



# Capital allowances for fixtures

## **Consultation document**

Publication date: 31 May 2011

Closing date for comments: 31 August 2011

**Subject of this consultation:**

This consultation is about the rules for capital allowances on fixtures.

At Budget 2011, the Government announced that it would consult on introducing a requirement, in Finance Bill 2012, that businesses must pool their expenditure on fixtures in a building, within a short period of acquiring the building, in order to qualify for allowances (the 'mandatory pooling' proposal).

This consultation document contains detailed proposals for implementing this policy, including related administrative requirements. The proposals are aimed at preventing allowances from being given more than once on the original cost of a fixture.

The Government wishes to consult about these proposals in the wider context of the fixtures rules more generally, and respondents should feel free to comment on ways in which those rules should be improved.

**Scope of this consultation:**

The Government welcomes views on the appropriate length of time businesses should be allowed to pool their expenditure on fixtures, as well as on other matters, such as the expected impact of these proposals on businesses and on the property sector. More generally, the Government would also welcome views on the other ways of improving the capital allowances fixtures regime outlined in this document (see Chapter 3) including any alternative suggestions for improvements.

**Who should read this:**

Businesses likely to be involved in buying, selling or leasing property containing fixtures that qualify for plant or machinery allowances and their professional advisers. Also, representative bodies, such as bodies representing smaller businesses or the property sector.

**Duration:**

This consultation starts on 31 May and ends on 31 August 2011.

**Enquiries:**

Enquiries about the content or scope of the consultation, requests for hard copies etc., should be addressed to Hasmukh Haria at the postal or email address below.

**How to respond:**

Any comments should be sent to: Hasmukh Haria, HM Revenue and Customs, CTIAA CT and Business Income Tax, Room 3C/15, 100 Parliament Street, London SW1A 2BQ.  
Email: [hasmukh.haria@hmrc.gsi.gov.uk](mailto:hasmukh.haria@hmrc.gsi.gov.uk). Telephone: 020 7147 2610.

**Additional ways to be involved:**

HMRC intends to convene a small working group of interested parties (possibly from bodies representing smaller businesses and the property sector and including tax advisers) in order to discuss the details of these proposals and their potential impacts. It is planned that the group will meet both during the consultation process and subsequently. If you would like to be part of this group or to engage in a bilateral discussion, please contact Hasmukh Haria at the postal or email address above.

**After the consultation:**

A summary of responses will be published after the close of the consultation. Draft legislation to give effect to changes that the Government decides to make in the light of the consultation will be published for comment later in 2011 and included in Finance Bill 2012.

**Getting to this stage:**

This review of capital allowances for fixtures is being carried out because of an awareness of defects in the current rules, which are being used in a way that undermines the policy purpose of the legislation. These defects allow tax to be avoided by (a) the obtaining of allowances on more than the original cost of fixtures and (b) through the acceleration of allowances on fixtures - both contrary to the policy intent.

**Previous engagement:**

This is the first consultation on the rules about capital allowances for fixtures under this Government.

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**On request this document can be produced in Welsh and alternative formats including large print, audio and Braille formats**

# 1. Introduction

## Aim of the consultation

- 1.1 The aim of this consultation is to seek views on the Government's proposals for amending the current rules on capital allowances for fixtures, in order to make the rules work as intended. We are currently at Stage 2 of the Consultation Process (described further at Chapter 6).
- 1.2 The main proposals (see Chapter 3) are intended to ensure that the fixture rules secure their original policy purpose of limiting allowances overall to the fixture's original cost, thereby preventing allowances from being given more than once on the same fixture.
- 1.3 The Government has decided to act now to protect the Exchequer and to make the rules fairer and clearer for businesses to understand and to operate, without giving rise to disproportionate administrative burdens.

## Policy intention

- 1.4 Since 1985, when the special capital allowances rules for fixtures were first introduced, the underlying policy has been that expenditure on a qualifying fixture should be written-off against taxable profits only once over its economic life.

## Current rules

- 1.5 Thus, where a building containing second hand fixtures is sold, the capital allowances rules require that the cost of the fixtures on which the new owner is entitled to claim capital allowances, must not exceed the disposal value that the previous owner is required to bring into account for those fixtures in their capital allowances computation. This is achieved through a 'balancing adjustment' mechanism<sup>1</sup>.
- 1.6 The normal rules provide that a 'just and reasonable' apportionment<sup>2</sup> should be made in order to determine the part of the sale price of a property attributable to fixtures. However, valuation is not, of course, a precise science, so different people, left to their own devices, are likely to come up with somewhat different values when making an apportionment calculation. Where both parties to a sale are taxpayers, there should be a natural tension between the seller and the purchaser when they come to apportion part of the total sale price of the

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<sup>1</sup> For example, if capital allowances totalling at £75 have been deducted from original expenditure of £100 on a fixture, so that the unrelieved balance in the capital allowances pool is £25, and the fixture is then sold for an agreed price of £50, those sale proceeds are deducted from the seller's pool, giving rise to a balancing charge of £25 (£25 - £50 = -£25). This balancing adjustment will mean that the seller has had allowances of £50 (£75 - £25) and the purchaser can have allowances on the price paid of £50, so that no more than the original £100 of expenditure should be relieved overall.

<sup>2</sup> Section 562, Capital Allowances Act (CAA) 2001.

property to the fixtures, in order to agree the fixtures' sale value. Normally, the seller will want the value of the fixtures to be low, so that he can claim further allowances (rather than incur a potential balancing charge on disposal). Conversely, the purchaser will want the apportioned value to be high, so that he can claim more allowances against his profits in the coming years. Where agreement cannot be reached, the legislation provides a statutory mechanism<sup>3</sup> to determine a single value *via* the First Tier Tax Tribunal.

### **The problem: absence of an agreed sale value**

- 1.7 In practice, however, sellers and purchasers (perhaps especially when both are smaller, unrepresented businesses) may neglect to agree a single disposal/acquisition value as the part of the sale price that should be apportioned to the fixtures, and may insert quite different values for the same fixtures in their respective capital allowances pools and calculations. This practice is not in accordance with the legislation.
- 1.8 In addition, there is no time limit on when expenditure on plant or machinery, including fixtures, needs to be pooled: qualifying expenditure may be pooled at any time, provided the asset is still owned and used in the business. This means that expenditure on fixtures can be pooled some years after the fixtures were acquired.
- 1.9 This facility to make 'late' claims, several years after a property acquisition - at a time when there is likely to be a dearth of relevant information about the previous owner – has led to an increase in some specialist capital allowances advisers encouraging the owners of second hand fixtures to make substantial late fixtures claims. In some cases, it appears highly likely that the previous owner would have claimed allowances on the fixtures, and that (perhaps because of the age of the fixtures) the bulk of the expenditure would most probably have been written-off already.
- 1.10 HMRC's view of the law is that it is the responsibility of the taxpayer to obtain and provide details of the disposal value that the past owner brought into account<sup>4</sup>. Where, however, the past owner's relevant tax year is settled, and he does not respond to communications, or indeed, where the previous owner has ceased to exist, there can clearly be very difficult problems of evidence for all concerned.
- 1.11 If, therefore, these problems around late claims and the issues of proof are left unresolved, the result will be a continuing lack of clarity about how the regime should operate, and an uneven playing field (with a duplication of allowances for some but not all). This has the potential to produce a significant tax loss for the Exchequer, contrary to the policy intent.

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<sup>3</sup> Under section 563 CAA 2001.

<sup>4</sup> See Capital Allowances Manual at CA26400.

## The proposals

- 1.12 To provide greater certainty for all parties, the Government is currently considering the following proposals: –
- (i) a requirement that businesses must pool their expenditure on fixtures within a short period after acquisition, in order to qualify for capital allowances;
  - (ii) a related, administrative requirement that, in order to qualify for capital allowances, the purchaser of a second hand building must agree with the seller the amount of the sale price attributable to the fixtures, and that both the purchaser and the seller should record and formally notify this to HMRC within a similar timescale.

## Other problem areas: dealing in tax attributes and the acceleration of allowances

- 1.13 Other problem areas where the legislation does not appear to deliver its policy intentions are –
- the rules (s.198 CAA 2001) can be used to retain allowances in the hands of the seller, when the asset has been transferred to the purchaser and
  - the anti-avoidance rule in section 197 CAA 2001 may not always be effective in preventing the acceleration of allowances.

## Suggestions for improvements

- 1.14 Options to address these problems could include –
- changes that would ensure that allowances yet to be claimed (unrelieved expenditure) transfer with the asset and
  - improvements to the anti-avoidance rule to prevent the acceleration of capital allowances on fixtures, by artificial arrangements that are not in keeping with the policy intention of the legislation.
- 1.15 These various proposals and suggestions are discussed in more detail in Chapter 3.

## Scope of the consultation

- 1.16 The Government intends to take forward its proposals (i) and (ii) to require expenditure on fixtures to be pooled within a reasonably short period of acquisition in order to qualify for capital allowances, and to require notification of the part of the sale value apportioned to the fixtures within a similar timescale. Proposal (ii) is intended as a companion measure to proposal (i) and should help to ensure that, in future, the regime operates as was always intended. The Government would, however, welcome views on the appropriate length of the period for pooling expenditure and on other matters, such as the expected impact of these proposals on businesses and the property sector.

1.17 More generally, the Government would also welcome views on the other problem areas outlined at paragraph 1.13 above, and on the initial suggestions regarding possible improvements, mentioned at paragraph 1.14 (and discussed in more detail in Chapter 3). Alternatively, respondents should feel free to comment on other ways in which the rules might be improved to ensure that they deliver their original policy intentions.

### **Duration of consultation and later stages**

1.18 This consultation will end on 31 August 2011. A summary of responses will be published later this year. It is intended that legislation to implement decisions made in the light of the consultation responses will be produced in draft for scrutiny towards the end of the year.

## 2. Capital allowances and fixtures

### Capital allowances

- 2.1 Capital allowances provide tax relief for the depreciation of certain capital assets, principally plant or machinery, including most fixtures in a building used by a business. These allowances are calculated as a percentage of the capital expenditure incurred, and are deducted from the income or profit of the business.
- 2.2 The main plant or machinery allowances (PMAs) are the Annual Investment Allowance (AIA) and writing-down allowances (WDAs). The AIA is effectively a 100% allowance that is available to businesses, regardless of size, and covers most plant or machinery expenditure up to a maximum amount of £100,000 a year currently. This limit is set to reduce to £25,000 a year from April 2012. Any expenditure not covered by the AIA qualifies for WDAs, at either the main rate, currently 20% p.a., or the special rate, currently 10% p.a., depending on the nature of the asset acquired. These rates are set to reduce to 18% p.a. and 8% p.a. respectively, from April 2012.
- 2.3 The lower, special rate of WDAs generally applies to assets which have, on average, a longer economic life than the generality of other plant or machinery. Special rate expenditure includes expenditure on 'long-life assets' (assets with an expected economic life of at least 25-years) and a special classification of 'integral features' of a building<sup>5</sup>. This classification specifically covers the major building fixtures (in terms of overall cost), that is, electrical, hot and cold water systems, air conditioning and heating systems, escalators and lifts.

### Fixtures

- 2.4 A fixture is an asset which is installed or fixed to the land so as to become part of the land or building in property law<sup>6</sup>. Examples are water pipes, electrical wiring, air conditioning, lifts, washbasins and fitted kitchens. Many such fixtures can qualify for capital allowances as machinery or plant, depending on the nature of the trade, so that PMAs are available in the form of the AIA and/or WDAs. The bulk of expenditure on fixtures incurred after April 2008 (when the integral features classification was first introduced) is likely to comprise special rate expenditure, qualifying for WDAs at 10% p.a. (reducing to 8% p.a. from April 2012).
- 2.5 Capital allowances on plant or machinery are normally only given to a person who has paid for and owns the asset. In 1984, the Courts decided that the ownership rule limits capital allowances on fixtures to the freeholder of the building<sup>7</sup>. That would have taken allowances away altogether where the cost is

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<sup>5</sup> S.33A of CAA.

<sup>6</sup> S.173 CAA.

<sup>7</sup> *Stokes v Costain Property Investments Ltd (57 TC 688)*

met by the tenant. The Government of the day therefore introduced legislation in 1985 to allow tenants, and also equipment lessors, to claim PMAs on fixtures. This fixtures legislation is now to be found in Chapter 14 of Part 2 of the Capital Allowances Act (CAA) 2001 (the relevant statutory provisions are reproduced at Annex B).

## Policy purpose

- 2.6 From the introduction of the fixtures rules in 1985, the policy intention has been to limit the capital allowances that can be given on fixtures to the lower of the original cost or the last disposal value, if any, which has been brought into account by any previous owner of the fixtures.

## Current legislation

- 2.7 There is a logical symmetry within the capital allowances legislation to ensure that capital expenditure on a qualifying fixture within a building, should be written off once and once only during that asset's useful economic life.
- 2.8 Thus, when a person acquires a qualifying fixture, the acquisition cost is added to the relevant "pool" of qualifying expenditure and annual writing-down allowances, at the appropriate rate, are deducted from that pool. Then, if that person sells that item, the disposal proceeds are deducted from the pool of unrelieved expenditure. This brings the allowances given into line with the actual depreciation suffered, as measured by the disposal proceeds/market value of the asset at that time. The purchaser can then begin to claim capital allowances on the price he paid, without any duplication of allowances on the asset in question.
- 2.9 To prevent double allowances in relation to fixtures and to achieve the symmetry just mentioned, the Capital Allowances Act 2001 includes the following provisions:
- **Section 62** limits the disposal value in respect of plant or machinery to the qualifying expenditure incurred on its provision, and
  - **Section 185** provides that where the current owner has acquired a fixture from a past owner, and that past owner is or has been required to bring the disposal value of that plant or machinery into account, the current owner's qualifying expenditure shall not exceed the past owner's disposal value.
- 2.10 In short, capital expenditure on a fixture should be written off once only, over that asset's useful economic life and, to this end, the purchaser's acquisition cost should equal the vendor's disposal value for capital allowances purposes.

## Difficulties in operation

- 2.11 However, the legislation currently allows expenditure on fixtures to be pooled at any time, provided the fixture is still owned and used in the business<sup>8</sup>. This facility, to pool expenditure at any time, has led to a growth in late fixtures claims from the owners of second-hand buildings (typically, medium-sized hotels, nursing homes and pubs, that is, businesses that are ‘fixtures heavy’), a number of years after the building was purchased. The owners argue that they are not bound by the value they originally pooled in respect of fixtures<sup>9</sup>, and/or that there may be significant expenditure on certain fixtures that has not previously been pooled at all.
- 2.12 After a lapse of several years, the seller’s business may no longer exist (for example, a company may have gone into liquidation), or HMRC may no longer be able to raise an enquiry within the normal time limits. This often means that the fixtures on which the seller claimed allowances, and the proportion of their cost that has already benefited from relief, can no longer be established. Also, if the seller’s tax affairs for the year of sale have been settled, the mechanism to ensure agreement of a single value (section 563 of the Capital Allowances Act (CAA) 2001) can no longer be invoked – [because that mechanism requires that the valuation is, at the relevant time, material to the tax liability of both parties].
- 2.13 It is therefore not clear to what extent current owners pursue previous owners for the necessary information, or simply assume that it is pointless to do so, with the consequence that this aspect of the law may effectively be being ignored.
- 2.14 From HMRC’s perspective, we may not be able to establish the disposal value used by the seller and the extent of his fixtures claim, if the need to do so occurs a number of years after the event. As a result, we may be unable to disprove an assertion by a current owner or his specialist advisers that capital allowances have not previously been claimed.
- 2.15 These difficulties of proof, and in operating the legislation correctly, are, of course, the background to the Government’s wish to improve the legislation and to the proposals for doing so described in the next chapter.

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<sup>8</sup> Section 11, CAA 2001.

<sup>9</sup> For example, because that value did not represent a ‘just and reasonable’ apportionment of the property sale value, as required by section 562, CAA 2001 (but without apparently taking into account the absolute limits of original cost or the last disposal value brought into account by the previous owner, as required by s.62 or s.185 CAA 2001, respectively).

## 3. Proposals

- 3.1 This chapter sets out the changes that the Government seeks to make to the capital allowances rules for fixtures. As summarised in Chapter 1, these changes are being proposed to make the legislation fairer, easier to operate and understand, while offering improved Exchequer protection, but without giving rise to disproportionate administrative burdens.

### (i) Main proposal: mandatory pooling

- 3.2 As announced at Budget 2011, the Government's main proposal in relation to capital allowances for fixtures is that businesses must pool their expenditure on fixtures within a reasonably short period after acquisition, in order to qualify for capital allowances.
- 3.3 This proposed new requirement would prevent 'late' claims, several years after an acquisition, by which time it is often practically impossible to determine the disposal value which the previous claimant brought into account for the fixtures. This disposal value is, of course, the statutory cap on the current owner's acquisition cost, so the lapse of time can prevent the legislation from operating as intended. Conversely, mandatory pooling within a short period would make it much easier to ensure that the purchaser's acquisition value equates to the seller's disposal value, so that tax relief is given only once. Also, if a single value has not already been voluntarily agreed by the seller and purchaser, the existing tribunal mechanism<sup>10</sup> may be invoked in current cases, where the issue is still material to both parties<sup>11</sup>, in order to determine an appropriate, single valuation.
- 3.4 Under this proposal, purchasers would notify HMRC of pooling through the existing corporation tax and income tax self assessment processes, which require the submission of capital allowances computations, so there would be no additional administrative burden. The mandatory time period would be measured from the date of acquisition to the date of notification to HMRC.

### Time limit for pooling

- 3.5 Clearly, a short period, such as **one year** from acquisition, would help ensure that a single agreed amount of the sale price represented both the seller's disposal value and the purchaser's acquisition cost in respect of the fixtures. Within such a short interval, it is most probable that the seller would still be contactable and that he will not have submitted a tax return, or if he has, that HMRC will still be able to raise an enquiry within the normal time limits. Thus, if

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<sup>10</sup> Section 563, CAA2001.

<sup>11</sup> The tribunal mechanism requires that the issue is material to both parties. This generally means that it cannot be used several years after a sale, when the seller's tax affairs for the year in question are most likely to have been settled, or the seller may, in fact, no longer exist (for example the company may have gone into liquidation).

a single value had not been agreed at the actual date of sale or transfer (as part of the sale agreement), it would still be possible to agree one. On the other hand, if the period from acquisition were too short, the purchaser might have omitted to fix this aspect of the agreement within the allotted period, and his entitlement to allowances could be lost. If necessary, a slightly longer period of up to **2-years** might be an option.

- 3.6 The shorter the time limit the easier the fit of the new rule with the normal time limits for filing and enquiring into a tax return, so a one-year time limit would be the easiest for HMRC to operate. However, a longer limit of up to 2-years, would still fit with the normal timings for returns, as the following example shows:

### Example

If the mandatory pooling period were, say, 2-years:

Company **A**, which has a calendar year accounting period (AP), sells a property with fixtures to Company **B** on 30/11/12, that is, in its AP ending on 31/12/12.

**A**'s normal date for filing its tax return for this period is on or before 31/12/13 (i.e. a year after the end of its AP).

However, **A** decides to file its return early on 30/6/13. The time limit for raising an enquiry is normally one year after that date, so, in this case, it would normally be 30/6/14. However, the legislation also requires **A** to tell HMRC of any amendment that would mean its return was no longer correct, in order that **A**'s tax liability can be adjusted, within one year of its normal filing date, which in this example would be by 31/12/14.

So, as long as **B** agrees a single sale value for the fixtures with **A** within 2-years of the sale, so that **B** can pool this value before 30/11/14 (i.e. within 2-years of the property acquisition) and **A** can bring this disposal value into his capital allowances computation by 31/12/14, a 2-year pooling period appears to fit quite well with the normal time limits for filing and enquiring into a tax return.

**Note:** *This example also illustrates that any period longer than 2-years would not fit with the normal time limits for filing returns and so would appear to be impractical.*

### Types of expenditure on fixtures

- 3.7 For present purposes, four types of expenditure on fixtures can be identified, namely, expenditure on:
- Second hand fixtures – where the previous owner of the building claimed capital allowances;

- Second-hand fixtures – where the previous owner did not claim capital allowances;
- New fixtures – purchased by the current owner and
- ‘Historic’ fixtures – that is, where the expenditure was incurred before the introduction of any changes to the current regime, where the fixtures are still owned, but the expenditure has not yet been pooled.

3.8 The Government considers that the new mandatory pooling proposal should apply to the first three of these classifications of fixtures, in relation to expenditure incurred on fixtures on or after the commencement date of the proposed new provisions. (The administrative requirement, to notify the value agreed with the seller would, of course, only apply to the first type, as that is the only expenditure in respect of which the seller will, in future, be obliged to bring in and notify an agreed disposal value.)

### Historic expenditure

3.9 With regard to historic expenditure on fixtures, incurred before any changes in the law may come into effect, the Government is considering whether businesses should also be required to pool that expenditure in future, say, within one or two years of the commencement of the mandatory pooling requirement for new expenditure. The views of business and other interested parties on this aspect of the proposal would be welcome, to inform a decision on this matter.

### Questions on (i) mandatory pooling

- What time limit would strike an appropriate balance between the need to ensure tie-in between the purchaser’s acquisition value and the seller’s disposal value, and the need to give the seller adequate time to comply with the new pooling deadline, whilst also fitting in with the normal time limits for submitting a return etc.? In practical terms, this question might be condensed to:

**Which time limit for mandatory pooling would be better: one year or two years from the property acquisition?**

- **What issues would arise from a requirement to pool historic expenditure on fixtures, and how might these affect what time limit could be set for pooling such expenditure?**
- **What impacts (if any) - perhaps particularly on smaller businesses or on the property sector - would you expect to arise from the proposed new pooling requirement?**

## (ii) Second proposal: the record of agreement

- 3.10 In order to make the fixtures rules work sensibly in future, it is essential that sellers and purchasers have a common understanding at the time of, or reasonably near to, the time of sale, of how much of the sale price relates to fixtures. To ensure this, it seems necessary and desirable that this is formally recorded, and that HMRC should have access to an agreed record of unrelieved expenditure made by the parties. HMRC does, of course, have a duty to protect the public purse by applying the law correctly, and the legislation unequivocally states that the current owner's claim in respect of a fixture cannot exceed the previous owner's disposal value<sup>12</sup>, in order to prevent duplicate allowances.
- 3.11 From HMRC's perspective, there is often a distinct possibility that the seller's original expenditure might well have been written-down to nil or a very small sum. (For example, by an earlier section 198 election for a nil value, by the deduction of a £100,000 AIA, or, in the case of an older property, by the fact that 90% of qualifying expenditure can, in some cases, be written-off within 11 to 12 years in any event, simply by the annual deduction of the main rate of writing-down allowances.) So evidence that the seller has agreed to apportion a significant part of the sale price to the fixtures (thereby incurring a potential balancing charge) seems both necessary and appropriate.
- 3.12 A brief record of the agreement actually reached on sale would therefore be an invaluable aid in enabling the rules to work as intended. Some further advantages and disadvantages of requiring a record seem to include the following:

<b>Advantages and disadvantages of a 'record of agreement'</b>	
<b>Pros</b>	<b>Cons</b>
In cases where the last owner is not chargeable to tax, but the preceding owner was a taxpayer, it can be very difficult for the purchaser to discover the disposal value of the last owner-but-one. The existence of a record would help both the purchaser and HMRC and would further prevent allowances from being given erroneously on more than the last disposal value, so further protecting the Exchequer from tax leakage.	The requirement to complete a formal record would be an additional administrative requirement.

<sup>12</sup> Section 185, CAA2001.

<p>The legislation requires a single, agreed value to be used. It is easier for both parties to reach a mutually acceptable agreement nearer to the time of sale, when the question affects the tax position of both sides. The requirement to record this agreement in a formal notice reminds both parties and their advisers of the statutory rules, and should also assist the purchaser to pool the correct figure for fixtures expenditure within the proposed new time limit (Proposal 1).</p>	<p>Capital allowances on second hand fixtures would be conditional on the parties giving notice of their agreement of value within a set period of sale.</p> <p>Businesses (perhaps especially smaller, unrepresented businesses) might inadvertently miss this deadline and so lose out.</p>
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- 3.13 A requirement for a record of agreement seems, therefore, to be a sensible companion measure to the requirement to pool expenditure, in order to resolve these difficult problems of proof and so protect the Exchequer.
- 3.14 The proposal would, therefore, be for a new capital allowances requirement that sellers and purchasers, (who must, in any event, agree the part of the sale price apportioned to fixtures) should in future submit a joint note of their mutual agreement to HMRC with their respective tax returns, within a similar timescale to that for the mandatory pooling proposal.
- 3.15 Some parties to a sale currently opt, in terms of section 198 CAA 2001, to agree an apportioned value for fixtures that may not represent market value (indeed the figure may represent **any** value, within the statutory limits). If they do so, the existing rules require that they make an appropriate joint election to HMRC within two years of the sale. So the new record of agreement in relation to a **market value** apportionment, could similarly be made within a 2-year timescale, using a similar format to that currently laid down in section 201 of CAA 2001 for the purposes of section 198.
- 3.16 This new requirement would make a notice of an agreement of value (similar to a 'section 198 election', but reflecting an agreed market value) mandatory, as a pre-condition for allowances on second hand fixtures, in all cases. However, such a proposal may be less of an imposition and more of a sensible help to all concerned than would at first appear. As mentioned earlier, the current rules already require that an agreement (or single figure) must be reached in all cases. If this is not done (whether because of ignorance of the rules, simple oversight or even deliberate exploitation of the current problems of proof) the legislation is technically breached. The requirement to make a formal record of that agreed figure within a prescribed period, and to notify this, would be the only administrative addition. And the fact that both sides would routinely have to do this should, in fact, serve to remind the purchaser to pool that qualifying expenditure timeously (proposal (i)), thus helping him to ensure that he does not lose out.

### Questions on (ii): making capital allowances conditional on a record of agreement

- Do you think that the proposal that capital allowances should be conditional on a notice of agreement would improve the clarity and working of the fixtures rules?
- What comments do you have on the administrative implications, and do you have any suggestions for improving the proposal?
- Do you think that such a record should follow a general format similar to that at section 201 CAA2001, or take some other form?

### (iii) Other possible suggestions for removing defects in the capital allowances rules for fixtures

3.17 These possible changes are being considered in relation to the other problem areas outlined at Chapter 1.13, namely the retention of allowances by the party who no longer holds the underlying asset, and the artificial acceleration of capital allowances on fixtures. The Government would welcome views on whether these problems could be addressed by changes to -

- the ‘**election to fix apportionment**’ provisions in sections 198 and 199 CAA 2001, so that the minimum amount that may be fixed as the price incurred on the provision of the fixture would become the tax written-down value of the fixture in the hands of the seller; and/or –
- the wording of the **anti-avoidance provision in section 197 CAA 2001**, to make it clearer that these provisions would be triggered, for example, in all circumstances where capital allowances on the fixture are accelerated by a balancing allowance, as a result of a scheme or arrangement where the main purpose, or one of the main purposes is the obtaining by the taxpayer of a tax advantage.

### **‘Section 198’ elections**

3.18 The Government believes that the first suggestion above is worth examination because the current provisions allow an election for any value (not exceeding original cost) and elections for a value as low as £1 are being made. This effectively means that the seller retains the benefit of allowances on any expenditure that has not yet been relieved, *even though he no longer retains the asset in his business*. The corollary is that the purchaser, who has incurred expenditure on acquiring the property, has effectively relinquished all future capital allowances on it, even though he now uses the property as an asset in his business.

## Section 197: acceleration of allowances

- 3.19 Improvements to the anti-avoidance provision in section 197, might not, of course, be necessary if an election could *not* be made at a value lower than the seller's tax written-down value. In that event the seller would not, of course, be able to obtain any further allowances through an election after the sale. However, if on further consideration, the Government decided not to change the section 198 election provisions, then the second suggestion of improving the anti-avoidance provision to make it more effective in preventing the acceleration of allowances in all cases, would remain relevant.

### Questions on (iii): other possible improvements

- 3.20 Respondents' views would be welcome in relation to either of these suggestions for possible legislative improvements, for example: -
- **What issues would they raise for business, and what impacts would they have?**
- Or –
- **Do you have any suggestions for alternative proposals that would be more effective in delivering the underlying policy purposes?**

## 4. Taxes Impact Assessment

Main proposals: mandatory pooling and record of agreement: summary of impacts

In line with the Government's Tax Consultation Framework this chapter sets out HMRC's current assessment of the impacts of the proposed changes under consideration.

The Government welcomes the views of business on its understanding of the impacts of the proposed change and the assumptions made in the assessment.

### Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	TBC	TBC	TBC	TBC	TBC
	This measure is expected to increase receipts, and HMRC are analysing relevant cases to estimate the total Exchequer impact. The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2012.				
Economic impact	This measure will not have a significant effect on the overall UK economy.				
Impact on individuals and households	This is a business measure so would have no direct impact on individuals or households.				
Equalities impact	The proposal is not expected to have any impact on the equality of protected groups.				
Impact on businesses and civil society organisations	<p>The proposals should not have any adverse effects on businesses' legitimate entitlements to capital allowances on fixtures. They are intended rather to prevent duplicate claims by late claimants on more than the original cost of a fixture, in circumstances where evidence of the disposal value of a previous owner is not available or has not been obtained. Such claims are not in accordance with the law.</p> <p>There will be one-off costs for business in becoming familiar with the new rules, and a small additional ongoing cost in identifying and returning an agreed value for fixtures (although only for those businesses that have not opted for the existing alternative of a section 198 election). Our expectation is, however, that overall the changes should lead to a modest net reduction in administrative burdens, because of the relative</p>				

	ease of locating the other party to a sale and agreeing a value at or near to the date of the sale. We will finalise this assessment after we have been able to take into account the responses to this consultation.
Operational impact (£m) – [HMRC or other Public Sector delivery organisations]	The proposals would have a significant, favourable impact in helping to reduce the compliance burdens on HMRC, in reducing the volume of late (and, quite possibly, duplicate) fixtures claims that come to HMRC's attention and that require to be investigated.
Other impacts	<p><b>Small Firms:</b> The Government would welcome information on the small firms impact of these proposals.</p> <p><b>Competition:</b> The proposals are intended to prevent duplicate allowances by some businesses that make late claims and, more generally, to prevent exploitation of defects in the capital allowances fixtures provisions. So these proposals should have a positive effect on competition by levelling the playing field for all businesses.</p>

**Evaluation and Monitoring:** through on-going liaison between tax inspectors dealing with capital allowances issues and HMRC's Capital Allowances' Policy & Technical team, working with the department's economists and statisticians, HMRC will monitor the extent to which they are able to challenge more successfully potential duplicate claims to allowances on the same assets, as a result of the proposed changes in legislation.

## 5. Summary of Consultation Questions

- 5.1 The aim of this consultation is to seek views on the Government's proposals for amending the current rules on capital allowances for fixtures, in order to make the rules work as intended.
- 5.2 The Government would welcome evidence, or more general feedback from business and others, on the potential impacts of the proposed changes, particularly if the proposals are considered likely to have a detrimental effect on particular groups, such as smaller businesses or the property sector.
- 5.3 The Government would welcome comments under three heads: the two main proposals and the third, more general subject of other possible improvements to the capital allowances fixtures regime. The consultation questions are summarised under these three headings below.

### (i) Main proposal: mandatory pooling

**Q1 Which time limit for mandatory pooling would be better: one year or two years after the property acquisition?**

**Q2 What issues would arise from a requirement to pool historic expenditure on fixtures, and how might these affect what time limit could be set for pooling such expenditure?**

**Q3 What impacts (if any) - perhaps particularly on smaller businesses or on the property sector - would you expect to arise from the proposed new pooling requirement?**

**Q4 Do you have any views on the assumptions or analysis in the initial Taxes Impact Assessment at Chapter 4, or any relevant data on potential impacts that would improve this assessment?**

### (ii) Second proposal: the record of agreement requirement

**Q5 Do you think that the proposal that capital allowances should be conditional on a notice of agreement would improve the clarity and working of the fixtures rules?**

**Q6 What comments do you have on the administrative implications, and do you have any suggestions for improving the proposal?**

**Q7 Do you think that such a record should follow a general format similar to that at section 201 CAA2001, or take some other form?**

**(iii) Other possible suggestions for removing defects from the capital allowances rules for fixtures**

In relation to either or both of the suggestions in relation to (a) section 198 CAA 2001 or (b) section 197 2001, outlined at Chapter 3.17 –

**Q8 What issues would these suggestions [either or both of (a) or (b)] raise for business, and what impacts would either/both have?**

**Q9 Do you have any suggestions for alternative proposals that would be more effective in delivering the underlying policy purposes?**

## 6. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before publishing draft legislation for the specific proposal for reform later in the year. This consultation is being led by Joy Guthrie in HMRC.

### How to respond

A summary of the questions in this consultation is included at chapter 4.

Responses should be sent by 31 August 2011, by e-mail to [Hasmukh.haria@hmrc.gsi.gov.uk](mailto:Hasmukh.haria@hmrc.gsi.gov.uk) or by post to: Hasmukh Haria, HM Revenue and Customs, CTIAA CT and Business Income Tax, Room 3C/15, 100 Parliament Street, London SW1A 2BQ.

Telephone enquiries: 020 7147 2610 (from a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from the HMRC Internet site at <http://www.hmrc.gov.uk/consultations/index.htm>. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

### Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes.

These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

### **The Consultation Code of Practice**

This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

# Annexe A: The Code of Practice on Consultation

## About the consultation process

This consultation is being conducted in accordance with the Code of Practice on Consultation.

The consultation criteria

1. When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Richard Bowyer, Consultation Coordinator, Better Regulation and Policy Team, H M Revenue & Customs, Room 3E13, 100 Parliament Street, London, SWA 2BQ

020 7147 0062 or e-mail [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

# Annex B: Relevant (current) Government Legislation

## CAPITAL ALLOWANCES ACT 2001

### PART 2: PLANT AND MACHINERY ALLOWANCES

#### CHAPTER 14 FIXTURES

##### *Introduction*

##### **172 Scope of Chapter etc**

- (1) This Chapter applies to determine entitlement to allowances under this Part in respect of expenditure on plant or machinery that is, or becomes, a fixture.
- (2) For the purposes of this Part, ownership of plant or machinery that is, or becomes, a fixture is determined under this Chapter.
- (2A) Subsections (1) and (2) are subject to section 172A.
- (3) The provisions of this Chapter that treat a person as being the owner of a fixture (see sections 176 to 184 and 193 to 195B) are subject to the provisions of this Chapter which treat a person as ceasing to be the owner of a fixture (see sections 188 to 192A).
- (4) References in this Chapter to a person being treated—
  - (a) as the owner of plant or machinery, or
  - (b) as ceasing to be the owner of plant or machinery,are to be read as references to the person being so treated for the purposes of this Part.
- (5) This Chapter does not affect any entitlement a person has to an allowance as a result of section 538 (contribution allowances for plant and machinery).

##### **172A Long funding leases etc: cases where this Chapter does not apply.**

....

##### **173 Meaning of “fixture” and “relevant land”**

- (1) In this Chapter “fixture”—
  - (a) means plant or machinery that is so installed or otherwise fixed in or to a building or other description of land as to become, in law, part of that building or other land, and
  - (b) includes any boiler or water-filled radiator installed in a building as part of a space or water heating system.
- (2) In this Chapter “relevant land”, in relation to a fixture means—
  - (a) the building or other description of land of which the fixture becomes part, or

(b) in the case of a boiler or water-filled radiator which is a fixture as a result of subsection (1)(b), the building in which it is installed as part of a space or water heating system.

#### **174 Meaning of “equipment lease” and “lease”**

....

#### **175 Meaning of “interest in land”, etc**

(1) In this Chapter “interest in land” means—

(a) the fee simple estate in the land or an agreement to acquire such an estate,

(b) in relation to Scotland, the interest of the owner or an agreement to acquire such an interest,

(c) a lease,

(d) an easement or servitude or an agreement to acquire an easement or servitude, and

(e) a licence to occupy land.

(2) If an interest in land is—

(a) conveyed or assigned by way of security, and

(b) subject to a right of redemption,

the person with the right of redemption is treated for the purposes of this Chapter as having that interest, and not the creditor.

#### **175A Meaning of “energy services agreement”**

.....

#### ***Persons who are treated as owners of fixtures***

#### **176 Person with interest in relevant land having fixture for purposes of qualifying activity**

(1) If—

(a) a person incurs capital expenditure on the provision of plant or machinery for the purposes of a qualifying activity carried on by him,

(b) the plant or machinery becomes a fixture, and

(c) that person has an interest in the relevant land at the time the plant or machinery becomes a fixture,

that person is to be treated, on and after that time, as the owner of the fixture as a result of incurring the expenditure.

(2) If there are two or more persons with different interests in the relevant land who would be treated as the owner of the same fixture as a result of subsection (1), one interest only is taken into account under that subsection.

(3) The interest to be taken into account is given by the following rules—

*Rule 1*

If one of the interests is an easement or servitude or any agreement to acquire an easement or servitude, that interest is the interest to be taken into account.

*Rule 2*

If Rule 1 does not apply, but one of the interests is a licence to occupy land, that interest is the interest to be taken into account.

*Rule 3*

In any other case—

(a) except in Scotland, the interest to be taken into account is the interest which is not in reversion (at law or in equity and whether directly or indirectly) on any other interest in the relevant land which is held by any of the persons referred to in subsection (2), and

(b) in Scotland, the interest to be taken into account is the interest of whichever of the persons referred to in subsection (2) has, or last had, the right of use of the relevant land.

(4) Subsection (1) is subject to sections 177(4) and 180A(4).

**177 Equipment lessors**

.....(1)

**178 Equipment lessee has qualifying activity etc**

...

**179 Equipment lessor has right to sever fixture that is not part of building**

....

**180 Equipment lease is part of affordable warmth programme**

...

**180A Energy services providers**

...

**181 Purchaser of land giving consideration for fixture**

(1) If—

(a) after any plant or machinery has become a fixture, a person (“the purchaser”) acquires an interest in the relevant land,

(b) that interest was in existence before the purchaser's acquisition of it, and

(c) the consideration which the purchaser gives for the interest is or includes a capital sum that, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture,

the purchaser is to be treated, on and after the time of the acquisition, as the owner of the fixture as a result of incurring that expenditure.

(2) Subsection (1) does not apply, and is to be treated as never having applied, if, immediately after the time of the acquisition, a person has a prior right in relation to the fixture.

(3) For the purposes of subsection (2), a person has a prior right in relation to the fixture if he—

(a) is treated as the owner of the fixture immediately before the time referred to in subsection (2) as a result of incurring expenditure on the provision of the fixture,

(b) is not so treated as a result of section 538 (contribution allowances for plant and machinery),

(c) is entitled to an allowance in respect of that expenditure, and

(d) makes or has made a claim in respect of that expenditure.

(4) Subsection (1) is subject to [sections 182 and 182A].

## **182 Purchaser of land discharging obligations of equipment lessee**

...

### **182A**

#### **Purchaser of land discharging obligations of client under energy services agreement**

...

## **183 Incoming lessee where lessor entitled to allowances**

(1) If—

(a) after any plant or machinery has become a fixture, a person (“the lessor”) who has an interest in the relevant land grants a lease,

(b) the lessor is entitled to an allowance in respect of the fixture for the chargeable period in which the lease is granted or would be if he were within the charge to tax,

(c) the consideration which the lessee gives for the lease is or includes a capital sum that, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture,

(d) the lessor and the lessee are not connected persons, and

(e) the lessor and the lessee make an election under this section,

the lessee is to be treated, on and after the time when the lease is granted, as the owner of the fixture as a result of incurring that expenditure.

(2) An election under this section must be made by notice to an officer of Revenue and Customs within 2 years after the date on which the lease takes effect.

#### **184 Incoming lessee where lessor not entitled to allowances**

(1) If—

(a) after any plant or machinery has become a fixture, a person (“the lessor”) who has an interest in the relevant land grants a lease,

(b) the lessor is not within section 183(1)(b),

(c) before the lease is granted, the fixture has not been used for the purposes of a qualifying activity carried on by the lessor or any person connected with the lessor, and

(d) the consideration which the lessee gives for the lease is or includes a capital sum that, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture,

the lessee is to be treated, on and after the time when the lease is granted, as the owner of the fixture as a result of incurring that expenditure.

[(2) Subsection (1) does not apply, and is to be treated as never having applied, if, immediately after the time when the lease is granted, a person has a prior right in relation to the fixture.

(3) Section 181(3) (test for whether person has a prior right) applies for the purposes of subsection (2).

#### ***Restrictions on amount of qualifying expenditure***

#### **185 Fixture on which a plant and machinery allowance has been claimed**

(1) This section applies if—

(a) a person (“the current owner”) is treated as the owner of a fixture as a result of incurring capital expenditure (“new expenditure”) on its provision,

(b) the plant or machinery is treated as having been owned at a relevant earlier time by any person (“the past owner”) as a result of incurring other expenditure,

(c) the plant or machinery is within paragraph (b) otherwise than as a result of section 538 (contribution allowances for plant and machinery), and

(d) the past owner is or has been required to bring the disposal value of the plant or machinery into account (as a result of having made a claim in respect of that other expenditure).

(2) If the new expenditure exceeds the maximum allowable amount, the excess—

(a) is to be left out of account in determining the current owner's qualifying expenditure, or

(b) if the new expenditure has already been taken into account for this purpose, is to be treated as expenditure that should never have been taken into account.

(3) The maximum allowable amount is—

$D + I$

where—

D is the disposal value of the plant or machinery which the past owner has been or is required to bring into account, and

I is any of the new expenditure that is treated under section 25 (building alterations in connection with installation) as expenditure on the provision of the plant or machinery.

(4) If more than one disposal event has occurred requiring the past owner to bring the disposal value of the plant or machinery into account, the maximum allowable amount is calculated by reference only to the most recent of those events.

(5) For the purposes of this section, the current owner and the past owner may be the same person.

(6) In subsection (1)(b) “relevant earlier time” means (subject to subsection (7)) any time before the earliest time when the current owner is treated as owning the plant or machinery as a result of incurring the new expenditure.

(7) If, before the earliest time when the current owner is treated as owning the plant or machinery as a result of incurring the new expenditure—

(a) any person has ceased to own the plant or machinery as a result of a sale,

(b) the sale was not a sale of the plant or machinery as a fixture, and

(c) the buyer and seller were not connected persons at the time of the sale,

the relevant earlier time does not include any time before the seller ceased to own the plant or machinery.

### **186 Fixture on which an industrial buildings allowance has been made**

(1) This section applies if—

(a) a person (“the past owner”) has at any time claimed an allowance to which he [was] entitled under Part 3 (industrial buildings allowances) in respect of expenditure which was or included expenditure on the provision of plant or machinery,

(b) the past owner has transferred the interest which [was] the relevant interest for the purposes of Part 3, and

(c) the current owner of the plant or machinery makes a claim in respect of expenditure (“new expenditure”) incurred—

(i) on the provision of the plant or machinery, and

(ii) at a time when it is a fixture in the building.

(2) If the new expenditure exceeds the maximum allowable amount, the excess is to be left out of account in determining the current owner's qualifying expenditure.

(3) [If the total consideration for the transfer by the past owner exceeds R,] the maximum allowable amount is—

$F / T \times R$

where—

F is the part of the consideration for the transfer by the past owner that is attributable to the fixture,

T is the total consideration for that transfer, and

R is the residue of qualifying expenditure [which would have been] attributable to the relevant interest immediately after that transfer, calculated on the assumption that the transfer was a sale of the relevant interest[, had the time immediately after the transfer fallen immediately before the repeal of Part 3 by section 84 of [FA] 2008].

(3A) Where subsection (3) does not apply, the maximum allowable amount is the part of the consideration for the transfer by the past owner that is attributable to the fixture.

(4) For the purposes of this section the current owner of the plant or machinery is—

(a) the person to whom the past owner transferred the relevant interest, or

(b) any person who is subsequently treated as the owner of the plant or machinery.

(5) In this section “building” and “residue of qualifying expenditure” have the same meaning as [for the purposes of Part 3 immediately before its repeal by section 84 of FA 2008].

### **187 Fixture on which a research and development allowance has been made**

(1) This section applies if—

(a) a person has at any time claimed an allowance to which he is entitled under Part 6 (research and development allowances) in respect of qualifying expenditure under that Part (“Part 6 expenditure”),

(b) an asset representing the whole or part of the Part 6 expenditure (“the Part 6 asset”) has ceased to be owned by that person (“the past owner”),

(c) the Part 6 asset was or included plant or machinery, and

(d) the current owner makes a claim under this Part in respect of expenditure (“new expenditure”) incurred—

(i) on the provision of the plant or machinery, and

(ii) at a time when it is a fixture.

(2) If the new expenditure exceeds the maximum allowable amount, the excess is to be left out of account in determining the current owner's qualifying expenditure.

(3) The maximum allowable amount is—

$F / T \times A$

where—

F is the part of the consideration for the disposal of the Part 6 asset by the past owner that is attributable to the fixture,

T is the total consideration for that disposal, and

A is an amount equal to whichever is the smaller of—

- (a) the disposal value of the Part 6 asset when the past owner ceased to own it, and
  - (b) so much of the Part 6 expenditure as related to the provision of the Part 6 asset.
- (4) For the purposes of this section the current owner of the plant or machinery is—
- (a) the person who acquired the Part 6 asset from the past owner, or
  - (b) any person who is subsequently treated as the owner of the plant or machinery.

### *Cessation of ownership of fixtures*

#### **188 Cessation of ownership when person ceases to have qualifying interest**

- (1) This section applies if a person is treated as the owner of a fixture under—
- (a) section 176 (person with interest in land having fixture for purposes of qualifying activity),
  - (b) section 181 (purchaser of land giving consideration for fixture),
  - (c) section 182 (purchaser of land discharging obligations of equipment lessee),
  - [(ca) section 182A (purchaser of land discharging obligations of client under energy services agreement),
  - (d) section 183 (incoming lessee where lessor entitled to allowances), or
  - (e) section 184 (incoming lessee where lessor not entitled to allowances).
- (2) If the person ceases at any time to have the qualifying interest, he is to be treated as ceasing to be the owner of the fixture at that time.
- (3) In this Chapter “the qualifying interest” means—
- (a) if section 176, 181[, 182 or 182A] applies, the interest in the relevant land referred to in that section, and
  - (b) if section 183 or 184 applies, the lease referred to in that section.
- (4) This section is subject to section 189.

#### **189 Identifying the qualifying interest in special cases**

....

#### **190 Cessation of ownership of lessor where section 183 applies**

....

#### **191 Cessation of ownership on severance of fixture**

....

**192 Cessation of ownership of equipment lessor**

....

**192A Cessation of ownership of energy services provider**

....

**193 Acquisition of ownership by lessor or licensor on termination of lease or licence**

...

**194 Acquisition of ownership by assignee of equipment lessor**

...

**195 Acquisition of ownership by equipment lessee**

...

**195A Acquisition of ownership by assignee of energy services provider**

...

**195B Acquisition of ownership by client**

....

***Disposal values***

**196 Disposal values in relation to fixtures: general**

(1) The disposal value to be brought into account in relation to a fixture depends on the nature of the disposal event, as shown in the Table—

TABLE  
DISPOSAL VALUES: FIXTURES

<i>1 Disposal event</i>	<i>2 Disposal value</i>
1 Cessation of ownership of the fixture under section 188 because of a sale of the qualifying interest except where item 2 applies.	The part of the sale price that—  (a) falls to be treated for the purposes of this Part as expenditure incurred by the purchaser on the provision of the fixture, or (b) would fall to be so treated if the purchaser were entitled to an allowance.
2 Cessation of ownership of the fixture under section 188 because of a sale of the qualifying interest where— (a) the sale is at less than market value, and  (b) the condition in subsection (2) is met by the purchaser	The part of the price that would be treated for the purposes of this Part as expenditure by the purchaser on the provision of the fixture if— (a) the qualifying interest were sold at market value,  (b) that sale took place immediately before the event which causes the former owner to be treated as ceasing to be the owner of the

	<p>fixture, and (c) that event were disregarded in determining that market value.</p>
<p>3 Cessation of ownership of the fixture under section 188 where— (a) neither item 1 nor 2 applies, but (b) the qualifying interest continues in existence after that time or would so continue but for its becoming merged in another interest.</p>	<p>The disposal value given for item 2.</p>
<p>4 Cessation of ownership of the fixture under section 188 because of the expiry of the qualifying interest.</p>	<p>If the person receives a capital sum by way of compensation or otherwise, by reference to the fixture, the amount of the capital sum. In any other case, nil.</p>
<p>5 Cessation of ownership of the fixture under section 190 because the lessee has become the owner under section 183.</p>	<p>The part of the capital sum given by the lessee for the lease referred to in section 183 that falls to be treated for the purposes of this Part as the lessee's expenditure on the provision of the fixture.</p>
<p>6 Cessation of ownership of the fixture under section 191 (severance).</p>	<p>The market value of the fixture at the time of the severance.</p>
<p>7 Cessation of ownership of the fixture because section 192(2)(a) (assignment of rights) applies.</p>	<p>The consideration given by the assignee for the assignment.</p>
<p>8 Cessation of ownership of the fixture because section 192(2)(b) (discharge of equipment lessee's obligations) applies on the payment of a capital sum.</p>	<p>The capital sum paid to discharge the financial obligations of the equipment lessee.</p>
<p>[8A Cessation of ownership of the fixture because section 192A(2)(a) (assignment of rights) applies.</p>	<p>The consideration given by the assignee for the assignment.</p>
<p>8B Cessation of ownership of the fixture because section 192A(2)(b) (discharge of client's obligations) applies on the payment of a capital sum.</p>	<p>The capital sum paid to discharge the financial obligations of the client.]</p>
<p>9 Permanent discontinuance of the qualifying activity followed by the sale of the qualifying interest.</p>	<p>The part of the sale price that—  (a) falls to be treated as expenditure incurred by the purchaser on the provision of the fixture, or (b) would fall to be so treated if the purchaser were entitled to an allowance.</p>
<p>10 Permanent discontinuance of the qualifying activity followed by the demolition or destruction of the fixture.</p>	<p>The net amount received for the remains of the fixture, together with—  (a) any insurance money received in respect of the demolition or destruction, and (b) any other compensation of any description so received, so far as it consists of capital sums.</p>
<p>11 Permanent discontinuance of the qualifying activity followed by the permanent loss of the fixture otherwise than as a result of its demolition or destruction.</p>	<p>Any insurance money received in respect of the loss and, so far as it consists of capital sums, any other compensation of any description so received.</p>
<p>12 The fixture begins to be used wholly or partly for purposes other than those of the qualifying activity.</p>	<p>The part of the price that would fall to be treated for the purposes of this Part as expenditure incurred by the purchaser on the provision of the fixture if the qualifying interest were sold at market value.</p>

- (2) The condition referred to in item 2 of the Table is met by the purchaser if—
  - (a) the purchaser's expenditure on the provision of the fixture cannot be qualifying expenditure under this Part or Part 6 (research and development allowances), or
  - (b) the purchaser is a dual resident investing company which is connected with the former owner.
- (3) Items 1 and 5 of the Table are subject to sections 198 and 199 (election to fix apportionment on sale of qualifying interest or grant of lease).
- (4) Section 192(3) (assignee of equipment lessee) applies in relation to item 8 of the Table.
  - (4A) Section 192A(3) (assignee of client) applies in relation to item 8B of the Table.
- (5) Nothing in sections 188 to [192A] or this section prevents a disposal value having to be brought into account under Chapter 5 because of a disposal event not dealt with in these sections.
- (6) This section is subject to section 197.

### **197 Disposal values in avoidance cases**

- (1) This section applies if—
  - (a) a person ("the taxpayer") is treated under this Chapter as the owner of any plant or machinery as a result of incurring any expenditure,
  - (b) any disposal event occurs in relation to the plant or machinery,
  - (c) the disposal value to be brought into account by the taxpayer would (but for this section) be less than the notional written-down value of the plant or machinery, and
  - (d) the disposal event is part of, or occurs as a result of, a scheme or arrangement the main purpose or one of the main purposes of which is the obtaining by the taxpayer of a tax advantage under this Part.

(2) The disposal value that the taxpayer must bring into account is the notional written-down value of the plant or machinery.

(3) The notional written-down value is—

QE – A

where—

QE is the taxpayer's expenditure on the plant or machinery that is qualifying expenditure,

A is the total of all allowances which could have been made to the taxpayer in respect of that expenditure if—

- (a) that expenditure had been the only expenditure that had ever been taken into account in determining his available qualifying expenditure, and
- (b) all allowances had been made in full.

### ***Election to fix apportionment***

#### **198 Election to apportion sale price on sale of qualifying interest**

(1) This section applies if the disposal value of a fixture is required to be brought into account in accordance with item 1 of the Table in section 196 (sale of qualifying interest at not less than market value, etc).

(2) The seller and the purchaser may jointly, by an election, fix the amount that is to be treated—

(a) for the purposes of item 1 of the Table, and

(b) for the other purposes of this Part,

as the part of the sale price that is expenditure incurred by the purchaser on the provision of the fixture.

(3) The amount fixed by the election must not exceed—

(a) the amount of the capital expenditure which was treated as incurred by the seller on the provision of the fixture or of the plant or machinery which became the fixture, or

(b) the actual sale price.

(4) If an election fixes the amount to be treated as the part of the sale price—

(a) the remaining amount (if any) of the sale price is to be treated for the purposes of this Act as expenditure attributable to the acquisition of the property which is not the fixture but is acquired for that amount, and

(b) if there is no remaining amount, the expenditure so attributable is to be treated for the purposes of this Act as nil.

(5) This section is subject to—

(a) sections 186 and 187 (fixtures on which industrial buildings allowance or research and development allowance has been made),

(b) section 197 (disposal values in avoidance cases), and

(c) sections 200 and 201 (further provisions about elections).

#### **199 Election to apportion capital sum given by lessee on grant of lease**

(1) This section applies if the disposal value of a fixture is required to be brought into account in accordance with item 5 of the Table in section 196 (on acquisition of ownership by incoming lessee under section 183).

(2) The persons who are the lessor and the lessee for the purposes of section 183 may jointly, by an election, fix the amount that is to be treated—

(a) for the purposes of item 5 of the Table, and

(b) for the other purposes of this Part,

as the part of the capital sum that is expenditure incurred by the lessee on the provision of the fixture.

- (3) The amount fixed by the election must not exceed—
  - (a) the amount of the capital expenditure which was treated as incurred by the lessor on the provision of the fixture or of the plant or machinery which became the fixture, or
  - (b) the actual capital sum.
- (4) If an election fixes the amount to be treated as the part of the capital sum—
  - (a) the remaining amount (if any) of the capital sum is to be treated for the purposes of this Act as expenditure attributable to the acquisition of the property which is not the fixture but is acquired for that amount, and
  - (b) if there is no remaining amount, the expenditure so attributable is to be treated for the purposes of this Act as nil.
- (5) This section is subject to—
  - (a) sections 186 and 187 (fixtures on which industrial buildings allowance or research and development allowance has been made),
  - (b) section 197 (disposal values in avoidance cases), and
  - (c) sections 200 and 201 (further provisions about elections).

## **200 Elections under sections 198 and 199: supplementary**

- (1) In this section and section 201, references to an election are to an election under section 198 or 199.
- (2) An apportionment made by an election has effect in place of any apportionment that would otherwise be made under sections 562, 563 and 564(1) (apportionment and procedure for determining apportionment).
- (3) An election is irrevocable.
- (4) If, as a result of circumstances arising after the making of an election, the maximum amount which could be fixed by the election is reduced to an amount which is less than the amount specified in the election, the election is to be treated, for the purposes of this Act, as having specified the amount to which the maximum is reduced.

## **201 Elections under sections 198 and 199: procedure**

- (1) An election must be made by notice to [an officer of Revenue and Customs] no later than 2 years after the date when—
  - (a) the purchaser acquires the qualifying interest, in the case of an election under section 198, or
  - (b) the lessee is granted the lease, in the case of an election under section 199.
- (2) The amount fixed by an election must be quantified at the time when the election is made.
- (3) The notice must state—
  - (a) the amount fixed by the election,

- (b) the name of each of the persons making the election,
  - (c) information sufficient to identify the plant or machinery,
  - (d) information sufficient to identify the relevant land,
  - (e) particulars of—
    - (i) the interest acquired by the purchaser, in the case of an election under section 198, or
    - (ii) the lease granted to the lessee, in the case of an election under section 199, and
  - (f) the tax district references of each of the persons making the election.
- (4) If a person—
- (a) has joined in making an election, and
  - (b) subsequently makes a tax return for a period which is the first period for which he is making a tax return in which the election has an effect for tax purposes in his case,

a copy of the notice containing the election must accompany the return.

- (5) The following provisions do not apply to the election—
- (a) section 42 of, and Schedule 1A to, TMA 1970 (claims and elections for income tax purposes);
  - (b) paragraphs 54 to 60 of Schedule 18 to FA 1998 (claims and elections for corporation tax purposes).
- (6) References in this section to a tax return, in the case of an election for the purposes of a trade, profession or business carried on by persons in partnership, are to be read, in relation to those persons, as references to a return under section 12AA of TMA 1970 (partnership returns).

### *Further provisions*

#### **202 Interpretation**

(1) Any reference in this Chapter to a person being entitled to an allowance in respect of expenditure on the provision of a fixture includes the person having a pool to which expenditure on the provision of the fixture has been allocated.

But this is subject to subsection (2).

- (2) If—
- (a) expenditure on the provision of the fixture has been allocated to a pool, and
  - (b) the person is required under section 61(1) to bring the disposal value of the fixture into account in the pool,

the person is not entitled to an allowance in respect of the expenditure allocated to that pool for any chargeable period after that in which the disposal event occurs.

- (3) For the purposes of this Chapter, a person makes a claim in respect of expenditure if he—
- (a) makes a claim for an allowance in respect of that expenditure,
  - (b) makes a tax return in which that expenditure is taken into account in determining his available qualifying expenditure for the purposes of this Part, or
  - (c) gives notice of an amendment of a tax return which provides for that expenditure to be so taken into account.

### **203 Amendment of returns etc**

(1) If a person who has made a tax return ("the taxpayer") becomes aware that, after making it, anything in it has become incorrect for any of the reasons given in subsection (2), the taxpayer must give notice to [an officer of Revenue and Customs] specifying how the return needs to be amended.

(2) The reasons are that—

- (a) an approval given for the purposes of section 180 (affordable warmth programme) has been withdrawn;
- (b) section 181(2), 182(2)[, 182A(2)] or 184(2) (another person has a prior right) applies in the taxpayer's case;
- (c) section 185 (restriction on qualifying expenditure where another person has claimed an allowance) applies in the taxpayer's case;
- (d) an election is made under section 198 or 199 (election to fix apportionment);
- (e) section 200(4) (reduction in amount which can be fixed by an election) applies in the taxpayer's case.

(3) The notice must be given within 3 months beginning with the day on which the taxpayer first became aware that anything contained in the tax return had become incorrect for any of the reasons given in subsection (2).

(4) All such assessments and adjustments of assessments are to be made as are necessary to give effect to this Chapter.

### **204 Appeals etc**

(1) Subsections (2) and (3) apply if—

- (a) any question arises as to whether any plant or machinery has become, in law, part of a building or other land, and
- (b) that question is material to the tax liability (for whatever period) of two or more persons.

(2) The question is to be determined, for the purposes of the tax of all the persons concerned, by the tribunal.

[(3) An application for the tribunal to determine the question is to be subject to the relevant provisions of Part 5 of the Taxes Management Act 1970 (see, in particular, section 48(2)(b) of that Act), and each of the persons concerned is entitled to be a party to the proceedings on the application.

(4) Subsections (5) and (6) apply if any question relating to an election under section 198 or 199 (apportionments) arises for determination by the tribunal for the purposes of any proceedings before it.

(5) The tribunal must determine the question separately from any other questions in those proceedings.

[(6) Each of the persons who has joined in the election is entitled to be a party to the proceedings of the tribunal concerned with the determination of the question; and the tribunal's determination has effect as if made in an appeal to which each of those persons was a party.

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## **PART 12: SUPPLEMENTARY PROVISIONS**

### **CHAPTER 5 MISCELLANEOUS**

#### ***Apportionment***

#### **562 Apportionment where property sold together**

(1) Any reference in this Act to the sale of property includes the sale of that property together with any other property.

(2) For the purposes of subsection (1), all property sold as a result of one bargain is to be treated as sold together even though—

(a) separate prices are, or purport to be, agreed for separate items of that property, or

(b) there are, or purport to be, separate sales of separate items of that property.

(3) If an item of property is sold together with other property, then, for the purposes of this Act—

(a) the net proceeds of the sale of that item are to be treated as being so much of the net proceeds of sale of all the property as, on a just and reasonable apportionment, is attributable to that item, and

(b) the expenditure incurred on the provision or purchase of that item is to be treated as being so much of the consideration given for all the property as, on a just and reasonable apportionment, is attributable to that item.

(4) This section applies, with the necessary modifications, to other proceeds (consisting of insurance money or other compensation) as it applies in relation to the net proceeds of a sale.

(5) This section applies in relation to Part 5 as if expenditure on the provision or purchase of an item of property included expenditure on the acquisition of—

(a) a mineral asset (as defined by section 397), or

(b) land outside the United Kingdom.

#### ***Procedure for determining certain questions***

### **563 Procedure for determining certain questions affecting two or more persons**

- (1) This section applies in relation to the determination of a question if—
  - (a) at the time when the question falls to be determined, it appears that the determination is material to the liability to tax (for whatever period) of two or more persons, and
  - (b) section 564 provides for this section to apply.

(2) . . .

(3) . . .

(4) . . .

(5) . . .

[(6) An application for the tribunal to determine the question is to be subject to the relevant provisions of Part 5 of the Taxes Management Act 1970 (see, in particular, section 48(2)(b) of that Act), and each of the persons concerned is entitled to be a party to the proceedings on the application.]

### **564 Questions to which procedure in section 563 applies**

(1) Section 563 applies in relation to the determination for the purposes of any of Parts [3A] to 11 or this Part of any question about the way in which a sum is to be apportioned.

(2) Section 563 applies in relation to any determination of the market value of property for the purposes of—

(a) any provision of Part 2 (plant and machinery allowances),

(b) section 423 (mineral extraction allowances: amount of disposal value to be brought into account),

(c) section 559 (effect of successions),

(d) section 568 or 569 (sales treated as being for alternative amount), or

(e) section 573 (transfers treated as sales).

(3) . . .

(4) If section 561 (transfer of a UK trade to a company in another member State) applies, section 563 applies—

(a) for the purposes of the tax of both company A and company B referred to in that section, and

(b) in relation to the determination of any question of apportionment of expenditure under section 561(3).