



# Capital Allowances Act 2001

## 2001 CHAPTER 2

### PART 2

#### PLANT AND MACHINERY ALLOWANCES

#### CHAPTER 17

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

##### Textual Amendments

- F1** Pt. 2 Ch. 17 heading substituted (8.4.2010) (with effect in accordance with Sch. 4 para. 5 to the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 4 para. 3](#)

#### *Relevant transactions*

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

- (1) For the purposes of this Chapter, a person (“B”) [<sup>F2</sup>and another person (“S”) enter into a relevant transaction] 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,

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- (b) 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
  - (c) 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—
- (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.
- [<sup>F3</sup>(4) For the purposes of this Chapter, references to the disposal value of the plant or machinery under a relevant transaction are references to the disposal value that is to be brought into account by S as a result of the sale, contract or assignment in question.]

#### Textual Amendments

- F2** Words in s. 213(1) substituted (with effect in accordance with s. 70(11) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 70\(3\)](#)
- F3** S. 213(4) inserted (with effect in accordance with s. 70(11) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 70\(4\)](#)

### *Restrictions on allowances*

#### **214 Connected persons**

Allowances under this Part are restricted under sections 217 and 218 [<sup>F4</sup>(or, as the case may be, 218ZA(3))] if—

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

#### Textual Amendments

- F4** Words in s. 214 inserted (with effect in accordance with Sch. 9 para. 9(1)(3) of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 9 para. 3](#)

#### **[<sup>F5</sup>215 Transactions to obtain tax advantages**

- (1) Allowances under this Part are restricted [<sup>F6</sup>, and balancing charges are imposed or increased,] under the applicable sections if [<sup>F7</sup>B and S enter into a relevant transaction] that either—
- (a) has an avoidance purpose, or
  - (b) is part of, or occurs as a result of, a scheme or arrangement that has an avoidance purpose.
- (2) Subsection (1)(b) may be satisfied—

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- (a) whether the scheme or arrangement was made before or after the relevant transaction was entered into, and
  - (b) whether or not the scheme or arrangement is legally enforceable.
- (3) A transaction, scheme or arrangement has an “avoidance purpose” if the main purpose, or one of the main purposes, of a party in entering into the transaction, scheme or arrangement is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.
- (4) The reference in subsection (3) to obtaining a tax advantage that would not otherwise be obtained includes<sup>F8</sup>—
- (a) obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained<sup>F9</sup>, and
  - (b) avoiding liability for the whole or part of a balancing charge to which a person would otherwise be liable.
- <sup>F10</sup>(4A) If the tax advantage relates to the disposal value of the plant or machinery under the relevant transaction (whether by obtaining a more favourable allowance or by avoiding the whole or part of a balancing charge) then—
- (a) the applicable section is section 218ZB, and
  - (b) the tax advantage is to be disregarded for the purposes of subsection (6) and (8)(b).]
- (5) If the tax advantage is of a kind described in subsection (7), “the applicable sections” are sections 217 and 218ZA(5).
- (6) Otherwise, “the applicable sections” are sections 217 and 218ZA(1) or, as the case may be, 218ZA(3).
- (7) The kinds of tax advantage are—
- (a) that an allowance to which B is entitled for a chargeable period is calculated using a percentage rate that is higher than the one that would otherwise be used, or
  - (b) that B is entitled to an allowance in respect of an amount of capital expenditure sooner than B would otherwise be entitled to it.
- (8) If a transaction, scheme or arrangement involves—
- (a) a tax advantage of a kind described in subsection (7), and
  - (b) a tax advantage not of such a kind,
- subsections (5) and (6) have effect separately in relation to each tax advantage.]

#### Textual Amendments

- F5** S. 215 substituted (with effect in accordance with Sch. 9 para. 9(1)(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 9 para. 1](#)
- F6** Words in s. 215(1) inserted (with effect in accordance with s. 70(11) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 70\(6\)\(a\)](#)
- F7** Words in s. 215(1) substituted (with effect in accordance with s. 70(11) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 70\(6\)\(b\)](#)
- F8** Word in s. 215(4) inserted (with effect in accordance with s. 70(11) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 70\(7\)\(a\)](#)
- F9** S. 215(4)(b) and preceding word inserted (with effect in accordance with s. 70(11) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 70\(7\)\(b\)](#)

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**F10** S. 215(4A) inserted (with effect in accordance with s. 70(11) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 70\(8\)](#)

## 216 Sale and leaseback, etc.

(1) Allowances under this Part are restricted under sections 217 and 218 [<sup>F11</sup>(or, as the case may be, 218ZA(3))] 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 [<sup>F12</sup>or by a person (other than B) who is connected with 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.

### Textual Amendments

**F11** Words in s. 216(1) inserted (with effect in accordance with Sch. 9 para. 9(1)(3) of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 9 para. 4](#)

**F12** Words in s. 216(1)(b)(i) inserted (with effect in accordance with Sch. 32 para. 25 to the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 32 para. 23](#)

## 217 No [<sup>F13</sup>annual investment allowance or] first-year allowance for B’s expenditure

(1) If this section applies as a result of section 214, 215 or 216, [<sup>F14</sup>no annual investment allowance or first-year allowance is] to be made in respect of B’s expenditure under the relevant transaction.

(2) Any [<sup>F15</sup>annual investment allowance or ] first-year allowance which is prohibited by subsection (1), but which has already been made, is to be withdrawn.

[<sup>F16</sup>(3) This section does not apply if plant or machinery is the subject of a sale and finance leaseback (as defined in section 221).]

### Textual Amendments

**F13** Words in s. 217 heading inserted (with effect in accordance with Sch. 24 para. 23 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 24 para. 8\(4\)](#)

**F14** Words in s. 217(1) substituted (with effect in accordance with Sch. 24 para. 23 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 24 para. 8\(2\)](#)

**F15** Words in s. 217(2) inserted (with effect in accordance with Sch. 24 para. 23 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 24 para. 8\(3\)](#)

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**F16** S. 217(3) substituted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 6(8)**

## **218 Restriction on B's qualifying expenditure<sup>F17</sup>: section 214 or 216]**

(1) If this section applies as a result of [<sup>F18</sup>section 214 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 [<sup>F19</sup>(2), (2A) 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.

[<sup>F20</sup>(2A) D is nil if—

- (a) S is not required to bring a disposal value into account under this Part because of the relevant transaction, and
- (b) at any time before that transaction S or a linked person became owner of the plant or machinery without incurring either capital expenditure or qualifying revenue expenditure on its provision.]

(3) [<sup>F21</sup>Otherwise,] 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.

[<sup>F22</sup>(3A) “Linked person”, in relation to plant or machinery, means a person—

- (a) who owned the plant or machinery at any time before the relevant transaction, and
- (b) who was connected with S at any time between—
  - (i) the time when the person became owner of the plant or machinery, and
  - (ii) the time of the relevant transaction.

(3B) Expenditure on the provision of plant or machinery is “qualifying revenue expenditure” if it is expenditure of a revenue nature—

- (a) that is at least equal to the amount of expenditure that would reasonably be expected to have been incurred on the provision of the plant or machinery in a transaction between persons dealing with each other at arm's length in the open market, or
- (b) that is incurred by the manufacturer of the plant or machinery and is at least equal to the amount that it would have been reasonable to expect to have been the normal cost of manufacturing the plant or machinery.]

[<sup>F23</sup>(4) This section does not apply if plant or machinery is the subject of a sale and finance leaseback (as defined in section 221), but see section 225.]

[<sup>F24</sup>(5) This section is subject to section 218ZA(3).]

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### Textual Amendments

- F17** Words in s. 218 heading inserted (with effect in accordance with Sch. 9 para. 9(1)(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 9 para. 5\(4\)](#)
- F18** Words in s. 218(1) substituted (with effect in accordance with Sch. 9 para. 9(1)(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 9 para. 5\(2\)](#)
- F19** Words in s. 218(1) substituted (with effect in accordance with Sch. 10 para. 3(6) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 10 para. 3\(2\)](#)
- F20** S. 218(2A) inserted (with effect in accordance with Sch. 10 para. 3(6) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 10 para. 3\(3\)](#)
- F21** Word in s. 218(3) substituted (with effect in accordance with Sch. 10 para. 3(6) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 10 para. 3\(4\)](#)
- F22** S. 218(3A)(3B) inserted (with effect in accordance with Sch. 10 para. 3(6) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 10 para. 3\(5\)](#)
- F23** S. 218(4) substituted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 6\(9\)](#)
- F24** S. 218(5) inserted (with effect in accordance with Sch. 9 para. 9(1)(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 9 para. 5\(3\)](#)

### [<sup>F25</sup>218Z]Restrictions on writing-down allowances: section 215

- (1) If this subsection applies as a result of section 215, all or part of B's expenditure under the relevant transaction is to be left out of account in determining B's available qualifying expenditure.
- (2) The amount of expenditure to be left out of account is—
  - (a) such amount as would or would in effect cancel out the tax advantage mentioned in section 215 (whether that advantage is obtained by B or another person and whether it relates to the relevant transaction or something else), or
  - (b) if the amount found under paragraph (a) exceeds the whole of B's expenditure under the relevant transaction, the whole of that expenditure.
- (3) But if subsection (1) applies as a result of section 215 and—
  - (a) section 218 also applies as a result of section 214 or 216, or
  - (b) section 228 also applies by virtue of an election under section 70I(11) or 227, the amount of expenditure to be left out of account is the greater of X and Y.
- (4) For the purposes of subsection (3)—
 

“X” is the amount found under subsection (2), and

“Y” is the amount by which B's expenditure under the relevant transaction exceeds D (as defined in section 218 or, as the case may be, section 228).
- (5) If this subsection applies as a result of section 215—
  - (a) the allowance mentioned in subsection (7)(a) of that section is to be calculated using the rate that would be used without the tax advantage, or (as the case may be)
  - (b) the entitlement mentioned in subsection (7)(b) of that section is to be available as and when it would be available without the tax advantage.
- (6) Subsection (5) applies whether or not section 218 also applies as a result of section 214 or 216, or section 228 also applies by virtue of an election under section 70I(11) or 227.]

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#### Textual Amendments

**F25** S. 218ZA inserted (with effect in accordance with Sch. 9 para. 9(1)(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 9 para. 6](#)

### [<sup>F26</sup> **218ZB** Disposal values: section 215

- (1) If—
- (a) this section applies as a result of section 215,
  - (b) a payment is payable to any person under the transaction, scheme or arrangement mentioned in that section,
  - (c) some or all of the payment would not (apart from this section) be taken into account in determining the disposal value of the plant or machinery under the relevant transaction, and
  - (d) as a result of the matters mentioned in paragraphs (b) and (c) S would otherwise obtain a tax advantage as mentioned in section 215(3) and (4),
- the disposal value of the plant or machinery under the relevant transaction is to be adjusted in a just and reasonable manner so as to include an amount representing so much of the payment as would or would in effect cancel out the tax advantage.
- (2) In subsection (1) “payment” includes the provision of any benefit, the assumption of any liability and any other transfer of money or money's worth, and “payable” is to be construed accordingly.]

#### Textual Amendments

**F26** S. 218ZB inserted (with effect in accordance with s. 70(11) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 70\(9\)](#)

### [<sup>F27</sup> **218A** Further restriction on annual investment allowance

- (1) This section applies where an arrangement is entered into wholly or mainly for a disqualifying purpose.
- (2) Arrangements are entered into for a disqualifying purpose if their main purpose, or one of their main purposes, is to enable a person to obtain an annual investment allowance to which the person would not otherwise be entitled.
- (3) The annual investment allowance mentioned in subsection (2) is not to be made.
- (4) Any annual investment allowance which is prohibited by subsection (3), but which has already been made, is to be withdrawn.]

#### Textual Amendments

**F27** S. 218A inserted (with effect in accordance with Sch. 24 para. 23 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 24 para. 9](#)



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*[<sup>F28</sup>Finance leases and certain operating leases]*

**Textual Amendments**

- F28** S. 219 cross-heading substituted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 9 para. 15(5)**

**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>F29</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.

<sup>F30</sup>  
...

- (2) <sup>F31</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
  - <sup>F32</sup>(b) are drawn up in accordance with generally accepted accounting practice.]

**Textual Amendments**

- F29** Words in s. 219(1) substituted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), s. 103(4)(g)
- F30** Words in s. 219(1) omitted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 20 para. 6(10)**
- F31** 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)**
- F32** S. 219(3)(b) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), **Sch. 4 para. 33**

**220 Allocation of expenditure to a chargeable period**

- <sup>F33</sup>(A1) Subsection (1) applies to a company for a chargeable period if—
- (a) at the end of the [<sup>F34</sup>CTA] period of account which is the basis period for the chargeable period, the company is a member of a group, and
  - (b) the last day of that [<sup>F35</sup>CTA] period of account is not also the last day of [<sup>F36</sup>a CTA] period of account of the principal company of the group.]
- (1) Subject to subsection (2), if [<sup>F37</sup>the company] incurs at any time in [<sup>F38</sup>the chargeable period] capital expenditure on the provision of plant or machinery for leasing under a finance lease [<sup>F39</sup>or under a qualifying operating lease (see subsection (4))] —
- (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 [<sup>F40</sup>company's] available qualifying expenditure for that period, but



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- (b) this does not prevent that part of the expenditure being taken into account in determining that [F<sup>40</sup>company'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.
- [F<sup>41</sup>(3) The following provisions have effect for the interpretation of this section.
- (4) A “qualifying operating lease” is a plant or machinery lease that meets the following conditions—
- (a) it is not a finance lease,
  - (b) it is a funding lease,
  - (c) its term is longer than 4 years but not longer than 5 years.
- (5) [F<sup>42</sup>A CTA] period of account is the basis period for a chargeable period if the chargeable period coincides with, or falls within, the [F<sup>43</sup>CTA] period of account.
- (6) [F<sup>44</sup>A “CTA] period of account” is a period of account as defined in [F<sup>45</sup>section 1119 of CTA 2010].
- (7) The provisions of section 170(3) to (6) of TCGA 1992 apply to determine for the purposes of this section—
- (a) whether a company is member of a group, and
  - (b) which company is the principal company of the group.
- (8) But, in applying those provisions for the purposes of this section, a company (“the subsidiary company”) that does not have ordinary share capital is to be treated as being a qualifying 75% subsidiary of another company (“the parent company”) if the parent company—
- (a) has control of the subsidiary company<sup>F<sup>46</sup></sup>..., and
  - (b) is beneficially entitled to the appropriate proportion of profits and assets.
- (9) The parent company is beneficially entitled to the appropriate proportion of profits and assets if (and only if) it—
- (a) is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the subsidiary company, and
  - (b) would be beneficially entitled to at least 75% of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.
- (10) The provisions of [F<sup>47</sup>Chapter 6 of Part 5 of CTA 2010] (equity holders and profits or assets etc) also apply for the purposes of this section.
- (11) In this section, the following expressions have the same meaning as in Chapter 6A of Part 2 (interpretation of provisions about long funding leases)—
- “funding lease”,
  - “plant or machinery lease”,
  - “term”, in relation to a lease.]

#### Textual Amendments

- F33** S. 220(A1) inserted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 9 para. 15\(2\)](#)

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- F34** Words in s. 220(A1)(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. 344\(2\)\(a\)](#) (with [Sch. 2](#))
- F35** Words in s. 220(A1)(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. 344\(2\)\(b\)\(i\)](#) (with [Sch. 2](#))
- F36** Words in s. 220(A1)(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. 344\(2\)\(b\)\(ii\)](#) (with [Sch. 2](#))
- F37** Words in s. 220(1) substituted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by [Finance Act 2006 \(c. 25\), Sch. 9 para. 15\(3\)\(a\)](#)
- F38** Words in s. 220(1) substituted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by [Finance Act 2006 \(c. 25\), Sch. 9 para. 15\(3\)\(b\)](#)
- F39** Words in s. 220(1) inserted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by [Finance Act 2006 \(c. 25\), Sch. 9 para. 15\(3\)\(c\)](#)
- F40** Word in s. 220(1) substituted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by [Finance Act 2006 \(c. 25\), Sch. 9 para. 15\(3\)\(d\)](#)
- F41** S. 220(3)-(11) inserted (with effect in accordance with Sch. 9 para. 15(6) of the amending Act) by [Finance Act 2006 \(c. 25\), Sch. 9 para. 15\(4\)](#)
- F42** Words in s. 220(5) 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. 344\(3\)\(a\)](#) (with [Sch. 2](#))
- F43** Words in s. 220(5) 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. 344\(3\)\(b\)](#) (with [Sch. 2](#))
- F44** Words in s. 220(6) 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. 344\(4\)\(a\)](#) (with [Sch. 2](#))
- F45** Words in s. 220(6) 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. 344\(4\)\(b\)](#) (with [Sch. 2](#))
- F46** Words in s. 220(8)(a) omitted (6.4.2007) by virtue of [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 402](#), Sch. 3 Pt. 1 (with [Sch. 2](#))
- F47** Words in s. 220(10) 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. 344\(5\)](#) (with [Sch. 2](#))

### *Sale and finance leasebacks*

## 221 Meaning of “sale and finance leaseback”

- (1) For the purposes of this section and <sup>F48</sup>[section 225], 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 <sup>F49</sup>[an activity carried on by S or by a person (other than B) who is connected with 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>F50</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.

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(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.

#### Textual Amendments

**F48** Words in s. 221(1) substituted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 6\(11\)](#)

**F49** Words in s. 221(1)(b)(i) substituted (with effect in accordance with Sch. 32 para. 26 to the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 24](#)

**F50** 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](#)

#### Modifications etc. (not altering text)

**C11** S. 221 applied (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 771\(8\)](#), 1184(1) (with [Sch. 2](#))

### <sup>F51</sup>222 Disposal value restricted

#### Textual Amendments

**F51** S. 222 omitted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 6\(12\)\(a\)](#)

### <sup>F52</sup>223 No first-year allowance for B’s expenditure

#### Textual Amendments

**F52** S. 223 omitted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 6\(12\)\(b\)](#)

### <sup>F53</sup>224 Restriction on B’s qualifying expenditure

#### Textual Amendments

**F53** S. 224 omitted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 6\(12\)\(c\)](#)

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**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.

<sup>F54</sup>**226 Qualifying expenditure limited in subsequent transactions**

.....

**Textual Amendments**  
**F54** S. 226 omitted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 6\(12\)\(d\)](#)

*[<sup>F55</sup>Sale and leaseback: election for special treatment]*

**Textual Amendments**  
**F55** S. 227 heading heading substituted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 6\(13\)\(b\)](#)

**227 [<sup>F56</sup>Sale and leaseback: election for special treatment ]**

- (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), <sup>F57</sup>...
    - <sup>F57</sup>(ii) .....
  - (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,

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- (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 [F58 217 or 218] 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.
- (4) An election under this section—
- (a) must be made by notice to [F59 an officer of Revenue and Customs] 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).

#### Textual Amendments

- F56** S. 227 heading substituted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 20 para. 6(13)**
- F57** S. 227(1)(b)(ii) and preceding word omitted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 20 para. 6(13)(a)**
- F58** Words in s. 227(2)(c) substituted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 20 para. 6(13)(b)**
- F59** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), **Sch. 4 para. 83(1)**; S.I. 2005/1126, art. 2(2)(h)

## 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 F60... (restriction on B’s qualifying expenditure).

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- (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.
- <sup>F61</sup>(4) .....
- (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.

#### Textual Amendments

**F60** Words in s. 228(1) omitted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 6\(14\)\(a\)](#)

**F61** S. 228(4) omitted (with effect in accordance with Sch. 20 para. 6(19) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 6\(14\)\(b\)](#)

#### <sup>F62</sup>*Finance leaseback: parties' income and profits*

#### Textual Amendments

**F62** 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](#)

#### <sup>F63</sup>**228A Application of sections 228B and 228C**

- (1) Sections 228B and 228C apply where plant or machinery is the subject of a lease and finance leaseback.
- (2) 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.
- (3) For the purposes of subsection (2), 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.]

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#### Textual Amendments

- F63** S. 228A substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 12(2)**

#### **228B** [<sup>F64</sup>S's income or profits [<sup>F65</sup>etc]: deductions]

- (1) For the purpose of income tax or corporation tax, in calculating [<sup>F66</sup>S'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 [<sup>F67</sup>the amount of the finance charges shown in the accounts.]
- (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—

$$\text{Current Book Value} \times \frac{\text{Original Consideration}}{\text{Original Book Value}}$$

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 [<sup>F68</sup>granting B rights over the plant or machinery], and

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

[ If the use mentioned in section 228A(2)(b) includes use by a person (other than B) <sup>F69</sup>(5) who is connected with S, this section applies in relation to that person as it applies in relation to S.]

#### Textual Amendments

- F64** S. 228B heading substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 12(3)(d)**
- F65** Word in s. 228B heading inserted (with effect in accordance with Sch. 20 para. 13(4) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 13(3)**
- F66** Word in s. 228B(1) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 12(3)(a)**
- F67** Words in s. 228B(2) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 12(3)(b)**
- F68** Words in s. 228B(4) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 12(3)(c)**
- F69** S. 228B(5) inserted (with effect in accordance with Sch. 20 para. 13(4) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 13(2)**



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## 228C [F70S'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 [F71S] 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—

$$\text{Original Consideration} \times \frac{\text{Current Book Value}}{\text{Original Book Value}}$$

where—

[F72“Original Consideration” means the consideration payable to S for granting B rights over the plant or machinery,]

“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 [F73S's] interest under the leaseback if any amounts due to [F74B (or, where appropriate, an assignee of B)] under the leaseback were disregarded.

### Textual Amendments

- F70** S. 228 heading substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(4\)\(d\)](#)
- F71** Word in s. 228C(2) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(4\)\(a\)](#)
- F72** Definition and word in formula in s. 228C(3) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(4\)\(b\)](#)
- F73** Word in s. 228C(6) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(4\)\(c\)](#)
- F74** Words in s. 228C(6) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(4\)\(c\)](#)

## <sup>F75</sup>228D Lessor's income or profits

.....

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**Textual Amendments**

**F75** S. 228D omitted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 20 para. 12(5)(a)**

**<sup>F76</sup>228E Lessor’s income or profits: termination of leaseback**

.....

**Textual Amendments**

**F76** S. 228E omitted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 20 para. 12(5)(b)**

**<sup>F77</sup>228F Lease and finance leaseback**

.....

**Textual Amendments**

**F77** S. 228F omitted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 20 para. 12(5)(c)**

**228G [<sup>F78</sup>Leaseback not accounted for as finance lease in S's accounts]**

- (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 [<sup>F79</sup>S].
- (2) Subsection (3) applies where the leaseback is accounted for as a finance lease in the accounts of a person connected with [<sup>F80</sup>S]; 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 [<sup>F80</sup>S] 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 [<sup>F81</sup>S'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 [<sup>F82</sup>S].
- (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 [<sup>F83</sup>S] from the relevant

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qualifying activity for the period of account during which the term of the leaseback begins shall be <sup>F84</sup>increased by the consideration payable to S for granting B rights over the plant or machinery.]

- (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.

#### Textual Amendments

- F78** S. 228G heading substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(6\)\(f\)](#)
- F79** Word in s. 228G(1) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(6\)\(a\)](#)
- F80** Word in s. 228G(2) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(6\)\(b\)](#)
- F81** Word in s. 228G(3) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(6\)\(c\)](#)
- F82** Word in s. 228G(4) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(6\)\(d\)](#)
- F83** Word in s. 228G(6) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(6\)\(e\)](#)
- F84** Words in s. 228G(6) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(6\)\(e\)](#)

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

- (1) In sections 228A to 228G—

<sup>F85</sup>“consideration” does not include rentals;]

<sup>F86</sup>  
...

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 <sup>F87</sup>S'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;

<sup>F88</sup>  
...

<sup>F89</sup>“S” does not include an assignee of S;]

“ termination ” in relation to a leaseback includes <sup>F90</sup>...—

- (a) the assignment of <sup>F91</sup>S's] interest,
- (b) the making of any arrangements (apart from an assignment of <sup>F91</sup>S's] interest) under which a person other than <sup>F91</sup>S] 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.

[ For the purposes of sections 228A to 228G, references to consideration given (or <sup>F92</sup>(1A) payable to S) for the grant to B of rights over the plant or machinery do not include—

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- (a) rentals payable under that grant, or
  - (b) any relevant capital payment (within the meaning of [F93]section 890 of CTA 2010] or section 809ZA of ITA 2007) to which either of those sections applies.
- (1B) In relation to a case where some but not all of the consideration mentioned in subsection (1A) falls within paragraph (b) of that subsection, sections 228B to 228G or section 228J have effect subject to such modifications as are just and reasonable.]
- (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.

#### Textual Amendments

- F85** Words in s. 228H(1) inserted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(8\)\(a\)](#)
- F86** Words in s. 228H(1) omitted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(8\)\(b\)](#)
- F87** Word in s. 228H(1) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(8\)\(c\)](#)
- F88** Words in s. 228H(1) omitted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(8\)\(d\)](#)
- F89** Words in s. 228H(1) inserted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(8\)\(e\)](#)
- F90** Words in s. 228H(1) omitted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(8\)\(f\)](#)
- F91** Word in s. 228H(1) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(8\)\(f\)](#)
- F92** S. 228H(1A)(1B) inserted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(9\)](#)
- F93** Words in s. 228H(1A)(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. 345](#) (with [Sch. 2](#))

#### 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

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- (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.
- (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 [F94 section 228A];
  - “ 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. ]

#### Textual Amendments

**F94** Words in s. 228J(8) substituted (with effect in accordance with Sch. 20 para. 12(12) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 12\(10\)](#)

*Status: Point in time view as at 15/09/2016.*

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

*f<sup>F95</sup>Disposal of plant or machinery subject to lease where income retained*

**Textual Amendments**

**F95** 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—
  - (a) on any day (“the relevant day”) a person (“the lessor”) carries on a business of leasing plant or machinery (the “leasing business”),
  - (b) on the relevant day the lessor sells or otherwise disposes of any relevant plant or machinery subject to a lease to another person,
  - (c) 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
  - (d) 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.
- (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.

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

- (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*

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.



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- (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>F96</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>F97</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.]

### **Textual Amendments**

- F96** 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](#))
- F97** 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>F98</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

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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—
- (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

**F98** 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,

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- (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

**F98** 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.
- (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.]

#### Textual Amendments

**F98** 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\(1\)](#)

### *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

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- (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.
- (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.

### **[<sup>F99</sup>229A Transfer followed by hire-purchase etc: restrictions on hirer's allowances**

- (1) This section applies where—
- (a) a person (“S”) transfers plant or machinery to another person (“B”),
- (b) at any time after the date of the transfer, the plant or machinery is available to be used by S, or a person (other than B) who is connected with S (“CS”),
- (c) it is available to be so used under a contract which provides that S or CS is to or may become the owner of the plant or machinery on the performance of the contract, and
- (d) S or CS incurs capital expenditure on the provision of the plant or machinery under that contract.
- (2) No annual investment allowance or first-year allowance is to be made in respect of the expenditure of S or CS under the contract.

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- (3) The amount, if any, by which E exceeds D is to be left out of account in determining the available qualifying expenditure of S or CS.
- (4) E is the capital expenditure of S or CS on the provision of the plant or machinery under the contract referred to in subsection (1)(c).
- (5) If S is required to bring a disposal value into account under this Part because of the transfer referred to in subsection (1)(a), D is that disposal value.
- [ D is nil if—
- <sup>F100</sup>(5A) (a) S is not required to bring a disposal value into account under this Part because of the transfer referred to in subsection (1)(a), and
- (b) at any time before that transfer S or a linked person became owner of the plant or machinery without incurring either capital expenditure or qualifying revenue expenditure on its provision.]
- (6) Otherwise, 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 before the transfer referred to in subsection (1)(a), the amount of that expenditure;
- (c) if a person connected with S incurred capital expenditure on the provision of the plant or machinery before that transfer, the amount of that expenditure.
- (7) Sections 214 and 215 do not apply in relation to the contract referred to in subsection (1)(c).
- (8) Section 70Y(3) applies to references in this section to a transfer of plant or machinery by a person.
- (9) For the purposes of this section a transfer involving the grant of a lease takes place on the commencement of the term of the lease.
- [ Linked person” , in relation to plant or machinery, means a person—
- <sup>F101</sup>(10) (a) who owned the plant or machinery at any time before the transfer referred to in subsection (1)(a), and
- (b) who was connected with S at any time between—
- (i) the time when the person became owner of the plant or machinery, and
- (ii) the time of the transfer referred to in subsection (1)(a).
- (11) Expenditure on the provision of plant or machinery is “qualifying revenue expenditure” if it is expenditure of a revenue nature—
- (a) that is at least equal to the amount of expenditure that would reasonably be expected to have been incurred on the provision of the plant or machinery in a transaction between persons dealing with each other at arm’s length in the open market, or
- (b) that is incurred by the manufacturer of the plant or machinery and is at least equal to the amount that it would have been reasonable to expect to have been the normal cost of manufacturing the plant or machinery.]]

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

#### Textual Amendments

- F99** S. 229A inserted (with effect in accordance with Sch. 32 para. 22 to the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 21](#)
- F100** S. 229A(5A) inserted (with effect in accordance with Sch. 10 para. 4(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 10 para. 4\(2\)](#)
- F101** S. 229A(10)(11) inserted (with effect in accordance with Sch. 10 para. 4(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 10 para. 4\(3\)](#)

### 230 Exception for manufacturers and suppliers

[<sup>F102</sup>(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),
- (b) the case does not fall within section 215, and
- (c) the conditions in subsection (3) are met.]

<sup>F103</sup>(2) .....

(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.

#### Textual Amendments

- F102** S. 230(1) substituted (with effect in accordance with Sch. 9 para. 9(1)(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 9 para. 7\(2\)](#)
- F103** S. 230(2) omitted (with effect in accordance with Sch. 9 para. 9(1)(3) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 9 para. 7\(3\)](#)

### 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.

### 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 [<sup>F104</sup>section 575], 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

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- (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”).

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**Textual Amendments**

**F104** Words in s. 232(1)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 403](#) (with [Sch. 2](#))

**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 15/09/2016.

**Changes to legislation:**

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