



Finance Act 1994

1994 CHAPTER 9

PART IV **U.K.**

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I **U.K.**

GENERAL

Capital allowances

117 **Expenditure on machinery or plant. U.K.**

(1) At the end of section 83 of the ^{M1}Capital Allowances Act 1990 (interpretation of Part II, which relates to machinery and plant) there shall be added—

“(7) Schedule AA1 (which excludes certain expenditure from the expression “expenditure on the provision of machinery or plant”) shall have effect.” and before Schedule A1 to that Act there shall be inserted—

“SCHEDULE AA1 **U.K.**

EXCLUSIONS FROM EXPENDITURE ON MACHINERY OR PLANT

Buildings

- 1 (1) For the purposes of this Act expenditure on the provision of machinery or plant does not include any expenditure on the provision of a building.
- (2) For the purposes of this Schedule “building” includes any asset in the building—
 - (a) which is incorporated into the building, or

Status: Point in time view as at 29/04/1996.

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(b) which, by reason of being moveable or otherwise, is not so incorporated, but is of a kind normally incorporated into buildings; and in particular includes any asset in or in connection with the building included in any of the items in column 1 or column 2 of the following Table (“Table 1”).

(3) Sub-paragraph (1) above does not affect the question whether expenditure on the provision of—

- (a) any asset falling within column 2 of Table 1,
- (b) any cold store,
- (c) any caravan provided mainly for holiday lettings,
- (d) any building provided for testing aircraft engines run within the building, or
- (e) any moveable building intended to be moved in the course of the trade,

is for the purposes of this Act expenditure on the provision of machinery or plant.

(4) Table 1 is to be read subject to the notes following it.

Table 1

A. Walls, floors, ceilings, doors, gates, shutters, windows and stairs.	<p>1. Electrical, cold water, gas and sewerage systems—(a) provided mainly to meet the particular requirements of the trade, or (b) provided mainly to serve particular machinery or plant used for the purposes of the trade.</p> <p>2. Space or water heating systems; powered systems of ventilation, air cooling or air purification; and any ceiling or floor comprised in such systems.</p>
B. Mains services, and systems, of water, electricity and gas.	<p>3. Manufacturing or processing equipment; storage equipment, including cold rooms; display equipment; and counters, checkouts and similar equipment.</p> <p>4. Cookers, washing machines, dishwashers, refrigerators and similar equipment; washbasins, sinks, baths, showers, sanitary ware and similar equipment; and furniture and furnishings.</p>
C. Waste disposal systems.	<p>5. Lifts, hoists, escalators and moving walkways.</p> <p>6. Sound insulation provided mainly to meet the particular requirements of the trade.</p>

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| D. Sewerage and drainage systems. | 7. Computer, telecommunication and surveillance systems (including their wiring or other links). |
| | 8. Refrigeration or cooling equipment. |
| E. Shafts or other structures in which lifts, hoists, escalators and moving walkways are installed. | 9. Sprinkler equipment and other equipment for extinguishing or containing fire; fire alarm systems. |
| | 10. Burglar alarm systems. |
| | 11. Any machinery (including devices for providing motive power) not within any other item in this column. |
| F. Fire safety systems. | 12. Strong rooms in bank or building society premises; safes. |
| | 13. Partition walls, where moveable and intended to be moved in the course of the trade. |
| | 14. Decorative assets provided for the enjoyment of the public in the hotel, restaurant or similar trades. |
| | 15. Advertising hoardings; and signs, displays and similar assets. |
| | 16. Swimming pools (including diving boards, slides and structures on which such boards or slides are mounted). |

Notes:

1. An asset does not fall within column 2 if its principal purpose is to insulate or enclose the interior of the building or provide an interior wall, a floor or a ceiling which (in each case) is intended to remain permanently in place.

2. “Electrical systems” include lighting systems.

Structures, assets and works

- 2 (1) For the purposes of this Act expenditure on the provision of machinery or plant does not include any expenditure on—
- (a) the provision of structures or other assets to which this paragraph applies, or
 - (b) any works involving the alteration of land.
- (2) This paragraph applies to any structure or other asset which falls within column 1 of the following Table (“Table 2”).
- (3) Sub-paragraph (1) above does not affect the question whether—
- (a) any expenditure falling within column 2 of Table 2, or
 - (b) any expenditure on the provision of any asset of a description within any of the items in column 2 of Table 1,

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is for the purposes of this Act expenditure on the provision of machinery or plant.

(4) Table 2 is to be read subject to the notes following it.

Table 2

A. Any tunnel, bridge, viaduct, aqueduct, embankment or cutting.	1. Expenditure on the alteration of land for the purpose only of installing machinery or plant.
B. Any way or hard standing, such as a pavement, road, railway or tramway, a park for vehicles or containers, or an airstrip or runway.	2. Expenditure on the provision of dry docks.
C. Any inland navigation, including a canal or basin or a navigable river.	3. Expenditure on the provision of any jetty or similar structure provided mainly to carry machinery or plant.
D. Any dam, reservoir or barrage (including any sluices, gates, generators and other equipment associated with it).	4. Expenditure on the provision of pipelines, or underground ducts or tunnels with a primary purpose of carrying utility conduits.
E. Any dock.	5. Expenditure on the provision of towers provided to support floodlights.
F. Any dike, sea wall, weir or drainage ditch.	6. Expenditure on the provision of any reservoir incorporated into a water treatment works or on the provision of any service reservoir of treated water for supply within any housing estate or other particular locality.
G. Any structure not within any other item in this column.	7. Expenditure on the provision of silos provided for temporary storage or on the provision of storage tanks.
	8. Expenditure on the provision of slurry pits or silage clamps.
	9. Expenditure on the provision of fish tanks or fish ponds.
	10. Expenditure on the provision of rails, sleepers and ballast for a railway or tramway.
	11. Expenditure on the provision of structures and other assets for providing the setting for any ride at an amusement park or exhibition.
	12. Expenditure on the provision of fixed zoo cages.

Notes:

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- 1 “Dock” includes—
 - (a) any harbour, wharf, pier, marina or jetty, and
 - (b) any other structure in or at which vessels may be kept or merchandise or passengers may be shipped or unshipped.
- 2 An industrial structure, that is, anything (other than a building) which is or is to be an industrial building or structure as defined in section 18, is not within item G in column 1; and that section, as it applies for the purposes of this note, shall have effect as if—
 - (a) in subsection (1)(b), after “electricity” there were inserted “gas”,
 - (b) after that paragraph there were inserted—
 - (c) for the purposes of a trade which consists in the provision of telecommunication, television or radio services; or”, and
 - (c) in subsection (9), after the definition of “foreign plantation”, there were inserted—

” “gas undertaking” means an undertaking for the extraction, production, processing or distribution of gas.”

Land

- 3 (1) For the purposes of this Act expenditure on the provision of machinery or plant does not include expenditure on the acquisition of any interest in land.
- (2) This paragraph does not apply for the purposes of Part II to any asset which is so installed or otherwise fixed in or to any description of land as to become, in law, part of that land.

General exemptions

- 4 Paragraphs 1(1) and 2(1) above do not apply to any expenditure to which section 67, 67A, 68, 69, 70 or 71 applies.

Interpretation

- 5 (1) In this Schedule—
 - (a) “structure” means a fixed structure of any kind, other than a building, and
 - (b) references to the provision of any building, structure or other asset include references to its construction or acquisition.
- (2) Nothing in this Schedule affects the question whether expenditure on the provision of any glasshouse which is constructed so that the required environment (that is, air, heat, light, irrigation and temperature) for growing plants is provided automatically by means of devices which are an integral part of its structure is, for the purposes of this Act, expenditure on the provision of machinery or plant.
- (3) The definition of “land” in Schedule 1 to the Interpretation Act 1978, in its application for the purposes of this Schedule, shall have effect with the omission of the words “buildings and other structures”; and, subject to that, “interest in land” in paragraph 3 above has the same meaning as in Chapter VI of Part II.”

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- (2) This section shall have effect in relation to expenditure incurred on or after 30th November 1993 unless—
- (a) it is incurred before 6th April 1996 in pursuance of a contract entered into before 30th November 1993, or
 - (b) it is incurred before 6th April 1996 in pursuance of a contract entered into, for the purpose of securing that the obligations under a contract entered into before 30th November 1993 are complied with, on or after 30th November 1993.

Marginal Citations

M1 1990 c. 1.

118 Expenditure on machinery or plant: notification. **U.K.**

- (1) A first year allowance shall not be made under—
- (a) section 22 of the ^{M2}Capital Allowances Act 1990 (first-year allowances in respect of expenditure on machinery or plant), or
 - (b) section 41 of the ^{M3}Finance Act 1971 (provision corresponding to section 22 applicable to earlier chargeable periods),
- for any chargeable period (whenever ending) unless the relevant condition is fulfilled with respect to that period.
- (2) For the purposes of—
- (a) section 25(1) of the 1990 Act (meaning of qualifying expenditure for the purposes of writing-down allowances for expenditure on machinery or plant), and
 - (b) section 44(4) of the 1971 Act (provision corresponding to section 25(1) applicable to earlier chargeable periods),
- no expenditure may form part of a person's qualifying expenditure for any chargeable period (whenever ending) unless the relevant condition is fulfilled with respect to that period.
- (3) The relevant condition is fulfilled with respect to a chargeable period ending on or after 30th November 1993 if notice of the expenditure is given to ^{F1}an officer of the Board, in such form as the Board may require, within the period specified in subsection (3A) below].
- ^{F2}(3A) A notice under subsection (3) above—
- (a) for the purposes of income tax, shall be given on or before the first anniversary of the 31st January next following the year of assessment in which ends the chargeable period mentioned in that subsection;
 - (b) for the purposes of corporation tax, shall be given no later than two years after the end of the chargeable period mentioned in that subsection.]
- (4) The relevant condition is fulfilled with respect to a chargeable period ending before 30th November 1993 if—
- (a) the expenditure was included in a computation which—
 - (i) was required to be made for any tax purpose,
 - (ii) was given before that date to an inspector, and

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- (iii) was not contained in a document prepared primarily for a purpose which was not a tax purpose; or
- (b) notice of the expenditure is given to the inspector, in such form as the Board may require, not later than three years after the end of that period; or
- (c) if the chargeable period ends on or after 1st December 1990, notice of the expenditure is so given before the passing of this Act.
- (5) If in a particular case it appears to the Board appropriate to do so, having regard to all the circumstances of the case (including in particular any unforeseeable circumstances which have delayed the giving of any notice or computation), they may extend the period within which for the purposes of subsection (3) or (4) above any notice or computation is to be given to the inspector.
- (6) For the purposes of the provisions mentioned in subsection (2) above expenditure which has not formed part of a person's qualifying expenditure for a previous chargeable period may not form part of his qualifying expenditure for a subsequent chargeable period unless the machinery or plant on which the expenditure was incurred belongs to that person at some time in that subsequent period ^{F3} . . .
- (7) No relief shall be given under section 33 or 42 of the ^{M4}Taxes Management Act 1970 in respect of a claim of error or mistake to the extent that the error or mistake consists of or arises from a failure to fulfil the relevant condition in relation to a chargeable period.
- (8) In this section "the 1990 Act" means the ^{M5}Capital Allowances Act 1990 and "the 1971 Act" means the ^{M6}Finance Act 1971; and expressions used in subsections (1) to (6) above have the same meaning as in the 1990 Act or (as the case may be) the 1971 Act.
- (9) Any such adjustment as is appropriate in consequence of this section may be made (whether by way of discharge or repayment of tax, the making of an assessment or otherwise).

Textual Amendments

- F1** Words in s. 118(3) substituted (29.4.1996 with effect as mentioned in s. 135(2)(5) of the amending Act) by 1996 c. 8, s. 135, **Sch. 21 para. 48(2)**
- F2** S. 118(3A) inserted (29.4.1996 with effect as mentioned in s. 135(2)(5) of the amending Act) by 1996 c. 8, s. 135, **Sch. 21 para. 48(3)**
- F3** Words in s. 118(6) repealed (3.5.1994 with effect as mentioned in ss. 211(2), 218(1)(b) of the repealing Act) by 1994 c. 9, s. 258, **Sch. 26 Pt. V(24)**, Note 5

Marginal Citations

- M2** 1990 c. 1.
M3 1971 c. 68.
M4 1970 c. 9.
M5 1990 c. 1.
M6 1971 c. 68.

119 Transactions between connected persons. **U.K.**

- (1) Section 158(2) of the ^{M7}Capital Allowances Act 1990 (election exercisable in the case of transactions between connected persons, etc.) shall be assumed always to have had effect subject to the amendments made by section 117(2) and (3) of the ^{M8}Finance

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Act 1993 (transactions between connected persons: qualifying hotels, commercial buildings and scientific research expenditure).

- (2) Paragraph 4(2) of Schedule 7 to the ^{M9}Capital Allowances Act 1968 (provision corresponding to section 158(2)) shall be assumed always to have had effect subject to amendments corresponding to those made to section 158(2) of the 1990 Act by section 117(2) and (3) of the Finance Act 1993.

Marginal Citations

M7 1990 c. 1.

M8 1993 c. 34.

M9 1968 c. 3.

120 Balancing charge on realisation of capital value. **U.K.**

- (1) The Capital Allowances Act 1990 shall be amended as follows:

- (2) In section 4 (balancing adjustments)—

- (a) in subsection (1) (events giving rise to an adjustment), after “or” at the end of paragraph (d) there is inserted—

“(dd) any capital value is realised (within the meaning of section 4A), or”, and for “subsection (2)” there is substituted “subsections (2) and (9A)”, and

- (b) after subsection (9) there is inserted—

“(9A) No balancing allowance shall be made by reason of any event falling within subsection (1)(dd) above; and (subject to that) in relation to such an event—

- (a) this Part and (so far as relating to it) Part VIII shall have effect as if references to sale, insurance, salvage or compensation moneys were references to the capital value realised, and
- (b) subsections (5) to (7) and (9) above shall have effect as if immediately after the event the capital expenditure were reduced by the amount of the capital value realised”.

- (3) After that section there is inserted—

“4A Realisation of capital value.

- (1) Where any capital expenditure has been incurred on the construction of a building or structure and, while the building or structure is an industrial building or structure or after it has ceased to be one—

- (a) an amount of capital value is paid which is attributable to an interest in land (the “subordinate interest”) to which the relevant interest in the building or structure is or will be subject, and
- (b) the payment is made not more than seven years after the agreement relating to the capital expenditure was entered into or (if the agreement was conditional) the time when the agreement became unconditional,

capital value of that amount is realised for the purposes of this Part on making the payment.

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- (2) For the purposes of this section, capital value is attributable to the subordinate interest if—
- (a) it is paid in consideration of the grant of the subordinate interest,
 - (b) it is paid in lieu of any rent payable by the person entitled to the subordinate interest or paid in consideration of the assignment of such rent, or
 - (c) it is paid in consideration of the surrender of the subordinate interest or the variation or waiver of any of the terms on which it was granted.
- (3) For the purposes of this section, “capital value”—
- (a) means any capital sum and includes what would have been a capital sum if it had taken the form of a money payment, and “payment” and “paid” shall be interpreted accordingly, but
 - (b) does not include so much of any sum as corresponds to any amount of rent or profits falling to be computed by reference to that sum under section 34 of the principal Act (premium, etc. treated as rent or Schedule D profits).
- (4) Where—
- (a) no premium is given in consideration of the grant of the subordinate interest or any premium given is less than the amount which would have been given by way of premium if the transaction had been at arm’s length, and
 - (b) no commercial rent is payable in respect of the subordinate interest,
- subsection (2) above shall have effect as if the amount referred to in paragraph (a) above (and not any premium actually given) were paid on and in consideration of the grant of the interest.
- (5) Where—
- (a) any rent payable in respect of the subordinate interest is assigned, the subordinate interest is surrendered or any of the terms on which the subordinate interest was granted are varied or waived, but
 - (b) no value is given in consideration of the event concerned, or any value given in consideration of the event concerned is less than the amount that would have been given if the transaction had been at arm’s length,
- subsection (2) above shall have effect as if that amount (and not any value actually given) were paid on and in consideration of the event concerned.
- (6) Where any value given in lieu of any rent payable by the person entitled to the subordinate interest is less than the amount that would have been given if the transaction had been at arm’s length, subsection (2) above shall have effect as if that amount (and not any value actually given) had been paid.
- (7) This section shall apply with the omission of subsection (1)(b) above in any case where—
- (a) arrangements under which the person entitled to the relevant interest acquired it include provision in respect of the subsequent sale of the relevant interest, the subsequent grant out of the relevant interest of an interest in land or any other event on which capital value attributable to the subordinate interest would be, or be treated as, paid, and

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- (b) either the provision concerned requires such a sale, grant or other event to occur or such a sale, grant or other event is substantially more likely to occur than if the provision had not been made;
and the reference to arrangements in paragraph (a) above includes any arrangements made in connection with the acquisition of the relevant interest.
- (8) This section does not apply to the grant of any interest in land to which an election under section 11 applies.
- (9) In this section “interest in land” means—
- (a) a leasehold estate in the land (whether in the nature of a head-lease, sub-lease or under-lease),
 - (b) an easement or servitude, and
 - (c) a licence to occupy land;
- and references to granting an interest in land include agreeing to grant any interest falling within paragraphs (a) to (c) above.
- (10) In this section “commercial rent” means such rent as may reasonably be expected to have been required in respect of the subordinate interest (having regard to any premium given in consideration of the grant of the interest) if the transaction had been at arm’s length.
- (11) For the purposes of this section, where—
- (a) an agreement is made to pay in respect of any event an amount of capital value which would be attributable to the subordinate interest, and
 - (b) the agreement is made or (if the agreement is conditional) becomes unconditional before the expiry of the period of seven years referred to in subsection (1)(b) above, but the event occurs, or any payment in consideration of the event is made, afterwards,
- the event or payment shall be treated as occurring or made before the expiry of the period.
- (12) For the purposes of this section, an agreement relates to any capital expenditure referred to in subsection (1) above if—
- (a) it is the agreement under which the expenditure was incurred, or
 - (b) where the expenditure is deemed for the purposes of sections 1 to 8 to have been incurred by a person who acquired the relevant interest, it is the agreement under which he acquired the relevant interest.
- (13) In the application of this section to Scotland—
- (a) references to assignment shall be read as references to assignation, and
 - (b) references to a leasehold estate in land shall be read as references to a lease of land.”
- (4) In section 5 (restriction of balancing allowance where interest has been sold subject to subordinate interest), after subsection (2) there is inserted—
- “(2A) Where the net proceeds to the relevant person of the sale fall to be increased or determined under subsection (2) above, those proceeds as so increased or determined shall be taken to be reduced by the amount of any capital value realised before the sale”.

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- (5) In section 6 (buildings, etc. in enterprise zones), in subsection (4), after “4(1)” there is inserted “ 4A(1) ”.
- (6) In section 8 (writing off expenditure)—
- (a) after subsection (12A) there is inserted—
- “(12B) Where any event occurs to which section 4(1)(dd) applies, there shall be treated as written off as at the time of the event an amount equal to the capital value realised”, and
- (b) in subsection (13), for “(12A)” there is substituted “ (12B) ”.
- (7) Subject to subsection (8) below, this section applies—
- (a) where capital expenditure has been incurred under a relevant contract, or
- (b) where capital expenditure is deemed for the purposes of sections 1 to 8 to have been incurred by a person who under a relevant contract acquires the relevant interest;
- and “relevant contract” means a contract entered into on or after 13th January 1994 or a conditional contract entered into before that date which becomes unconditional after 25th February 1994.
- (8) This section applies to capital expenditure on the construction of a building or structure only if the expenditure, or, in the case of expenditure falling within subsection (7)(b) above, the actual expenditure on the construction of the building or structure to which the expenditure so falling relates, is incurred, or is incurred under a contract entered into, at a time when the site of the building or structure is wholly or mainly in an enterprise zone, being a time not more than 10 years after the site was first included in the zone.

121 Used buildings etc. in enterprise zones. **U.K.**

- (1) Where—
- (a) the relevant interest in a building or structure is sold on a date falling after the expiry of the period of two years beginning with the date on which the building or structure was first used, and
- (b) that period ends, and the date on which the relevant interest is sold falls, within the period beginning with 13th January 1994 and ending with 31st August 1994,
- paragraphs (c) and (d) of section 10B(1) of the ^{M10}Capital Allowances Act 1990 (purchaser of building etc. in enterprise zone within two years of first use eligible for allowances) shall have effect as if the period there referred to were the period beginning with the date on which the building or structure was first used and ending with 31st August 1994.
- (2) Expressions used in this section and in Part I of the Capital Allowances Act 1990 have the same meaning as in that Part.

Marginal Citations

M10 1990 c. 1.

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