



# Capital Allowances Act 1990 (repealed)

## 1990 CHAPTER 1

### PART II

#### MACHINERY AND PLANT

### CHAPTER VIII

#### SUPPLEMENTARY PROVISIONS

#### **73 Manner of making allowances and charges.**

(1) Subject to [<sup>F1</sup>subsections (1A) and (2)] below, any allowance or charge made to or on any person under this Part shall be made to or on that person in taxing his trade.

[<sup>F2</sup>(1A) Any allowance or charge made to or on any company by virtue of section 28A shall be made for the purposes of corporation tax by way of discharge or repayment of tax and, for that purpose—

- (a) any such allowance shall be available primarily against income chargeable to tax under Schedule A; and
- (b) the amount on which any such charge is to be made shall be treated as income so chargeable.]

(2) Any allowance made by virtue of section 61(1) shall be made by way of discharge or repayment of tax, and, subject to subsection (3) below and section 67(3), shall be available primarily against income from the letting of machinery or plant; and effect shall be given to any charge made by virtue of section 61(1)—

- (a) if a charge to income tax, by making the charge under Case VI of Schedule D,
- (b) if a charge to corporation tax, by treating the amount on which the charge is to be made as income from the letting of machinery or plant.

(3) Where an allowance falling to be made for any chargeable period by virtue of section 61(1) is in respect of expenditure on the provision of machinery or plant which for the whole or any part of that period <sup>F3</sup>... is not used for the purposes of a trade

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carried on by the lessee, that allowance or, as the case may require, a proportionate part thereof shall be available primarily against income from the letting of that machinery or plant only.

<sup>F4</sup>(4) .....

#### Textual Amendments

- F1** Words in s. 73(1) substituted (with effect in accordance with Sch. 15 para. 9(1) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), [Sch. 15 para. 6\(1\)](#)
- F2** S. 73(1A) inserted (with effect in accordance with Sch. 15 para. 9(1) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), [Sch. 15 para. 6\(2\)](#)
- F3** Words in Act repealed (with effect in accordance with s. 211(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [s. 213\(1\)](#), [Sch. 26 Pt. 5\(24\)](#)
- F4** S. 73(4) repealed (with effect in accordance with Sch. 15 para. 9(1) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), [Sch. 18 Pt. 6\(11\)](#)

#### 74 Allowances not available: expenses of Members of Parliament.

No allowance shall be made under this Part in respect of any expenditure incurred by a Member of the House of Commons in or in connection with the provision or use of residential or overnight accommodation to enable him to perform his duties in or about the Palace of Westminster or his constituency.

#### 75 Further restrictions on allowances.

- (1) Subject to [<sup>F5</sup>sections 76, 76A and 77], where a person incurs capital expenditure on the provision by purchase of machinery or plant, and—
- (a) he and the seller are connected with each other, or
  - (b) the machinery or plant continues to be used for the purposes of a trade carried on by the seller, or
  - (c) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which, but for this subsection, might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part,

a first-year allowance shall not be made in respect of the expenditure [<sup>F6</sup>or any additional VAT liability incurred in respect of it] or, if made, shall be withdrawn, and there shall be disregarded for the purposes of sections 24, 25 and 26 [<sup>F7</sup>so much (if any) of the aggregate of the expenditure and any such additional VAT liability] as exceeds the disposal value to be brought into account under those sections by reason of the sale.

- (2) Subject to [<sup>F8</sup>sections 76, 76A and 77], where a person enters into a contract under which, on the performance thereof, he will or may become the owner of machinery or plant belonging to another person, and—
- (a) he and that person are connected with each other, or
  - (b) the machinery or plant continues to be used for the purposes of a trade carried on by that person, or
  - (c) it appears with respect to the transaction, or with respect to transactions of which it is one, that the sole or main benefit which, but for this subsection, might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part,

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a first-year allowance shall not be made in respect of any expenditure incurred by him under the contract so far as relating to that machinery or plant [<sup>F9</sup>or in respect of any additional VAT liability incurred by him in respect of any such expenditure] or, if made, shall be withdrawn, and there shall be disregarded for the purposes of sections 24, 25 and 26 [<sup>F10</sup>so much (if any) of the aggregate of the expenditure and any such additional VAT liability] as exceeds the disposal value to be brought into account under those sections by reason of the contract so far as relating thereto.

- (3) Subject to [<sup>F11</sup>sections 76, 76A and 77], where a person, being entitled to the benefit of a contract under which, on the performance thereof, he will or may become the owner of any machinery or plant, assigns the benefit of the contract so far as it relates to that machinery or plant to another person, and—
- he and the assignee are connected with each other, or
  - the machinery or plant continues to be used for the purposes of a trade carried on by him, or
  - it appears with respect to the assignment, or with respect to transactions of which the assignment is one, that the sole or main benefit which, but for this subsection, might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part,

a first-year allowance shall not be made in respect of any expenditure incurred by him under the contract so far as so relating, or by way of consideration for the assignment [<sup>F12</sup>or in respect of any additional VAT liability incurred by him in respect of any such expenditure] or, if so made, shall be withdrawn, and there shall be disregarded for the purposes of sections 24, 25 and 26 [<sup>F13</sup>so much (if any) of the aggregate of the assignee's expenditure and any such additional VAT liability] as exceeds the disposal value to be brought into account under section 60 by reason of the assignment.

- (4) In this section references to persons connected with each other shall be construed in accordance with section 839 of the principal Act.
- (5) All such assessments and adjustments of assessments shall be made as are necessary to give effect to this section.

#### Textual Amendments

- F5** Words in s. 75(1) substituted (with effect in accordance with s. 46(3) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\), s. 46\(1\)\(a\)](#) (with s. 46(3)(a)-(c))
- F6** Words in s. 75(1) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31\), s. 59, Sch. 14 Pt. II para. 11\(1\)\(a\)](#).
- F7** Words in s. 75(1) substituted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31\), s. 59, Sch. 14 Pt. II para. 11\(1\)\(b\)](#).
- F8** Words in s. 75(2) substituted (with effect in accordance with s. 46(3) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\), s. 46\(1\)\(a\)](#) (with s. 46(3)(a)-(c))
- F9** Words in s. 75(2) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31\), s. 59, Sch. 14 Pt. II para. 11\(2\)\(a\)](#).
- F10** Words in s. 75(2) substituted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31\), s. 59, Sch. 14 Pt. II para. 11\(2\)\(b\)](#).
- F11** Words in s. 75(3) substituted (with effect in accordance with s. 46(3) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\), s. 46\(1\)\(a\)](#) (with s. 46(3)(a)-(c))
- F12** Words in s. 75(3) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31\), s. 59, Sch. 14 Pt. II para. 11\(3\)\(a\)](#).

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**F13** Words in s. 75(3) substituted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by Finance Act 1991 (c. 31), s. 59, **Sch. 14 Pt. II para. 11(3)(b)**.

## 76 Extension of section 75.

- (1) Paragraph (b) of each of subsections (1) to (3) of section 75 shall have effect as if the reference to the machinery or plant continuing to be used for the purposes of a trade carried on by the person there mentioned included a reference to its being used after the date of the sale, the making of the contract or the assignment of the benefit of the contract (as the case may be) for the purposes of a trade carried on by that person or another person who is connected with him (other than the buyer, the person entering into the contract or the assignee) without having been used since that date for the purposes of any other trade except that of leasing machinery or plant.
- (2) In a case in which no disposal value falls to be brought into account as mentioned in subsection (1) of section 75, that subsection shall have effect as if for the reference to the disposal value to be so brought into account there were substituted a reference to an amount equal to whichever of the following is the smallest—
  - (a) the open market value of the machinery or plant;
  - (b) where capital expenditure was incurred by the seller on the provision of the machinery or plant, the amount of that expenditure;
  - (c) where capital expenditure was incurred by any person connected with the seller on the provision of the machinery or plant, the amount of the expenditure incurred by that person.

<sup>F14</sup>[(2A) In any case where—

- (a) section 75(1) has effect with the modification specified in paragraph (a) of subsection (2) above, but
- (b) the open market value of the machinery or plant in question is determined for the purposes of those provisions inclusive of value added tax,

section 75(1) as so modified shall have effect with the omission of the words “the aggregate of” and “and any such additional VAT liability”.

(2B) For the purposes of paragraphs (b) and (c) of subsection (2) above—

- (a) any additional VAT liability incurred by the seller or, as the case may be, any person connected with him in respect of capital expenditure incurred on the provision of the machinery or plant shall be regarded as capital expenditure incurred on the provision of the machinery or plant, and
- (b) any additional VAT rebate made to the seller or, as the case may be, any person connected with him in respect of any such expenditure shall be regarded as reducing the amount of capital expenditure so incurred by him,

to the extent that the liability or rebate in question would not, apart from this subsection, fall to be so regarded.]

- (3) Section 75(1) shall not by virtue of paragraph (a) or (b) thereof deny a first-year allowance if the machinery or plant has not before the sale been used for the purposes of a trade by the seller or any person connected with him but for the purposes of that allowance there shall be disregarded so much (if any) of the expenditure as exceeds whichever is the smallest of the amounts mentioned in subsection (2)(a), (b) and (c) above.

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- (4) [<sup>F15</sup>Subsections (2), (2A), (2B) and (3)] above shall apply in relation to section 75(2) and (3) as they apply in relation to section 75(1) but taking references—
- (a) to the sale as references to the making of the contract and to the assignment of the benefit of the contract respectively;
  - (b) to the seller as references to the person to whom the machinery or plant belongs and to the assignor respectively.
- (5) Neither subsection (1) nor subsection (2) of section 75 shall apply in relation to a sale or contract if the machinery or plant has never been used before the sale or the making of the contract and the business or part of the business of the seller or owner was the manufacture or supply of machinery or plant of that class and the sale was effected or the contract was made in the ordinary course of that business.
- (6) In this section—
- (a) “open market value” in relation to any machinery or plant means an amount equal to the price which the machinery or plant would have fetched if sold in the open market; and
  - (b) references to persons connected with each other shall be construed in accordance with section 839 of the principal Act.

[<sup>F16</sup>(7) This section has effect subject to the modifications made by section 76A in cases where there is a finance lease.]

#### Textual Amendments

- F14** S. 76(2A)(2B) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31\), s. 59, Sch. 14 Pt. II para. 11\(4\)](#).
- F15** Words in s. 76(4) substituted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31\), s. 59, Sch. 14 Pt. II para. 11\(5\)](#).
- F16** S. 76(7) inserted (with effect in accordance with s. 46(3) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\), s. 46\(1\)\(b\)](#) (with s. 46(3)(a)-(c))

#### [<sup>F17</sup>76A Special provision for finance lease cases.

- (1) Where—
- (a) any machinery or plant is used for the purposes of any non-trading activities carried on by any person, and
  - (b) it is directly or indirectly as a consequence of the machinery or plant having been leased under a finance lease that it is available for that use,
- subsections (1), (2) and (3) of section 75 and subsection (1) of section 76 (except the words after “without”) shall have effect as if the use for the purposes of those activities were a use for the purposes of a trade carried on by that person.
- (2) Where—
- (a) subsection (1), (2) or (3) of section 75 applies by virtue of paragraph (b) of that subsection, or is treated (under one or both of section 76(1) and subsection (1) above) as so applying,
  - (b) it is directly or indirectly as a consequence of the machinery or plant having been leased under a finance lease that it is available after—
    - (i) the date of the sale,
    - (ii) the date of the making of the contract, or

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(iii) the date of the assignment,

for the use which is mentioned in that paragraph, or which is treated as if it were a use so mentioned, and

- (c) apart from this subsection the disposal value to be brought into account under sections 24, 25 and 26 by reason of the sale, contract or assignment would be more than the amount (“the section 76(2) amount”) which (if no disposal value fell to be brought into account) would be applicable instead in accordance with section 76(2) and subsection (5) below,

sections 24, 25 and 26 (and, accordingly, subsections (1) to (3) of section 75) shall have effect as if the disposal value to be so brought into account were equal to the section 76(2) amount.

(3) Where—

- (a) a disposal value has fallen, in a case within sub-paragraphs (a) and (b) of subsection (2) above, to be brought into account under sections 24, 25 and 26 by reason of the sale, contract or assignment,
- (b) the machinery or plant in question falls to be treated as belonging, at a time after the event by reason of which that disposal value fell to be brought into account, to any person in consequence of his incurring any capital expenditure,
- (c) the allowances under this Part in respect of that capital expenditure are not restricted by subsection (1), (2) or (3) of section 75, and
- (d) the amount of that expenditure (“the actual amount”) exceeds the maximum allowable amount,

this Part shall have effect in relation to that expenditure as if it were expenditure of an amount equal to the maximum allowable amount.

(4) In subsection (3) above “the maximum allowable amount” means the sum of the following amounts—

- (a) the disposal value falling to be brought into account as mentioned in subsection (3)(a) above, and
- (b) so much of the actual amount of the expenditure as is equal to the amount included in that expenditure by virtue of section 66 (installation costs).

(5) In a case which—

- (a) falls within paragraphs (a) and (b) of subsection (2) above, but
- (b) is a case in which no disposal value falls to be brought into account as mentioned in the applicable subsection of section 75,

subsections (2) to (4) of section 76 shall have effect as if the amounts referred to in each of paragraphs (b) and (c) of section 76(2) were equal to the notional written-down value of the capital expenditure incurred by the person mentioned in that paragraph on the provision of the machinery or plant.

(6) Subsection (7) below applies where, in a case falling within paragraphs (a) and (b) of subsection (2) above—

- (a) the finance lease, or
- (b) any transaction or series of transactions of which it forms a part,

makes provision (otherwise than by means of guarantees from persons connected with the lessee) the effect of which (if the lessor and the persons connected with him are treated as the same person) is to remove the whole, or the greater part, of any non-

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compliance risk which (apart from that provision) would fall directly or indirectly on the lessor.

- (7) Where this subsection applies—
- (a) subsections (1), (2) and (3) of section 75 shall have effect as if (as well as excluding the making of a first-year allowance), they also required—
    - (i) the whole amount of the expenditure, and
    - (ii) any additional VAT liability incurred in respect of it,to be left out of account in determining the amount for any period of a person's qualifying expenditure under section 25; and
  - (b) subsections (2), (3) and (5) above shall not apply.
- (8) Where subsection (7) above applies in a case where the buyer, person entering into the contract or assignee is different from the lessor—
- (a) any capital expenditure incurred on the provision of the machinery or plant by the lessor, and
  - (b) any additional VAT liability incurred in respect of it,
- shall also be disregarded both for the purposes of determining the amount for any period of the lessor's qualifying expenditure under section 25 and for the purposes of any claim by the lessor to a first-year allowance.
- (9) In this section “the notional written-down value”, in relation to any expenditure incurred by a person on the provision of any machinery or plant, means the amount which, if—
- (a) the sale, contract or assignment were an event by reason of which a disposal value of that machinery or plant fell to be brought into account in that person's case, and
  - (b) the further assumptions set out in subsection (10) below were made in relation to that expenditure,
- would give rise to neither a balancing allowance nor a balancing charge for the chargeable period for which that disposal value would be brought into account in that person's case.
- (10) Those assumptions are—
- (a) that the person in question incurred the expenditure on the provision of the machinery or plant wholly and exclusively for the purposes of a trade carried on by him (until its deemed discontinuance) separately from any other trade or other activities carried on or assumed to be carried on by him;
  - (b) that that person was within the charge to tax in respect of that separate trade;
  - (c) that the expenditure was the only capital expenditure ever taken into account in respect of that trade in determining qualifying expenditure for the purposes of section 24;
  - (d) that the expenditure is to be treated in relation to that person as expenditure to which Chapter IVA of this Part applies if, but only if, it is expenditure falling in fact to be so treated apart from the preceding assumptions; and
  - (e) that there had been made to that person the full amount of every allowance to which, on the assumptions specified in paragraphs (a) to (c) above, that person was entitled in respect of that expenditure.
- (11) This section and sections 75 and 76 shall have effect in relation to machinery or plant where—

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- (a) it is directly or indirectly as a consequence of the machinery or plant having been leased under a finance lease that it is available for any use to which it is put, and
- (b) the machinery or plant has at any time been acquired by one public authority from another otherwise than by purchase,

as if the public authority from whom it was acquired were connected with the public authority that acquired it and with every person connected with the acquiring authority.

(12) In this section—

“deemed discontinuance”, in relation to the trade assumed under subsection (10) above in a case in which section 75(1), (2) or (3) applies or is treated as applying, means a permanent discontinuance of that trade at the time of the sale, of the performance of the contract or, as the case may be, of the assignment;

“non-compliance risk”, in relation to a finance lease, means a risk that a loss will be sustained by any person if payments under the lease are not made in accordance with its terms;

“non-trading activities” means any activities that do not constitute a trade; and

“public authority” includes the Crown or any government or local authority;

and (subject to subsection (11) above) references in this section to persons connected with each other shall be construed in accordance with section 839 of the principal Act.]

#### Textual Amendments

**F17** S. 76A inserted (with effect in accordance with s. 46(3) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [s. 46\(2\)](#) (with [s. 46\(3\)\(a\)-\(c\)](#))

## 77 Successions to trades: connected persons.

- (1) Where a person (in this subsection referred to as “the successor”) has succeeded to a trade which was until that time carried on by another person (in this subsection referred to as “the predecessor”) and the two persons are connected with each other within the terms of section 839 of the principal Act and the successor is not a dual resident investing company, those persons may by notice to the inspector elect that the provisions of this subsection shall have effect; and in that event—
  - (a) for the purpose of making allowances and charges under this Part, the trade shall not be treated as discontinued;
  - (b) allowances and charges shall be so made to or on the successor as if everything done to or by the predecessor had been done to or by the successor, but with no account being taken of the sale or transfer from the predecessor to the successor of any machinery or plant which was in use for the purposes of the trade at the time of the succession.
- (2) Subsection (1) above shall not apply in relation to successions occurring after the passing of the <sup>M1</sup>Finance Act 1988 (29th July 1988); and the requirement in that subsection that the successor must not be a dual resident investing company shall not apply if the successor began to carry on the trade before 1st April 1987.



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- (3) Where at any time after the passing of the Finance Act 1988 a person (referred to below as “the successor”) succeeds to a trade which was until that time carried on by another person (referred to below as “the predecessor”) and—
- (a) the two persons are connected with each other;
  - (b) each of them is within the charge to tax in the United Kingdom on the profits of the trade; and
  - (c) the successor is not a dual resident investing company,
- those persons may by notice given to the inspector not later than two years after that time, elect that the provisions of subsection (4) below shall have effect.
- (4) In the event of an election under subsection (3) above—
- (a) for the purpose of making allowances and charges under this Part, any machinery or plant which—
    - (i) immediately before the time when the succession took place, belonged to the predecessor and was in use for the purposes of the trade; and
    - (ii) immediately after that time, belonged to the successor and was in use for those purposes,shall (notwithstanding any actual sale or transfer) be treated as sold by the predecessor to the successor at a price which does not give rise to a balancing allowance or balancing charge; and
  - (b) allowances and charges shall be made under this Part to or on the successor as if everything done to or by the predecessor had been done to or by the successor.
- (5) For the purposes of subsection (3) above the predecessor and the successor are connected with each other if—
- (a) they are connected with each other within the terms of section 839 of the principal Act;
  - (b) one of them is a partnership and the other has the right to a share in that partnership;
  - (c) one of them is a body corporate and the other has control over that body;
  - (d) both of them are partnerships and some other person has the right to a share in both of them; or
  - (e) both of them are bodies corporate, or one of them is a partnership and the other is a body corporate, and (in either case) some other person has control over both of them.
- (6) In subsection (5) above “control” shall be construed in accordance with section 840 of the principal Act; and any reference to the right to a share in a partnership is a reference to the right to a share of the assets or income of that partnership.
- (7) All such assessments and adjustments of assessments shall be made as are necessary to give effect to subsections (3) and (4) above.
- (8) Sections [F1838G,] 41(5) and 78(1) shall not apply in any case where an election is made under subsection (3) above.

This subsection shall not apply in relation to successions occurring before 27th July 1989.

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### Textual Amendments

- F18** Word in s. 77(8) inserted (with application in accordance with Sch. 14 para. 10 of the amending Act) by [Finance Act 1997 \(c. 16\)](#), [Sch. 14 para. 9](#)

### Modifications etc. (not altering text)

- C1** S. 77(3) modified (for the year of assessment 1988-1989) by [S.I. 1991/851](#), [regs. 1, 9](#), [Sch.2](#).  
**C2** S. 77(3) modified (for the year of assessment 1989-1990) by [S.I. 1992/511](#), [regs. 1, 9](#), [Sch.2](#).  
**C3** S. 77(3) applied (with modifications) (for the year of assessment 1990–91) by [The Lloyd’s Underwriters \(Tax\) \(1990–91\) Regulations 1993 \(S.I. 1993/415\)](#), [reg. 9](#), [Sch.2](#)  
**C4** S. 77(3) modified (for the year of assessment 1991-92) by [The Lloyds Underwriters \(Tax\) \(1991-92\) Regulations 1994 \(S.I. 1994/728\)](#), [regs. 1\(1\), 9](#), [Sch. 2](#)  
**C5** S. 77(3) modified (for the years of assessment 1992-93 and 1993-94) by [The Lloyds Underwriters \(Tax\) \(1992–93 to 1996–97\) Regulations 1995 \(S.I. 1995/352\)](#), [regs. 1\(1\), 14\(1\)](#), [Sch.](#)  
**C6** S. 77(3) modified (for the year of assessment 1994-95) by [The Lloyds Underwriters \(Tax\) \(1992–93 to 1996–97\) Regulations 1995 \(S.I. 1995/352\)](#), [regs. 1\(1\), 15\(1\)](#), [Sch.](#)

### Marginal Citations

- M1** [1988 c. 39](#).

## 78 Succession to trades where no election made under section 77.

- (1) Where a person succeeds to any trade which until that time was carried on by another person and, by virtue of section 113 or 337(1) of the principal Act (changes in persons carrying on a trade, and special rules for corporation tax), the trade is to be treated as discontinued, any property which, immediately before the succession takes place, was either in use or provided and available for use for the purposes of the discontinued trade and, without being sold, is, immediately after the succession takes place, either in use or provided and available for use for the purposes of the new trade shall, for the purposes of this Part be treated as if—

- (a) it had been sold to the successor when the succession takes place, and
- (b) the net proceeds of the sale had been the price which that property would have fetched if sold in the open market;

but no first-year allowance shall be made by virtue of this subsection.

- (2) Where a person succeeds to a trade as a beneficiary under the will or on the intestacy of a deceased person who carried on that trade and the beneficiary by notice to the inspector so elects, then, in relation to any machinery or plant which passes to him together with the trade, being machinery or plant—

- (a) previously owned by the deceased person, and
- (b) either used or provided and available for use by him for the purposes of that trade,

the reference in subsection (1) above to the price which the machinery or plant would have fetched if sold in the open market shall, in relation to the succession and any previous succession occurring on or after the death of the deceased, be deemed to be a reference to that price or, if it is less than that price, any excess of qualifying expenditure over disposal value which would have been taken into account under sections 24, 25 and 26 for making an allowance for the chargeable period related to the permanent discontinuance of the deceased person’s trade if the machinery or plant had had no disposal value.

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[<sup>F19</sup>(2A) Where the disposal value of any machinery or plant in relation to which an election under subsection (2) above has effect falls to be ascertained in accordance with section 26, that section shall apply as if the person mentioned in subsection (2) of that section were the deceased.]

- (3) This subsection has effect as respects any allowance under this Part, other than a balancing allowance.

Where, after the setting up and before the permanent discontinuance of a trade which at any time is carried on in partnership, anything is done for the purposes thereof, any such allowance which, if the trade had at all times been carried on by one and the same person, would have fallen to be made to him shall be made to the person or persons from time to time carrying on that trade, and the amount of any such allowance shall be computed as if that person or those persons had at all times been carrying on the trade, and as if everything done to or by his or their predecessors in the carrying on thereof had been done to or by him or them.

- (4) Where, after the setting up and on or before the permanent discontinuance of a trade which at any time is carried on in partnership, any event occurs which gives rise or may give rise to a balancing allowance or balancing charge under this Part in respect of machinery or plant, any balancing allowance or balancing charge which, if the trade had at all times been carried on by one and the same person, would have fallen to be made to or on him in respect of that machinery or plant by reason of that event shall be made to or on the person or persons carrying on the trade at the time of that event, and the amount of any such allowance or charge shall be computed as if that person or those persons had at all times been carrying on the trade and as if everything done to or by his or their predecessors in the carrying on thereof had been done to or by him or them.
- (5) Notwithstanding section 27(1), this section shall not apply to any employment or office.

#### Textual Amendments

**F19** S. 78(2A) inserted by [Finance Act 1990 \(c. 29\)](#), s. 88, **Sch. 13 para. 3(1)(2)**

## 79 Effect of use partly for trade etc. and partly for other purposes.

- (1) A first-year allowance may be made to a person in respect of any machinery or plant notwithstanding that it appears that the provision of the machinery or plant is partly for purposes other than those of a trade carried on by him; but the allowance in any such case shall be so much only of the allowance that would fall to be made if the provision of the machinery or plant were wholly and exclusively for the purposes of the trade as may be just and reasonable having regard to all the relevant circumstances of the case and, in particular, to the extent to which it appears that the machinery or plant is likely to be used for those other purposes.
- (2) Where a person carrying on a trade incurs capital expenditure on the provision of machinery or plant partly for the purposes of a trade (in subsections (4) to (6) below referred to as “the actual trade”) and partly for other purposes, it shall be assumed for the purposes of sections 24, 25 and 26 that he incurred the expenditure on the provision of the machinery or plant wholly and exclusively for the purposes of a trade

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(in subsections (4) to (6) below referred to as “the notional trade”) carried on by him separately from the actual trade and any other trade carried on him.

- (3) If, for any chargeable period, a person who has incurred expenditure on the provision of machinery or plant for the purposes of a trade (in subsections (4) to (6) below referred to as “the actual trade”) is required to bring the disposal value of the machinery or plant into account by reason of it beginning in that chargeable period <sup>F3</sup>... to be used partly, but not wholly, for purposes other than those of the actual trade, it shall be assumed for the purposes of sections 24, 25 and 26 that, immediately after the beginning of that chargeable period <sup>F3</sup>... , he incurs capital expenditure equal to that disposal value on the provision of the machinery or plant wholly and exclusively for the purposes of a trade (in subsections (4) to (6) below referred to as “the notional trade”) carried on by him separately from the actual trade and any other trade carried on by him.
- (4) Without prejudice to section 24(6)(c)(i) to (iii), it shall be assumed for the purposes of that section that the notional trade is permanently discontinued on the machinery or plant beginning to be used wholly for purposes other than those of the actual trade.
- (5) The allowance or charge under section 24 which, on the above assumptions, and having regard to subsection (6) below, would fall to be made for any chargeable period in the case of the notional trade—
- (a) shall be reduced to such extent as may be just and reasonable having regard to all the relevant circumstances of the case and, in particular, to the extent to which the machinery or plant was used in that chargeable period <sup>F3</sup>... otherwise than for the purposes of the actual trade; and
  - (b) shall, as so reduced, be made for that chargeable period in the case of the actual trade.
- (6) If an allowance under section 24 falling to be made by virtue of this section for any chargeable period in the case of the actual trade is not claimed <sup>F20</sup>... , or is reduced in amount in accordance with a requirement under subsection (3) <sup>F20</sup>... of that section then, in determining the allowance or charge under that section which would fall to be made for any subsequent chargeable period in the case of the notional trade, any allowance falling to be made in the case of that trade for the first-mentioned chargeable period shall be treated as not claimed <sup>F20</sup>... or, as the case may require, as proportionately reduced.

#### Textual Amendments

**F3** Words in Act repealed (with effect in accordance with s. 211(2) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 213\(1\), Sch. 26 Pt. 5\(24\)](#)

**F20** Words repealed by [Finance Act 1990 \(c. 29\), ss. 103\(1\)\(2\), 132, Sch. 17 para. 14, Sch. 19 Pt. V](#), Note 6

## 80 Effect of subsidies towards wear and tear.

- (1) If it appears that, during the period during which any machinery or plant will be used by a person for the purposes of his trade, sums which—
- (a) are in respect of, or take account of, the wear and tear to the machinery or plant occasioned by its use for those purposes, and

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- (b) do not fall to be taken into account as income of that person, or in computing the profits or gains of any trade carried on by him,
- are, or are to be, payable to that person directly or indirectly by the Crown, or by any government or public or local authority (whether in the United Kingdom or elsewhere), or by any other person, then, unless those sums are in respect of, or take account of, part only of that wear and tear, any expenditure incurred by the first-mentioned person in providing the machinery or plant shall be wholly disregarded for the purposes of this Part.
- (2) Where subsection (1) above would apply to a person's expenditure on the provision of machinery or plant but for the fact that the sums there referred to are in respect of, or take account of, part only of the wear and tear to the machinery or plant, a first-year allowance may be made in respect of the expenditure, but the amount thereof shall be reduced to such extent as may be just and reasonable having regard to all the relevant circumstances of the case.
- (3) Where sums within subsection (1) above are paid as mentioned in that subsection to a person carrying on a trade, but are in respect of, or take account of, part only of the wear and tear to the machinery or plant in respect of which they are paid, subsections (4) to (6) below shall have effect with respect to the allowances and charges to be made in the case of the trade ("the actual trade") under section 24.
- (4) If an allowance has been made under section 24 for a chargeable period prior to the relevant period, the machinery or plant shall be treated for the purposes of that section as having begun to be used wholly for purposes other than those of the actual trade immediately after the beginning of the relevant period.
- (5) Whether or not subsection (4) above applies—
- (a) it shall be assumed for the purposes of section 24—
- (i) that (with section 81 applying where appropriate) immediately after the beginning of the relevant period, capital expenditure was incurred on providing the machinery or plant wholly and exclusively for the purposes of a trade ("the notional trade") carried on by the person carrying on the actual trade separately from that and any other trade carried on by him,
- (ii) that from then until the notional trade is treated by virtue of subparagraph (iii) below as permanently discontinued no sums within subsection (1) above are paid in respect thereof to the person carrying on that trade, and
- (iii) that without prejudice to section 24(6)(c)(i) to (iii), the notional trade is permanently discontinued on the machinery or plant beginning to be used wholly or partly for purposes other than those of the actual trade; and
- (b) the allowance or charge under section 24 which, on the assumptions set out in paragraph (a) above and having regard to subsection (6) below, would fall to be made for any chargeable period in the case of the notional trade—
- (i) shall be reduced to such extent as may be just and reasonable having regard to all the relevant circumstances of the case, and
- (ii) shall, as so reduced, be made for that chargeable period in the case of the actual trade.
- (6) If an allowance under section 24 falling by virtue of this section to be made for any chargeable period in the case of the actual trade is not claimed <sup>F21</sup>... , or is reduced

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in amount in accordance with a requirement under subsection (3) <sup>F21</sup>... of that section then, in determining the allowance or charge under that section which would fall to be made for any subsequent chargeable period in the case of the notional trade, any allowance falling to be made in the case of that trade for the first-mentioned chargeable period shall be treated as not claimed <sup>F21</sup>... or, as the case may require, as proportionately reduced.

- (7) In subsections (4) and (5) above “the relevant period” means the chargeable period in which or, as the case may be, in the basis period for which the first sum is paid as mentioned in subsection (1) above in respect of the machinery or plant in question.

#### Textual Amendments

**F21** Words repealed by Finance Act 1990 (c. 29), ss. 103(1)(2), 132, Sch. 17 para. 15, Sch. 19 Pt. V, Note 6

### 81 Effect of use after user not attracting capital allowances, or after receipt by way of gift.

- (1) Subject to section 63, where a person—
- (a) brings into use for the purposes of a trade carried on by him machinery or plant which belongs to him in consequence of his having incurred capital expenditure on its provision, for purposes which were such that that expenditure has not been taken into account in computing any allowance falling to be made in the case of the trade under this Part, or
  - (b) brings into use for the purposes of a trade carried on by him machinery or plant which belongs to him in consequence of a disposition by way of gift,
- sections 24, 25 and 26 shall have effect as if that person had incurred capital expenditure on the provision of the machinery or plant for the purposes of the trade in the chargeable period related to its bringing into use for those purposes, the amount of that expenditure being taken as the price which the machinery or plant would have fetched if sold in the open market on the date when it was so brought into use, and the machinery or plant being treated as belonging to that person in consequence of his having incurred that expenditure.

<sup>F22</sup>[(1A) Subject to section 63, in a case falling within subsection (1)(a) or (b) above, the assumptions applied by that subsection in relation to sections 24 to 26—

- (a) shall apply in relation to section 22 as they apply in relation to those sections but only for the purposes of first-year allowances by virtue of section 22(3B); and
  - (b) where those assumptions require any person to be treated as having incurred expenditure in a chargeable period related to any event, shall apply for those purposes as if they required that person to be treated as having incurred that expenditure on the date of that event.]
- (2) Where subsection (1) above applies, the question whether the provision of the machinery or plant is to be taken to be wholly and exclusively or only partly for the purposes of the trade shall be determined according to whether the use referred to in paragraph (a) or, as the case may be, (b) of that subsection is wholly and exclusively or only partly for those purposes.

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- <sup>F23</sup>[(2A) Where a person is treated as having incurred capital expenditure on the provision of machinery or plant by virtue of subsection (1)(a) above, he shall be treated for the purposes of section 75(1), as it has effect in relation to first-year allowances by virtue of section 22(3B), as having done so by way of purchase from a person connected with him.]
- (3) Where a person is treated as having incurred capital expenditure on the provision of machinery or plant by virtue of subsection (1)(b) above, he shall for the purposes of section 75 be treated as having done so by way of purchase from the donor.
- (4) This section shall have effect in any case where the machinery or plant in question was brought into use before 27th July 1989—
- (a) with the addition at the end of subsection (1)(b) of the words “by reason of which the donor was required by virtue of section 24(6) to bring into account for the purposes there mentioned a disposal value equal to the price which the machinery or plant would have fetched if sold in the open market at the time of the gift”, and
- (b) with the omission of subsection (3).

#### Textual Amendments

**F22** S. 81(1A) inserted (27.7.1993 with effect as mentioned in s. 115(5) of the amending Act) by 1993 c. 34, s. 115, **Sch. 13 para. 12(1)**

**F23** S. 81(2A) inserted (27.7.1993 with effect as mentioned in Sch. 13 para. 12(3) of the amending Act) by 1993 c. 34, s. 115, **Sch. 13 para. 12(2)(3)**

## 82 Capital expenditure to which this Part does not apply.

[<sup>F24</sup>(1)] This Part shall not apply to capital expenditure—

- (a) which was not eligible expenditure within the meaning of section 39 of the <sup>M2</sup>Finance Act 1976 (which brought expenditure previously not within Chapter I of Part III of the <sup>M3</sup>Finance Act 1971 within that Chapter but with certain exceptions), and
- (b) which was incurred in a chargeable period [<sup>F25</sup>or its basis period] ending before 6th April 1976,

and the repeals made by this Act shall not have effect in relation to any such expenditure.

[<sup>F26</sup>(2)] This Part shall not apply to capital expenditure—

- (a) on animals or other creatures to which Schedule 5 to the principal Act (treatment of farm animals etc for purposes of Case I of Schedule D) applies; or
- (b) on shares in such animals or creatures.]

#### Textual Amendments

**F24** S. 82 renumbered as s. 82(1) (retrospectively) by Finance Act 2000 (c. 17), s. 76(1)(3)

**F25** Words in Act ceased to have effect (with effect in accordance with s. 211(2) of the amending Act) by Finance Act 1994 (c. 9), s. 213(1)

**F26** S. 82(2) inserted (retrospectively) by Finance Act 2000 (c. 17), s. 76(1)(3)

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### Marginal Citations

M2 1976 c. 40.

M3 1971 c. 68.

## [<sup>F27</sup> 82A Meaning of “finance lease”.

- (1) In this Part “finance lease” means any arrangements which—
- (a) provide for machinery or plant to be leased or otherwise made available by a person (“the lessor”) to another (“the lessee”); and
  - (b) are such that, in cases where the lessor and persons connected with the lessor are all UK companies—
    - (i) the arrangements, or
    - (ii) arrangements in which they are comprised,
 fall, in accordance with normal accountancy practice, to be treated in the accounts of one or more of those companies as a finance lease or as a loan.
- (2) In this section—
- “accounts”, in relation to a company, includes any consolidated group accounts relating to two or more companies of which that company is one;
- “consolidated group accounts” means accounts prepared in accordance with—
- (a) section 227 of the Companies Act 1985, or
  - (b) Article 235 of the Companies (Northern Ireland) Order 1986;
- and
- “UK company” means a company incorporated in a part of the United Kingdom;
- and references in this section to persons connected with each other shall be construed in accordance with section 839 of the principal Act.]

### Textual Amendments

**F27** S. 82A inserted (with effect in accordance with s. 47(2) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\), s. 47\(1\)](#)

## 83 Other interpretative provisions.

- (1) In this Part, except where the context otherwise requires—
- “income” includes any amount on which a charge to tax is authorised to be made under this Part;
- “mineral exploration and access” and “trade of mineral extraction” have the same meaning as in section 121;
- “motor car” has the meaning given by section 36;
- “new” (except in the expression “new expenditure”) means unused and not second-hand.
- (2) For the purposes of this Part, any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated as if it had been incurred by him on the first day on which he does carry it on.



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- (3) Any reference in this Part to an allowance or charge is a reference to such an allowance or charge under this Part and a reference to an allowance made or postponed under this Part includes, so far as the context permits, a reference to an allowance relating to expenditure in respect of machinery or plant (or anything treated as machinery or plant) made or postponed under any enactment repealed by this Act or by any other Act, notwithstanding that this Act does not re-enact that repealed enactment.
- (4) The provisions of this Part, and the provisions applying for the purposes of this Part, shall apply in relation to a share in machinery or plant as they apply in relation to a part of machinery or plant; and for the purposes of those provisions, a share in machinery or plant shall be deemed to be used for the purposes of a trade so long as, and only so long as, the machinery or plant is used for those purposes.
- (5) This Part has effect subject to section 577(1)(c) of the principal Act (under which the use of an asset for providing business entertainment is not to be treated as use for the purposes of a trade).
- (6) For the purposes of this Part, where a person is carrying on a trade of mineral extraction, expenditure incurred by him in connection with that trade on the provision of machinery or plant for mineral exploration and access shall be taken to be incurred on the provision of the machinery or plant wholly and exclusively for the purposes of that trade.
- [<sup>F28</sup>(7) Schedule AA1 (which excludes certain expenditure from the expression “expenditure on the provision of machinery or plant”) shall have effect.]

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**Textual Amendments**

- F28** S. 83(7) added (with effect in accordance with s. 117(2) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 117\(1\)](#)

**Status:**

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**Changes to legislation:**

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