



Capital Allowances Act 2001

2001 CHAPTER 2

PART 2

PLANT AND MACHINERY ALLOWANCES

CHAPTER 17

ANTI-AVOIDANCE

Sale and finance leasebacks

221 Meaning of “sale and finance leaseback”

- (1) For the purposes of this section and sections 222 to 228, plant or machinery is the subject of a sale and finance leaseback if—
- (a) B enters into a relevant transaction with S,
 - (b) after the date of the transaction, the plant or machinery—
 - (i) continues to be used for the purposes of a qualifying activity carried on by S,
 - (ii) is used for the purposes of a qualifying activity carried on by S or by a person (other than B) who is connected with S, without having been used since that date for the purposes of any other qualifying activity except that of leasing the plant or machinery, or
 - (iii) is used for the purposes of a non-qualifying activity carried on by [F¹S or by a person (other than B) who is connected with S] , without having been used since that date for the purposes of a qualifying activity except that of leasing the plant or machinery, and
 - (c) it is directly or indirectly as a consequence of having been leased under a finance lease that the plant or machinery is available to be so used after that date.
- (2) In this section—

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“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

F1 Words in s. 221(1)(b)(iii) substituted (with effect as mentioned in s. 69(2) of the amending Act) by Finance Act 2001 (c. 9), s. 69(1), **Sch. 21 para. 3**

222 Disposal value restricted

(1) If—

- (a) plant or machinery is the subject of a sale and finance leaseback, and
- (b) S is required to bring a disposal value into account under this Part because of the relevant transaction,

the disposal value is whichever of the amounts in subsection (2) is the smallest.

(2) The amounts are—

- (a) the disposal value that S would be required to bring into account apart from subsection (1);
- (b) the market value of the plant or machinery;
- (c) if S incurred capital expenditure on the provision of the plant or machinery, the notional written-down value of that capital expenditure;
- (d) if a person connected with S incurred capital expenditure on the provision of the plant or machinery, the notional written-down value of that capital expenditure.

(3) The notional written-down value is—

QE – A

where—

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

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

- (a) that expenditure had been qualifying expenditure,
- (b) that expenditure had been the only expenditure that had ever been taken into account in determining his available qualifying expenditure,
- (c) that expenditure had been treated as long-life asset expenditure only if it is in fact such expenditure, and
- (d) all allowances had been made in full.

(4) This section does not apply if the finance lease or any transaction or series of transactions of which it forms a part makes provision such as is described in section 225(1) (sale and finance leasebacks: B’s qualifying expenditure if lessor not bearing non-compliance risk).

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223 No first-year allowance for B's expenditure

- (1) If plant or machinery is the subject of a sale and finance leaseback, a first-year allowance is not to be made in respect of B's expenditure under the relevant transaction.
- (2) Any first-year allowance which is prohibited by subsection (1), but which has already been made, is to be withdrawn.

224 Restriction on B's qualifying expenditure

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

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

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

225 B's qualifying expenditure if lessor not bearing non-compliance risk

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

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- (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.

226 Qualifying expenditure limited in subsequent transactions

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

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