Capital Allowances Act 2001

2001 CHAPTER 2

PART 7

KNOW-HOW ALLOWANCES

CHAPTER 1

INTRODUCTION

452 Know-how allowances

(1) Allowances are available under this Part if a person incurs qualifying expenditure on the acquisition of know-how.

(2) In this Part "know-how" means any industrial information or techniques likely to assist in—

(a) manufacturing or processing goods or materials,

(b) working a source of mineral deposits (including searching for, discovering or testing mineral deposits or obtaining access to them), or

(c) carrying out any agricultural, forestry or fishing operations.

(3) In subsection (2)(b)—

(a) "mineral deposits" includes any natural deposits capable of being lifted or extracted from the earth and for this purpose geothermal energy is to be treated as a natural deposit, and

(b) "source of mineral deposits" includes a mine, an oil well and a source of geothermal energy.

453 Know-how as property

(1) Know-how is to be treated as property for the purposes of this Act.

(2) References in this Act to the purchase or sale of property include the acquisition or disposal of know-how.

CHAPTER 2

QUALIFYING EXPENDITURE

454 Qualifying expenditure

(1) In this Part "qualifying expenditure" means, subject to section 455, capital expenditure incurred on the acquisition of know-how by a person if—

(a) the person is carrying on a trade at the time of the acquisition and the know-how is acquired for use in that trade,

(b) the person acquires the know-how and subsequently sets up and commences a trade in which it is used,

(c) the person acquires the know-how together with the trade or part of a trade in which it was used and the parties to the acquisition make an election under section 531(3)(a) of ICTA (consideration for know-how on disposal of trade to be treated as payment for goodwill unless parties otherwise elect), or

(d) the person acquires the know-how together with the trade or part of a trade in which it was used and the trade in question was, before the acquisition, carried on wholly outside the United Kingdom.

(2) The same expenditure may not be taken into account as qualifying expenditure in relation to more than one trade.

(3) Qualifying expenditure incurred before the setting up and commencement of the relevant trade is to be treated for the purposes of this Part as incurred when the trade is set up and commenced.

(4) "Relevant trade" means the trade by reference to which expenditure is qualifying expenditure.

455 Excluded expenditure

(1) Expenditure on the acquisition of know-how is not qualifying expenditure to the extent that it is otherwise deducted for tax purposes.

(2) Expenditure on the acquisition of know-how is not qualifying expenditure if—

(a) the buyer is a body of persons over whom the seller has control,

(b) the seller is a body of persons over whom the buyer has control, or

(c) the buyer and the seller are both bodies of persons and another person has control over both of them.

(3) In subsection (2) "body of persons" includes a partnership.

(4) Expenditure on the acquisition of know-how is not qualifying expenditure if it is treated as a payment for goodwill under section 531(2) of ICTA (consideration for know-how on disposal of trade to be treated as payment for goodwill, unless parties otherwise elect etc.).

CHAPTER 3

ALLOWANCES AND CHARGES

456 Pooling of expenditure

(1) Qualifying expenditure has to be pooled for the purpose of determining a person's entitlement to writing-down allowances and balancing allowances and liability to balancing charges.

(2) There is a separate pool for each trade in respect of which the person has qualifying expenditure.

457 Determination of entitlement or liability

(1) Whether a person is entitled to a writing-down allowance or a balancing allowance, or liable to a balancing charge, for a chargeable period is determined separately for each pool of qualifying expenditure and depends on—
   (a) the available qualifying expenditure in that pool for that period ("AQE"), and
   (b) the total of any disposal values to be brought into account in that pool for that period ("TDV").

(2) If AQE exceeds TDV, the person is entitled to a writing-down allowance or a balancing allowance for the period.

(3) If TDV exceeds AQE, the person is liable to a balancing charge for the period.

(4) The entitlement under subsection (2) is to a writing-down allowance except for the final chargeable period when it is to a balancing allowance.

(5) The final chargeable period is the chargeable period in which the trade is permanently discontinued.

458 Amount of allowances and charges

(1) The amount of the writing-down allowance to which a person is entitled for a chargeable period is 25% of the amount by which AQE exceeds TDV.

(2) If the chargeable period is more or less than a year, the amount is proportionately increased or reduced.

(3) If the trade has been carried on for part only of the chargeable period, the amount is proportionately reduced.

(4) A person claiming a writing-down allowance may require the allowance to be reduced to a specified amount.

(5) The amount of the balancing charge to which a person is liable for a chargeable period is the amount by which TDV exceeds AQE.

(6) The amount of the balancing allowance to which a person is entitled for the final chargeable period is the amount by which AQE exceeds TDV.

459 Available qualifying expenditure

A person's available qualifying expenditure in a pool for a chargeable period consists of—

(a) any qualifying expenditure allocated to the pool for that period in accordance with section 460, and

(b) any unrelieved qualifying expenditure carried forward in the pool from the previous chargeable period under section 461.

460 Allocation of qualifying expenditure to pools

(1) The following rules apply to the allocation of a person's qualifying expenditure to a pool.

(2) An amount of qualifying expenditure is not to be allocated to the pool for a chargeable period if that amount has been taken into account in determining the person's available qualifying expenditure for an earlier chargeable period.

(3) Qualifying expenditure is not to be allocated to the pool for a chargeable period before that in which the expenditure is incurred.

461 Unrelieved qualifying expenditure

(1) A person has unrelieved qualifying expenditure to carry forward from a chargeable period if for that period AQE exceeds TDV.

(2) The amount of the unrelieved qualifying expenditure is—

(a) the excess less the writing-down allowance made for the period, or

(b) if no writing-down allowance is claimed for the period, the excess.

(3) No amount may be carried forward as unrelieved qualifying expenditure from the final chargeable period.

462 Disposal values

(1) A person is required to bring a disposal value into account for the chargeable period in which he sells know-how on which he has incurred qualifying expenditure.

(2) The disposal value to be brought into account is the net proceeds of the sale, so far as they consist of capital sums.

(3) But no disposal value need be brought into account if the consideration received for the sale is treated as a payment for goodwill under section 531(2) of ICTA (consideration for know-how on disposal of trade to be treated as payment for goodwill, unless parties otherwise elect).

463 Giving effect to allowances and charges

An allowance or charge to which a person is entitled or liable under this Part for a chargeable period is to be given effect in calculating the profits of the trade, by treating—

(a) the allowance as an expense of the trade, and

(b) the charge as a receipt of the trade.