



# Finance Act 1982

## 1982 CHAPTER 39

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER II

#### CAPITAL ALLOWANCES

#### **70 Allowances for assets leased outside the United Kingdom**

- (1) The provisions of this section have effect with respect to expenditure on the provision of machinery or plant for leasing where the machinery or plant is at any time in the requisite period used for the purpose of being leased to a person who—
  - (a) is not resident in the United Kingdom, and
  - (b) does not use the machinery or plant for the purposes of a trade carried on there or for earning profits or gains chargeable to tax by virtue of section 38(4) of the Finance Act 1973,and where the leasing is not short-term leasing.
- (2) In its application to expenditure falling within subsection (1) above, section 44 of the Finance Act 1971 (writing-down allowances and balancing adjustments) as it has effect—
  - (a) in accordance with section 65 of the Finance Act 1980 (assets leased in the course of a trade), or
  - (b) in accordance with paragraph 6 of Schedule 8 to the Finance Act 1971 (effect of subsidies towards wear and tear of assets), or
  - (c) in accordance with paragraph 10 of that Schedule (cars costing more than £8,000), or
  - (d) with respect to any motor car to which paragraph 11 of that Schedule applies (contributions towards expenditure on cars costing more than £8,000), or

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- (e) with respect to machinery or plant to which section 46 of the Finance Act 1971 applies (assets leased otherwise than in the course of a trade), shall have effect, subject to subsection (4) below, as if the reference in subsection (2) of section 44 to 25 per cent, were a reference to 10 per cent.
- (3) In any case where—
- (a) machinery or plant is used for the purpose of being leased to such a person as is referred to in paragraphs (a) and (b) of subsection (1) above, and
  - (b) the circumstances are such that the machinery or plant is used otherwise than for a qualifying purpose, within the meaning of section 64 of the Finance Act 1980 (exclusion of first-year allowances for certain leased assets),
- any question whether that use falls within the requisite period, as defined in subsection (8) of that section, shall be determined as if, for each reference in that subsection to four years, there were substituted a reference to ten years; and any reference to the requisite period in sections 66 and 67 of that Act shall be construed accordingly.
- (4) No first year allowances, balancing allowances or writing-down allowances shall be available in respect of expenditure falling within subsection (1) above if the circumstances are as mentioned in subsection (3) (b) above and—
- (a) there is a period of more than one year between the dates on which any two consecutive payments become due under the lease ; or
  - (b) any payments other than periodical payments are due under the lease or under any agreement which might reasonably be construed as being collateral to the lease; or
  - (c) disregarding variations made under the terms of the lease which are attributable to—
    - (i) changes in the rate of corporation tax or income tax, or
    - (ii) changes in the rate of capital allowances, or
    - (iii) changes in any rate of interest where the changes are linked to changes in the rate of interest applicable to inter-bank loans, or
    - (iv) changes in the premiums charged for insurance of any description by a person who is not connected with the lessor or the lessee,
 any of the payments due under the lease or under any such agreement as is referred to in sub-paragraph (b) above, expressed as monthly amounts over the period for which that payment is due, is not the same as any other such payment expressed in the same way ; or
  - (d) either the lease is expressed to be for a period which exceeds thirteen years or there is, in the lease or a separate agreement, provision for extending or renewing the lease or for the grant of a new lease so that, by virtue of that provision, the machinery or plant could be leased for a period which exceeds thirteen years; or
  - (e) at any time the lessor or a person connected with him will, or may in certain circumstances, become entitled to receive from the lessee or any other person a payment, other than a payment of insurance moneys, which is of an amount determined before the expiry of the lease and which is referable to a value of the machinery or plant at or after that expiry (whether or not the payment relates to a disposal of the machinery or plant).
- (5) Where a first year allowance, a balancing allowance or a writing-down allowance has been made in respect of expenditure incurred in providing machinery or plant and, at

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any time in the requisite period, an event occurs such that, by virtue of subsection (4) above, there is no right to that allowance, an amount equal to any such allowance which has previously been given (less any excess reliefs previously recovered by the operation of section 66 of the Finance Act 1980) shall, in relation to the person to whom the machinery or plant belongs immediately before the occurrence of that event, be treated as if it were a balancing charge to be made on him for the chargeable period in which, or in the basis period for which, the machinery or plant is used at the time that event occurs.

(6) Subsections (3) and (4) of section 66 of the Finance Act 1980 apply in relation to the allowances mentioned in subsection (5) above as they apply in relation to the allowances mentioned in subsection (2) of that section.

(7) In subsection (1) above " short-term leasing " has the same meaning as in subsection (2)(b) of section 64 of the Finance Act 1980, and in subsection (3) of that section (which defines that expression) at the beginning of sub-paragraph (ii) of paragraph (b), there shall be inserted the words " subject to subsection (3A) below " and at the end of that subsection there shall be added—

“(3A) In a case where the requisite period exceeds four years the reference in subsection (3)(b)(ii) above to that period shall be construed as a reference to any period of four consecutive years which falls within the requisite period.”

(8) The provisions of Schedule 11 to this Act shall have effect for supplementing the preceding provisions of this section.

(9) In subsections (1) and (5) above " the requisite period " has the same meaning as, in a case where subsection (3) above applies, it has in sections 64 to 68 of the Finance Act 1980 ; and section 73 of that Act (interpretation), with the exception of subsection (4) thereof, has effect in relation to the preceding provisions of this section and the provisions of Schedule 11 to this Act—

- (a) as if those provisions were comprised in the foregoing provisions of Chapter II of Part III of that Act; and
- (b) as if the reference in subsection (1) of that section to section 72 of that Act included a reference to subsection (10) below.

(10) Subject to subsection (11) below, this section applies to expenditure incurred on or after 10th March 1982 unless—

- (a) the expenditure consists of the payment of sums payable under a contract entered into before that date by the person incurring the expenditure ; or
- (b) the expenditure consists of the payment of sums payable under a contract entered into not later than 31st March 1984 and the conditions in subsection (12) below are fulfilled;

and, in either case, the machinery or plant concerned is brought into use not later than 31st March 1985.

(11) In its application to subsections (4) to (6) above, subsection (10) above has effect as if for the references to 10th March 1982 there were substituted references to 23rd June 1982.

(12) The conditions referred to in paragraph (b) of subsection (10) above are—

- (a) that the expenditure referred to in that paragraph is incurred in fulfilment of arrangements (not necessarily amounting to contractual obligations) under which the person incurring the expenditure (in this subsection referred to as "

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- the lessor ") would lease the machinery or plant in question to another person (in this subsection referred to as " the lessee "); and
- (b) that those arrangements were in existence on 10th March 1982 and are evidenced by writing dating from a time before that date ; and
  - (c) that, in reliance upon the arrangements and before 10th March 1982, the lessee had entered into a contract with a third party (in this subsection referred to as " the supplier ") to incur expenditure on the provision of the machinery or plant in question ; and
  - (d) that, pursuant to the arrangements.—
    - (i) the obligations of the lessee under the contract referred to in paragraph (c) above are, before 31st March 1984, either taken over by the lessor or discharged on the lessor entering into a new contract with the supplier ; or
    - (ii) the lessee purchases the machinery or plant in question and transfers it to the lessor before 8th July 1982; and
  - (e) that, on or before 31st March 1984, the lessor enters into a contract to lease the machinery or plant to the lessee; and
  - (f) that, disregarding any use before 8th July 1982, the machinery or plant in question is not brought into use by the lessee before it is leased to him by the lessor; and
  - (g) that the lessor and the lessee are not connected persons and neither of them is connected with the supplier;
- and section 533 of the Taxes Act (connected persons) applies for the purposes of this section.