

Restriction on use of capital allowances for certain leased machinery or plant. FA94 s30(1) to (5) and (7)
404.—(1) (a) In this section—

“agricultural machinery” means machinery or plant used or intended to be used for the purposes of a trade of farming) or machinery or plant of a type commonly used for such a trade which is used or intended to be used for the purposes of a trade which consists of supplying services which normally play a part in agricultural production;

“asset” means machinery or plant;

“chargeable period”, “chargeable period related to”, and “chargeable period or its basis period” have the same meanings respectively as in section 321 (2);

“fair value”, in relation to a leased asset, means an amount equal to such consideration as might be expected to be paid for the asset at the inception of the lease on a sale negotiated on an arm's length basis, less any grants receivable by the lessor towards the purchase of the asset;

“inception of the lease” means the date on which the leased asset is brought into use by the lessee or the date from which lease payments under the lease first accrue, whichever is the earlier;

“lease payments” means the lease payments over the term of the lease to be paid to the lessor in relation to the leased asset, and includes any residual amount to be paid to the lessor at or after the end of the term of the lease and guaranteed by the lessee or by a person connected with the lessee or under the terms of any scheme or arrangement between the lessee and any other person;

“lessee” and “lessor” have the same meanings respectively as in section 403;

“predictable useful life”, in relation to an asset, means the useful life of the asset estimated at the inception of the lease, having regard to the purpose for which the asset was acquired and on the assumption that—

(i) its life will end when it ceases to be useful for the purpose for which it was acquired, and

(ii) it will be used in the normal manner and to the normal extent throughout its life;

“relevant lease payment” means—

(i) the amount of any lease payment as provided under the terms of the lease, or

(ii) where the lease provides for the amount of any lease payment to be determined by reference to a rate known as the Dublin Interbank Offered Rate and a record of which is kept by the Central Bank of Ireland, or a similar rate, the amount calculated by reference to that rate if the rate per cent at the inception of the lease were the rate per cent at the time of the payment;

“relevant lease payments related to a chargeable period or its basis period” means relevant lease payments under the lease or the amounts which are treated as the relevant lease payments and which, if they were the actual amounts payable under the lease, would be taken into account in computing the income of the lessor for that chargeable period or its basis period or any earlier such period;

“relevant period” means the period—

(i) beginning at the inception of the lease, and

(ii) ending at—

(I) the earliest time at which the aggregate of amounts of the discounted present value at the inception of the lease of relevant lease payments which are payable at or before that time amounts to 90 per cent or more of the fair value of the leased asset, or

(II) if it is earlier, at the end of the predictable useful life of the asset,

and, for the purposes of this definition, relevant lease payments shall be discounted at a rate which, when applied at the inception of the lease to the amount of the relevant lease payments, produces discounted present values the aggregate of which equals the amount of the fair value of the leased asset at the inception of the lease, but where the duration of the relevant period determined in accordance with the preceding provisions of this definition is more than 7 years, the relevant period shall not be the period so determined but shall be the period which would be determined in accordance with this definition if for “90 per cent” there were substituted “95 per cent”.

(b) For the purposes of this section—

(i) a lease of an asset shall be a relevant lease unless—

(I) as respects any chargeable period or its basis period of the lessor which falls wholly or partly in the relevant period, the aggregate of the amounts of relevant lease payments related to the chargeable period or its basis period and the amounts of relevant lease payments related to any earlier chargeable period or its basis period is not less than an amount determined by the formula—

$$W \times P \times 90 + (10 \times W) \text{ _____ } 100$$

where—

P is the aggregate of the amounts of relevant lease payments payable by the lessee in relation to the leased asset in the relevant period, and

W is an amount determined by the formula—

$$E \text{ — } R$$

where—

E is the length of the part of the relevant period which has expired at the end of the chargeable period or its basis period, and

R is the length of the relevant period, and

(II) except for an amount of relevant lease payments which is inconsequential, the excess of the total relevant lease payments under the lease over the aggregate of the relevant lease payments in the relevant period is payable to the lessor, or would be so payable if the relevant lease payments were the actual amounts payable under the lease, within a period the duration of which does not exceed—

(A) where the exception to the definition of “relevant period” does not apply, one-seventh of the duration of the relevant period, and

(B) where that exception does apply, one-ninth of the duration of the relevant period,

or one year, whichever is the greater, and which commences immediately after the end of the relevant period,

(ii) a lease, the duration of the relevant period in respect of which exceeds 10 years and which apart from this subparagraph would be a relevant lease, shall not be a relevant lease if it is a lease of an asset, being an asset—

(I) provided for the purposes of a project, specified in the list referred to in section 133 (8)(c)(iv), which has been approved for grant aid by the Industrial Development Authority, the Shannon Free Airport Development Company Limited or Udarás na Gaeltachta, and

(II) to which section 283(5) or 285(7)(a)(i) applies,

and it would not be a relevant lease if for clauses (I) and (II) of subparagraph (i) there were substituted the following:

“(I) the aggregate of the relevant lease payments related to a chargeable period or its basis period of the lessor which falls wholly or partly in the period (in this subsection referred to as the “first period”) of 3 years beginning at the inception of the lease is not less than an amount determined by the formula—

$$V \times D \text{ — } 100 \times 80 \text{ — } 100 \times M / 12$$

where—

D is the rate per cent at the inception of the lease of the rate known as the 6 month Dublin Interbank Offered Rate and a record of which is maintained by the Central Bank of Ireland, expressed as a rate per annum,

M is the number of months in the chargeable period or its basis period, and

V is the fair value of the asset at the inception of the lease,

(II) as respects any chargeable period or its basis period of the lessor which falls wholly or partly in the period (in this subsection referred to as 'the second period') commencing immediately after the first period and ending at the end of the relevant period, the aggregate of the amounts of relevant lease payments related to the chargeable period or its basis period and the amounts of relevant lease payments related to any earlier chargeable period or its basis period falling wholly or partly in the second period is not less than an amount determined by the formula—

$$E / R \times P$$

where—

E is the length of the part of the second period which has expired at the end of the chargeable period or its basis period,

P is the aggregate of the amounts of relevant lease payments payable by the lessee in relation to the leased asset in the second period, and

R is the length of the second period, and

(III) except for an amount of relevant lease payments which is inconsequential, the excess of the total relevant lease payments under the lease over the aggregate of the relevant lease payments in the relevant period is payable to the lessor, or would be so payable if the relevant lease payments were the actual amounts payable under the lease, within a period of one year after the end of the relevant period.”,

(iii) an amount of relevant lease payments shall be treated as inconsequential if the aggregate of amounts, estimated at the inception of the lease, of discounted value, at the end of the period specified in clause (II) of subparagraph (i) or clause (III) of that subparagraph (construed in accordance with subparagraph (ii)), as the case may be, of the relevant lease payments after that time does not exceed 5 per cent of the fair value of the leased asset or £2,000, whichever is the lesser, and, for the purposes of this subparagraph, relevant lease payments shall be discounted at the rate specified in the definition of “relevant period”, and

(iv) where a chargeable period or its basis period, being an accounting period of a company, begins before and ends after a date, being the commencement of the relevant period, the first period or the second period or the end of such a period, as the case may be, it shall be divided into one part beginning on the day on which the accounting period begins and ending at the beginning or the end, as the case may be, of the relevant period, the first period or the second period, and another part beginning immediately after that time and ending on the day on which the accounting period ends, and both parts shall be treated as if they were separate accounting periods.

(2) (a) Where in the course of a trade an asset is provided by a person for leasing under a relevant

lease, the letting of the asset under that relevant lease shall be treated as a separate trade of leasing (in this subsection referred to as a "specified leasing trade") distinct from all other activities, including other leasing activities, of the person, and section 403, apart from subsections (5) to (9) of that section, shall apply in relation to a specified leasing trade as it applies in relation to a trade of leasing within the meaning of that section.

(b) Sections 305 (1)(b), 308 (4) and 420 (2) shall not apply in relation to capital allowances—

(i) in respect of expenditure incurred on the provision of an asset, or

(ii) on account of the wear and tear of an asset,

which is provided by a person for leasing under a relevant lease.

(3) Notwithstanding subsection (1)(b), a lease of an asset which consists of agricultural machinery or plant shall not be a relevant lease unless it would be such a lease if the amounts of relevant lease payments related to any chargeable period or its basis period were taken to be an amount equal to 50 per cent of the aggregate of the amounts of relevant lease payments related to that chargeable period or its basis period and the amounts of relevant lease payments related to a period equal in length to, and ending immediately before the commencement of, that period.

(4) (a) Where at any time after the 11th day of April, 1994, either of the following events occurs—

(i) the terms of a lease of an asset entered into before that day are altered, or

(ii) a lessor and a lessee agree to terminate a lease of an asset and, at or about that time, a further agreement to lease the asset is entered into by the lessor and the lessee or an agreement is entered into by the lessor and a person connected with the lessee, by the lessee and a person connected with the lessor or by a person connected with the lessor and a person connected with the lessee,

such that the aggregate of the amounts of the lease payments which are payable, or which would be payable if the relevant lease payments were the actual amounts payable under the lease, after any time exceeds the aggregate of the amounts of such relevant lease payments which would have been payable after that time if the events in subparagraph (i) or (ii) had not taken place, then, notwithstanding subsection (6)(a), unless it is shown that the change or the termination was effected for bona fide commercial reasons, the lease (including the terminated lease) shall be treated as if it were at all times a relevant lease, and relief given under Part 9, Chapter 1 or 2 of this Part, or section 396 or 420, which would not have been given if the lease was a relevant lease, shall be withdrawn.

(b) The withdrawal of an allowance or relief under paragraph (a) shall be made—

(i) for the chargeable period related to the event giving rise to the withdrawal of the relief, and

(ii) in accordance with paragraph (c), and both—

(I) details of the event giving rise to the withdrawal of the allowance or relief, and

(II) the amount to be treated as income under paragraph (c),

shall be included in the return required to be made by the lessor under section 951 for that chargeable period.

(c) (i) Notwithstanding any other provision of the Tax Acts, where relief is to be withdrawn under paragraph (a) in respect of—

(I) any amount which was set off against income under section 305,

(II) the amount of any loss which was set off under section 307, 308, 396 or 420 against profits, or

(III) the amount of any loss which was treated by virtue of a claim under section 381 as reducing income,

and which would not have been so set off or treated if the lease were a relevant lease, such amount (in this subsection referred to as “the relevant amount”) as would not have been so set off or treated, increased in accordance with subparagraph (ii), shall be treated as income arising in the chargeable period specified in paragraph (b)(i).

(ii) The amount by which the relevant amount is to be increased under subparagraph (i) shall be an amount determined by the formula—

$$A \times R \div 100 \times M$$

where—

A is the relevant amount,

M is the number of months in the period beginning on the date on which tax for the chargeable period in which the losses were treated as reducing income, or set off against profits, as the case may be, was due and payable and ending on the date on which tax for the chargeable period for which the withdrawal of relief is to be made is due and payable, and

R is the rate per cent specified in section 1080 (1).

(5) Notwithstanding subsection (1)(b), where at any time on or after the 11th day of April, 1994, a person (in this subsection referred to as “the lessor”) acquires an asset from another person who before that date was the owner of the asset and at or about that time the lessor or a person connected with the lessor leases the asset to the other person or a person connected with the other person, then, unless—

(a) the asset is new and unused, or

(b) the lease would not be a relevant lease if—

(i) for the first formula in subsection (1)(b)(i)(I) there were substituted “ $W \times P$ ”, and

(ii) subsection (1)(b)(ii) had not been enacted,

the lease shall be a relevant lease for the purposes of this section.

(6) This section shall apply as on and from the 23rd day of December, 1993; but a lease of an asset shall not be a relevant lease if—

(a) a binding contract in writing for the letting of the asset was concluded before that day,

(b) the leasing of the asset is carried on in the course of relevant trading operations within the meaning of section 445 or 446, or

(c) subject to subsections (4) and (5)—

(i) the relevant period does not exceed 5 years,

(ii) the fair value of the asset does not exceed £50,000 and, except where the assets are separate and distinct assets used independently of each other and the use of one is not an integral part of the use of the other, the fair value of an asset which is leased by a lessor to a lessee shall for the purposes of this subparagraph be treated as exceeding £50,000 if the aggregate of the fair value of such an asset and the fair value of any other asset leased by the lessor to the lessee in the period of 12 months ending at the inception of the lease of such an asset exceeds £50,000, and

(iii) the lease provides for lease payments to be made at annual or more frequent regular intervals throughout the period of the lease such that none of those payments, other than a payment which consists of the consideration for the disposal of the asset for an amount equal to its market value (being its market value if it were not subject to any lease) at the time of disposal, is significantly greater than any of the lease payments payable before it.