

EXPLANATORY NOTE

PLANT AND MACHINERY ALLOWANCES: ANTI-AVOIDANCE

SUMMARY

1. Clause [X] introduces Schedule [A] which sets out new restrictions on the amount of expenditure that qualifies for plant and machinery allowances. It can apply where expenditure is incurred under a transfer and long funding leaseback, a sale and leaseback, a connected party transaction or a sale and subsequent hire-purchase. In each case the restriction applies where the seller or transferor (or a person connected with them) has previously acquired the plant and machinery without incurring capital expenditure or an arm's length amount of revenue expenditure. Where the restriction applies, the expenditure qualifying for plant and machinery allowances is restricted to nil. This restriction comes into effect on 26 February 2015.

DETAILS OF THE SCHEDULE

1. Paragraph 2 introduces a new restriction in respect of the qualifying expenditure for the purposes of Part 2 Capital Allowances Act 2001 (CAA 2001) of a person who incurs expenditure under a long funding lease.

2. Sub-paragraph 2(2) introduces the new restriction as section 70DA(5A) CAA 2001. Where the restriction applies the qualifying expenditure of S (the transferor) or CS (a person connected with the transferor to whom the plant or machinery is made available) under a long funding lease is restricted to nil. The restriction applies if S is not required to bring a disposal value into account and S or a linked person acquired the plant and machinery without incurring either capital expenditure or qualifying revenue expenditure. No capital expenditure will have been incurred in cases where, for example, plant or machinery has been transferred to a person as part of a statutory transfer of property or where the whole cost of the asset has been met by another person.

3. Sub-paragraph 2(3) introduces definitions for "linked person" and "qualifying revenue expenditure". A "linked person" is a person that has been connected with S at any time between when the person first acquired the plant or machinery and the transfer by S. "Qualifying revenue expenditure" is revenue expenditure on the provision of the plant or machinery. Where the expenditure is incurred on the purchase of the plant or machinery, the amount must be at least equal to the amount of expenditure that would have been incurred between the seller and the buyer at arm's length. Where the expenditure is incurred on the manufacture or construction of the plant or machinery the amount of the expenditure must be the normal costs of manufacture or construction. A person will not have incurred qualifying revenue expenditure if they have incurred less than the full commercial cost of the plant or machinery. For example, a person will not have incurred qualifying revenue expenditure where there is below arm's length pricing by connected suppliers or where no expenditure is incurred to acquire the plant or machinery and only repair expenditure is incurred subsequently.

4. Paragraph 3 amends section 218 CAA 2001 to introduce the same restriction in respect of transactions between connected persons (falling within section 214 CAA 2001) and sale and leaseback transactions (falling within section 216 CAA 2001). In this case the restriction applies to B, who is either a purchaser of the plant or machinery connected with the seller, S, or is a purchaser who leases the plant or machinery back to S. The same concepts of “linked person” and “qualifying revenue expenditure” are introduced.

5. Paragraph 4 amends section 229A CAA 2001 to introduce the same restriction in respect of the expenditure of a person, S, or a person connected with S, CS, who incurs expenditure on plant or machinery under a hire purchase contract or similar after S has previously sold the plant or machinery. The new restriction applies to the qualifying expenditure of S or CS under the hire purchase or similar contract.

6. Paragraph 5 amends section 242 to introduce the same restriction where additional VAT becomes payable or VAT rebates are received.

BACKGROUND NOTE

7. The Government announced on 26 February 2015 its intention to remove an opportunity for taxpayers to create an entitlement to capital allowances in respect of assets for which no qualifying expenditure was previously incurred. Any such opportunity was not an intended consequence of the previous legislation.

8. If you have any questions about this change, or comments on the legislation, please contact Pete Downing on 03000 541 597 (email: caguidance.ct&vat@hmrc.gsi.gov.uk).