*These notes refer to the Finance Act 2013 (c.29) which received Royal Assent on 17 July 2013*

# FINANCE ACT 2013

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## EXPLANATORY NOTES

### INTRODUCTION

### *Section 71, Schedule 26: Restrictions on Buying Capital Allowances*

#### Summary

1. Section 71 expands the application of Chapter 16A of Part 2 of the Capital Allowances Act 2001 (CAA 2001) which restricts the relevant excess of allowances after a qualifying change in relation to a company (C). It expands Chapter 16A to apply to all "qualifying activities" (under section 15 of CAA 2001) and not just trades, as currently. It also applies Chapter 16A where that relevant excess of allowances is £50 million or more (in any circumstances); or where the relevant excess is £2 million or more and less than £50 million (where the amount is not insignificant); or where the relevant excess is less than £2 million (and the qualifying change has an unallowable purpose).

#### Details of the Schedule

2. Schedule 26 Part 1 amends Chapter 16A CAA 2001.
3. Paragraph 2 amends 212B makes consequential amendments and introduces the requirement for a qualifying change to meet the "limiting conditions".
4. Paragraph 3 inserts 212LA after 212L providing the four limiting conditions.
5. Subsection (2) provides that Condition A is met where the relevant excess of allowances is £50 million or more.
6. Subsection (3) explains Condition B. Where the relevant excess of allowances is £2 million or more but less than £50 million and the amount is not insignificant in the context of the value of the benefits obtained by a "relevant person" through the qualifying change or "change arrangements" then Condition B is met.
7. Subsection (4) defines "relevant person" as the company acquiring the company or the activity in partnership or any person connected with the company acquiring the company or trade.
8. Subsection (5) explains Condition C. This is met if the amount of the relevant excess of allowances is less than £2 million and the qualifying change has an unallowable purpose. The subsection refers to section 212M which provides the definition of unallowable purpose.
9. Subsection (6) explains Condition D. This is met if there are arrangements the purpose of which is to procure that the relevant excess allowance is below the £50 million or £2 million tests or to procure that the relevant excess of allowances is a smaller proportion of the total amount or value of the benefits referred to in Condition B.
10. Subsection 7 defines the amount of the relevant excess and arrangements.
11. Paragraph (4) renames Chapter 16A "restrictions on allowance buying".

12. Paragraphs 5-12 extend the restrictions on allowance buying to all other qualifying activities (under section 15 of CAA 2001) and provides the consequential amendments arising from this extension.

13. Paragraph 13 provides that the amendments apply to a qualifying change on or after 20 March 2013, unless either arrangements to bring about the qualifying change had been entered into before that date or there was an agreement or common understanding between the parties as to the principal terms on which the qualifying change will be brought about.

## Background

14. Section 34 is one of two preventing loss buying.

15. Chapter 16A of Part 2 CAA 2001 was introduced in Finance Act 2010 in order to prevent tax-motivated capital allowance buying. Chapter 16A applies to situations where a company in a group decided not to claim all the allowances to which it was entitled and that company is then subject to a qualifying change.

16. Chapter 16A applies where there is a company C and

    - the tax written down value (TWDV) of the company's plant or machinery assets exceeds the balance sheet value (BSV) of those assets. This excess is the relevant excess of allowances.
    - there is a "qualifying change of ownership" in relation to C; and in certain circumstances where the qualifying change has an "unallowable purpose".

17. Prior to this amendment Chapter 16A applied to restrict claims to trading lossess either by set off in year by carry back or by group relief where there is a qualifying change with an unallowable purpose as one where the main purpose or one of the main purposes of the change arrangements is to obtain a tax advantage for any person.