



# Finance (No. 2) Act 1997

## 1997 CHAPTER 58

### PART III

#### INCOME TAX AND CORPORATION TAX

#### *Capital allowances and finance leases*

#### **44 Writing-down allowances for finance lessors.**

- (1) Section 25 of the <sup>M1</sup>Capital Allowances Act 1990 (qualifying expenditure for writing-down allowances) shall be amended as follows.
- (2) After subsection (5) there shall be inserted the following subsections—
  - “(5A) Subject to subsection (5B) below, capital expenditure incurred by any person in any chargeable period on the provision of machinery or plant for leasing under a finance lease shall not be brought into account so as to form part of that person’s qualifying expenditure for that period except to the extent of the part of the expenditure which is proportionate to the part of the chargeable period falling after the time when the expenditure was incurred.
  - (5B) Subsection (5A) above does not apply where, in the chargeable period related to the incurring of the expenditure, the disposal value of the machinery or plant falls to be brought into account in accordance with section 24(6).
  - (5C) Where under subsection (5A) above only part of any capital expenditure on the provision of any machinery or plant may be included in a person’s qualifying expenditure for any chargeable period, subsection (1)(a)(i) above shall not prevent the whole or any part of the remainder of that expenditure from being included in his qualifying expenditure for the next following chargeable period.”
- (3) In subsection (6) (disposal values brought into account on an assignment)—
  - (a) for the words “subsection (5) above”, in the first place where they occur, there shall be substituted “ subsection (5) or (5B) above ”; and

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- (b) for “, as modified by subsection (5) above,” there shall be substituted “ (as modified, where subsection (5) above applies, by that subsection) ”.
- (4) In subsection (8) (adjustments), after “subsections (5)” there shall be inserted “ , (5B) ”.
- (5) This section has effect for chargeable periods ending on or after 2nd July 1997 except in relation to—
- (a) expenditure incurred before that date; and
  - (b) expenditure incurred in the twelve months beginning with that date in pursuance of a contract entered into before that date.

**Marginal Citations**

**M1** 1990 c. 1.

**45 Hire-purchase by finance lessors.**

- (1) In section 60 of the <sup>M2</sup>Capital Allowances Act 1990 (machinery and plant on hire-purchase), after subsection (2) there shall be inserted the following subsection—
- “(2A) Subsections (1)(b) and (2)(b) above do not apply where the capital expenditure incurred by the person to whom the machinery or plant is treated as belonging under subsection (1)(a) was incurred on the provision of the machinery or plant for leasing under a finance lease.”
- (2) This section has effect for chargeable periods ending on or after 2nd July 1997 except in relation to—
- (a) expenditure incurred before that date; and
  - (b) expenditure incurred in the twelve months beginning with that date in pursuance of a contract entered into before that date.

**Marginal Citations**

**M2** 1990 c. 1.

**46 Sale and leaseback etc. using finance leases.**

- (1) In the Capital Allowances Act 1990—
- (a) in section 75(1), (2) and (3) (further restrictions on allowances), for the words “sections 76 and 77”, in each place where they occur, there shall be substituted “ sections 76, 76A and 77 ”; and
  - (b) in section 76, after subsection (6) there shall be inserted the following subsection—
- “(7) This section has effect subject to the modifications made by section 76A in cases where there is a finance lease.”
- (2) After section 76 of that Act there shall be inserted the following section—

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### **“76A Special provision for finance lease cases.**

(1) Where—

- (a) any machinery or plant is used for the purposes of any non-trading activities carried on by any person, and
- (b) it is directly or indirectly as a consequence of the machinery or plant having been leased under a finance lease that it is available for that use,

subsections (1), (2) and (3) of section 75 and subsection (1) of section 76 (except the words after “without”) shall have effect as if the use for the purposes of those activities were a use for the purposes of a trade carried on by that person.

(2) Where—

- (a) subsection (1), (2) or (3) of section 75 applies by virtue of paragraph (b) of that subsection, or is treated (under one or both of section 76(1) and subsection (1) above) as so applying,
- (b) it is directly or indirectly as a consequence of the machinery or plant having been leased under a finance lease that it is available after—
  - (i) the date of the sale,
  - (ii) the date of the making of the contract, or
  - (iii) the date of the assignment,

for the use which is mentioned in that paragraph, or which is treated as if it were a use so mentioned, and

- (c) apart from this subsection the disposal value to be brought into account under sections 24, 25 and 26 by reason of the sale, contract or assignment would be more than the amount (“the section 76(2) amount”) which (if no disposal value fell to be brought into account) would be applicable instead in accordance with section 76(2) and subsection (5) below,

sections 24, 25 and 26 (and, accordingly, subsections (1) to (3) of section 75) shall have effect as if the disposal value to be so brought into account were equal to the section 76(2) amount.

(3) Where—

- (a) a disposal value has fallen, in a case within sub-paragraphs (a) and (b) of subsection (2) above, to be brought into account under sections 24, 25 and 26 by reason of the sale, contract or assignment,
- (b) the machinery or plant in question falls to be treated as belonging, at a time after the event by reason of which that disposal value fell to be brought into account, to any person in consequence of his incurring any capital expenditure,
- (c) the allowances under this Part in respect of that capital expenditure are not restricted by subsection (1), (2) or (3) of section 75, and
- (d) the amount of that expenditure (“the actual amount”) exceeds the maximum allowable amount,

this Part shall have effect in relation to that expenditure as if it were expenditure of an amount equal to the maximum allowable amount.

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- (4) In subsection (3) above “the maximum allowable amount” means the sum of the following amounts—
- (a) the disposal value falling to be brought into account as mentioned in subsection (3)(a) above, and
  - (b) so much of the actual amount of the expenditure as is equal to the amount included in that expenditure by virtue of section 66 (installation costs).
- (5) In a case which—
- (a) falls within paragraphs (a) and (b) of subsection (2) above, but
  - (b) is a case in which no disposal value falls to be brought into account as mentioned in the applicable subsection of section 75,
- subsections (2) to (4) of section 76 shall have effect as if the amounts referred to in each of paragraphs (b) and (c) of section 76(2) were equal to the notional written-down value of the capital expenditure incurred by the person mentioned in that paragraph on the provision of the machinery or plant.
- (6) Subsection (7) below applies where, in a case falling within paragraphs (a) and (b) of subsection (2) above—
- (a) the finance lease, or
  - (b) any transaction or series of transactions of which it forms a part,
- makes provision (otherwise than by means of guarantees from persons connected with the lessee) the effect of which (if the lessor and the persons connected with him are treated as the same person) is to remove the whole, or the greater part, of any non-compliance risk which (apart from that provision) would fall directly or indirectly on the lessor.
- (7) Where this subsection applies—
- (a) subsections (1), (2) and (3) of section 75 shall have effect as if (as well as excluding the making of a first-year allowance), they also required—
    - (i) the whole amount of the expenditure, and
    - (ii) any additional VAT liability incurred in respect of it,
 to be left out of account in determining the amount for any period of a person’s qualifying expenditure under section 25; and
  - (b) subsections (2), (3) and (5) above shall not apply.
- (8) Where subsection (7) above applies in a case where the buyer, person entering into the contract or assignee is different from the lessor—
- (a) any capital expenditure incurred on the provision of the machinery or plant by the lessor, and
  - (b) any additional VAT liability incurred in respect of it,
- shall also be disregarded both for the purposes of determining the amount for any period of the lessor’s qualifying expenditure under section 25 and for the purposes of any claim by the lessor to a first-year allowance.
- (9) In this section “the notional written-down value”, in relation to any expenditure incurred by a person on the provision of any machinery or plant, means the amount which, if—

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- (a) the sale, contract or assignment were an event by reason of which a disposal value of that machinery or plant fell to be brought into account in that person's case, and
- (b) the further assumptions set out in subsection (10) below were made in relation to that expenditure,

would give rise to neither a balancing allowance nor a balancing charge for the chargeable period for which that disposal value would be brought into account in that person's case.

(10) Those assumptions are—

- (a) that the person in question incurred the expenditure on the provision of the machinery or plant wholly and exclusively for the purposes of a trade carried on by him (until its deemed discontinuance) separately from any other trade or other activities carried on or assumed to be carried on by him;
- (b) that that person was within the charge to tax in respect of that separate trade;
- (c) that the expenditure was the only capital expenditure ever taken into account in respect of that trade in determining qualifying expenditure for the purposes of section 24;
- (d) that the expenditure is to be treated in relation to that person as expenditure to which Chapter IVA of this Part applies if, but only if, it is expenditure falling in fact to be so treated apart from the preceding assumptions; and
- (e) that there had been made to that person the full amount of every allowance to which, on the assumptions specified in paragraphs (a) to (c) above, that person was entitled in respect of that expenditure.

(11) This section and sections 75 and 76 shall have effect in relation to machinery or plant where—

- (a) it is directly or indirectly as a consequence of the machinery or plant having been leased under a finance lease that it is available for any use to which it is put, and
- (b) the machinery or plant has at any time been acquired by one public authority from another otherwise than by purchase,

as if the public authority from whom it was acquired were connected with the public authority that acquired it and with every person connected with the acquiring authority.

(12) In this section—

“deemed discontinuance”, in relation to the trade assumed under subsection (10) above in a case in which section 75(1), (2) or (3) applies or is treated as applying, means a permanent discontinuance of that trade at the time of the sale, of the performance of the contract or, as the case may be, of the assignment;

“non-compliance risk”, in relation to a finance lease, means a risk that a loss will be sustained by any person if payments under the lease are not made in accordance with its terms;

“non-trading activities” means any activities that do not constitute a trade; and

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“public authority” includes the Crown or any government or local authority;

and (subject to subsection (11) above) references in this section to persons connected with each other shall be construed in accordance with section 839 of the principal Act.”

- (3) This section has effect for chargeable periods ending on or after 2nd July 1997 except in relation to expenditure incurred before 2nd July 1998 in a case in which—
- (a) the sale referred to in subsection (1) of section 75 of that Act is a sale under a contract entered into before 2nd July 1997;
  - (b) the contract referred to in subsection (2) of that section is itself a contract entered into before 2nd July 1997; or
  - (c) the assignment referred to in subsection (3) of that section is an assignment made before 2nd July 1997 or in pursuance of a contract entered into before that date.

#### 47 **Meaning of “finance lease”.**

- (1) After section 82 of the <sup>M3</sup>Capital Allowances Act 1990 there shall be inserted the following section—

##### **“82A Meaning of “finance lease”.**

- (1) In this Part “finance lease” means any arrangements which—
- (a) provide for machinery or plant to be leased or otherwise made available by a person (“the lessor”) to another (“the lessee”); and
  - (b) are such that, in cases where the lessor and persons connected with the lessor are all UK companies—
    - (i) the arrangements, or
    - (ii) arrangements in which they are comprised,
 fall, in accordance with normal accountancy practice, to be treated in the accounts of one or more of those companies as a finance lease or as a loan.

- (2) In this section—

“accounts”, in relation to a company, includes any consolidated group accounts relating to two or more companies of which that company is one;

“consolidated group accounts” means accounts prepared in accordance with—

- (a) section 227 of the <sup>M4</sup>Companies Act 1985, or
- (b) Article 235 of the <sup>M5</sup>Companies (Northern Ireland) Order 1986;

and

“UK company” means a company incorporated in a part of the United Kingdom;

and references in this section to persons connected with each other shall be construed in accordance with section 839 of the principal Act.”

- (2) This section has effect in relation to any case in relation to which the <sup>M6</sup>Capital Allowances Act 1990 has effect as amended by any of sections 44 to 46 above.

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**Marginal Citations**

**M3** 1990 c. 1.

**M4** 1985 c. 6.

**M5** S.I. 1986/1032 (N.I. 6).

**M6** 1990 c. 1.

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