section 181(3) (test for whether person has a prior right) applies for the purposes of subsection (2).”.
- 7 (1) Section 188 of that Act (cessation of ownership when person ceases to have qualifying interest) is amended as follows.
- (2) In subsection (1), after paragraph (c) insert—  
“(ca) section 182A (purchaser of land discharging obligations of client under energy services agreement),”.
- (3) In subsection (3)(a), for “or 182” substitute “, 182 or 182A”.
- 8 After section 192 of that Act insert—

**“192A Cessation of ownership of energy services provider**

- (1) This section applies if an energy services provider is treated under section 180A as the owner of a fixture.
- (2) If—  
(a) the energy services provider at any time assigns his rights under the energy services agreement, or  
(b) the financial obligations of the client in respect of the fixture under an energy services agreement are at any time discharged (on the payment of a capital sum or otherwise),  
the energy services provider is to be treated as ceasing to be the owner of the fixture at that time (or, as the case may be, the earliest of those times).
- (3) The reference in subsection (2)(b) to the client is, in a case where the financial obligations of the client have become vested in another person (by assignment, operation of law or otherwise), a reference to the person in whom the obligations are vested when the capital sum is paid.”.
- 9 After section 195 of that Act insert—

**“195A Acquisition of ownership by assignee of energy services provider**

- (1) If section 192A(2)(a) applies (cessation of ownership of energy services provider as a result of assignment), the assignee is to be treated, on and after the assignment—  
(a) as having incurred expenditure, consisting of the consideration given by him for the assignment, on the provision of the fixture, and  
(b) as being the owner of the fixture.

- (2) For the purposes of section 192A (and subsection (1) and section 195B) the assignee is to be treated as being an energy services provider who owns the fixture under section 180A.

**195B Acquisition of ownership by client**

- (1) If section 192A(2)(b) applies (discharge of obligations of client) because the client has paid a capital sum, the client is to be treated—
- (a) as having incurred expenditure, consisting of the capital sum, on the provision of the fixture, and
  - (b) as being, on and after the time of payment, the owner of the fixture.
- (2) Section 192A(3) (assignee of client) applies in relation to subsection (1).”.
- 10 (1) Section 196 of that Act (disposal values in relation to fixtures) is amended as follows.
- (2) In subsection (1), in the Table, after item 8 insert—

“8A. Cessation of ownership of the fixture because section 192A(2)(a) (assignment of rights) applies.	The consideration given by the assignee for the assignment.
8B. Cessation of ownership of the fixture because section 192A(2)(b) (discharge of client’s obligations) applies on the payment of a capital sum.	The capital sum paid to discharge the financial obligations of the client.”

- (3) After subsection (4) insert—
- “(4A) Section 192A(3) (assignee of client) applies in relation to item 8B of the Table.”.
- (4) In subsection (5), for “192” substitute “192A”.
- 11 In section 203(2)(b) of that Act (reasons for amendment of returns), after “182(2)” insert “, 182A(2)”.