

Explanatory Note

Clause 36: Capital allowances: anti-avoidance relating to disposals

Summary

1. This measure counters tax avoidance schemes which seek to reduce disposal values of plant or machinery for capital allowances purposes below the actual full value attributable to the disposal of those assets.

Details of the clause

2. Subsection (1) introduces the amendments to Chapter 17 of Part 2 of the Capital Allowances Act 2001.
3. Subsection (2) explains that section 213 CAA 2001 is to be amended as set out in subsections (3) and (4).
4. Subsection (3) amends section 213(1) to clarify that Chapter 17 applies to both parties to a relevant transaction - "S" (the transferor) as well as "B" (the transferee).
5. Subsection (4) inserts new section 213(4) which defines the disposal values relevant for the purposes of Chapter 17 as being those arising from the different types of relevant transaction identified in section 213(1).
6. Subsection (5) explains that section 215 CAA 2001 is to be amended as set out in the three following subsections. Section 215 sets out when certain anti-avoidance rules apply for the purposes of Part 2 of CAA 2001 and, depending on the tax advantage sought by the arrangements, which other section within Chapter 17 will apply to counteract that tax advantage.
7. Subsection (6) amends section 215(1) in two respects. The first is to extend the section to the imposition of balancing charges, new or increased, as well as restriction of allowances. The second is to put beyond doubt the section applies potentially to either party to a relevant transaction.
8. Subsection (7) makes an amendment to section 215(4) to include as obtaining a tax advantage where a person seeks to avoid liability for all or part of a balancing charge.
9. Subsection (8) inserts new subsection (4A) into section 215. New subsection (4A) identifies the applicable section to counteract the tax advantage relating to disposal value of plant or machinery that is the subject of the relevant transaction as being section 218ZB CAA 2001. There are already two other applicable sections, referred to in section 215(5) and (6), being sections 217 and 218ZA CAA 2001. Those other applicable sections deal with instances where

the tax advantage in question relates to allowances that B can claim on qualifying expenditure and the amount of the qualifying expenditure.

10. Subsection (9) inserts new section 218ZB into Chapter 17 as the applicable section referred to in new section 215(4A).
11. New section 218ZB(1) provides for cancellation of the tax advantage in defined circumstances. These are that S would otherwise obtain a tax advantage in the form of a higher allowance or a reduced or no balancing charge as a consequence of a payment payable to any person where section 215 applies. The cancellation of the tax advantage takes the form of adjustment of the disposal value of the plant or machinery in a just and reasonable manner.
12. New section 218ZB(2) provides that payment is to have a wide definition.
13. Subsection (10) adds section 218ZB to the list of sections about disposal values in section 66 CAA 2001.
14. Subsection (11) provides the amendments will have effect in relation to transactions within section 213(1) that take place on or after 25 November 2015.

Background note

15. This measure addresses a number of avoidance schemes that have been disclosed to HMRC. The fact pattern differs in each scheme. However, the common theme is that the amount to be taken into account under the scheme as disposal value for capital allowances purposes is significantly less than the actual value of the plant or machinery being disposed of. The difference is received, directly or indirectly, in such a way as to not form part of the disposal value and does not otherwise attract any actual tax liability. Consequently, the disposer receives capital allowances significantly in excess of the actual economic depreciation of the plant or machinery whilst it was being used for qualifying activities.
16. If you have any questions about this change, or comments on the legislation, please contact Paul Hindley on 03000 585576 (email: paul.hindley@hmrc.gsi.gov.uk)