

Restriction on use of capital allowances for certain leased assets. FA84 s40(1) to (10); FA86 s53; FA87 s26; FA90 s41(5)(a) and (c); FA94 s61(1) 403.—(1) (a) In this section—

“chargeable period or its basis period” has the same meaning as in section 321 (2);

“lessee” and “lessor”, in relation to machinery or plant provided for leasing, mean respectively the person to whom the machinery or plant is or is to be leased and the person providing the machinery or plant for leasing, and “lessee” and “lessor” include respectively the successors in title of a lessee or a lessor;

“the relevant period” has the meaning assigned to it by subsection (9)(b);

“the specified capital allowances” means capital allowances in respect of—

(i) expenditure incurred on machinery or plant provided on or after the 25th day of January, 1984, for leasing in the course of a trade of leasing, or

(ii) the diminished value of such machinery or plant by reason of wear and tear,

other than capital allowances in respect of machinery or plant to which subsection (6), (7), (8) or (9) applies;

“trade of leasing” means—

(i) a trade which consists wholly of the leasing of machinery or plant, or

(ii) any part of a trade treated as a separate trade by virtue of subsection (2).

(b) For the purposes of this section—

(i) letting on charter a ship or aircraft which has been provided for such letting, and

(ii) letting any item of machinery or plant on hire,

shall be regarded as leasing of machinery or plant if apart from this paragraph it would not be so regarded.

(c) Where a company carries on a trade of operating ships in the course of which a ship is let on charter, paragraph (b) shall not apply so as to treat the letting on charter as the leasing of machinery or plant if apart from this section the letting would be regarded for the purposes of Case I of Schedule D as part of the activities of the trade.

(2) Where in any chargeable period or its basis period a person carries on as part of a trade any leasing of machinery or plant, that leasing shall be treated for the purposes of the Tax Acts, other than any

provision of those Acts relating to the commencement or cessation of a trade, as a separate trade distinct from all other activities carried on by such person as part of the trade, and any necessary apportionment shall be made of receipts or expenses.

(3) (a) Notwithstanding section 381, where relief is claimed under that section in respect of a loss sustained in a trade of leasing, the amount of that loss, in so far as by virtue of section 392 it is referable to the specified capital allowances, shall be treated for the purposes of subsections (1) and (3)(b) of section 381 as reducing profits or gains of that trade of leasing only and shall not be treated as reducing any other income.

(b) Where paragraph (a) applies in the case of any claimant to relief under section 381—

(i) any limitation imposed by section 393 on the amount of capital allowances which may be taken into account under section 392 shall be referred, as far as may be, to the specified capital allowances rather than to any other capital allowances, and

(ii) notwithstanding section 392 (2) (but without prejudice to paragraph (a) and to the order in which income is to be treated as reduced under section 381 (3)(b)), the claimant may specify the extent to which any reduction of income treated as occurring by virtue of section 381 is to be referred to so much of the loss as is attributable to the loss, if any, actually sustained in the trade of leasing, the specified capital allowances or any other capital allowances, and, where the claimant so specifies, section 394 shall apply in accordance with the claimant's specification and not in accordance with section 392 (2).

(4) (a) Where in an accounting period a company carrying on a trade of leasing incurs a loss in that trade and any specified capital allowances have been treated by virtue of section 307 or 308 as trading expenses in arriving at the amount of the loss, the relevant amount of the loss shall not be available—

(i) for relief under section 396 (2), except to the extent that it can be set off under that section against the company's income from the trade of leasing only, or

(ii) to be surrendered by means of group relief.

(b) For the purposes of paragraph (a), the relevant amount of the loss shall be the full amount of the loss or, if it is less, an amount equal to—

(i) where no capital allowances, other than the specified capital allowances, have been treated by virtue of section 307 or 308 as trading expenses in arriving at the amount of the loss, the amount of the specified capital allowances, or

(ii) where, in addition to the specified capital allowances, other capital allowances have been so treated by virtue of section 307 or 308, the lesser of—

(I) the amount of the specified capital allowances, and

(II) the amount by which the loss exceeds the amount of the other capital allowances;

but, where the amount of the loss does not exceed the amount of the other capital allowances, the relevant amount of the loss shall be nil.

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

(a) in respect of expenditure incurred on or after the 25th day of January, 1984, on the provision of machinery or plant, or

(b) in respect of the diminished value of machinery or plant by reason of wear and tear, if that machinery or plant was first acquired on or after the 25th day of January, 1984, by the person to whom the capital allowances are to be or have been made,

other than capital allowances in respect of machinery or plant to which subsection (6) or (7) applies.

(6) References in this section to machinery or plant to which this subsection applies are references to machinery or plant provided on or after the 25th day of January, 1984, for leasing where the expenditure incurred on the provision of the machinery or plant was incurred under an obligation entered into by the lessor and the lessee before—

(a) the 25th day of January, 1984, or

(b) the 1st day of March, 1984, pursuant to negotiations which were in progress between the lessor and the lessee before the 25th day of January, 1984.

(7) References in this section to machinery or plant to which this subsection applies are references to machinery or plant provided on or after the 25th day of January, 1984, for leasing where the expenditure incurred on the provision of the machinery or plant or 7 of the Irish Film Board Act, 1980 , applies, the cost of the making of the film) has been or is to be met directly or indirectly, wholly or partly, by the Industrial Development Authority, the Irish Film Board, the Shannon Free Airport Development Company Limited, or Údarás na Gaeltachta; but this subsection shall not apply to machinery or plant provided for leasing on or after the 13th day of May, 1986, unless—

(a) the machinery or plant is a film to which section 6 or 7 of the Irish Film Board Act, 1980 , applies, or

(b) the expenditure incurred on the provision of the machinery or plant (not being a film of the kind mentioned in paragraph (a)) was incurred under an obligation entered into by the lessor and the lessee before—

(i) the 13th day of May, 1986, or

(ii) the 1st day of September, 1986, pursuant to negotiations which were in progress between the lessor and the lessee before the 13th day of May, 1986.

(8) The reference in the definition of “the specified capital allowances” to machinery or plant to which

this subsection applies is a reference to machinery or plant provided for leasing by a lessor to a lessee in the course of the carrying on by the lessor of relevant trading operations within the meaning of section 445 or 446, and—

(a) in respect of the expenditure on which no allowance has been or will be made under section 283, or

(b) in respect of which no allowance on account of wear and tear to be made under section 284 has been or will be increased under section 285.

(9) (a) (i) In this subsection, “specified trade”, in relation to a lessee, means a trade which throughout the relevant period consists wholly or mainly of the manufacture of goods, would be regarded for the purposes of that Part as the manufacture of goods).

(ii) For the purposes of subparagraph (i), a trade shall be regarded, as respects the relevant period, as consisting wholly or mainly of particular activities only if the total amount receivable by the lessee from sales made or, as the case may be, in payment for services rendered in the course of those activities in the relevant period is not less than 75 per cent of the total amount receivable by the lessee from all sales made or, as the case may be, in payment for all services rendered in the course of the trade in the relevant period.

(iii) As respects a person who carries on a trade of leasing and who incurred expenditure on the provision before the 20th day of April, 1990, of machinery or plant for leasing under an obligation entered into before that date by the lessor and a lessee who carries on a trade which but for section 443 (6) would be a specified trade, this subsection shall apply as if the trade carried on by the lessee were a specified trade.

(iv) For the purposes of subparagraph (iii), an obligation shall be treated as entered into before the 20th day of April, 1990, only if before that date there were in existence a binding contract in writing under which that obligation arose.

(b) The reference in the definition of “the specified capital allowances” to machinery or plant to which this subsection applies is a reference to machinery or plant (not being a film of the kind mentioned in subsection (7)(a)) provided on or after the 13th day of May, 1986, for leasing by a lessor to a lessee (who is not a person connected with the lessor) under a lease the terms of which include an undertaking given by the lessee that, during a period (in this section referred to as “the relevant period”) which is not less than 3 years and which commences on the day on which the machinery or plant is first brought into use by the lessee, the machinery or plant so provided will be used by the lessee for the purposes only of a specified trade carried on in the State by the lessee.

(c) Any machinery or plant in respect of which an undertaking mentioned in paragraph (b) has been given by a lessee, and which at any time has been treated as machinery or plant to which this subsection applies, shall at any later time cease to be machinery or plant to which this subsection applies if at that later time it appears to the inspector (or on appeal to the Appeal Commissioners) that the undertaking has not been fulfilled by the lessee.

(d) Where any machinery or plant ceases in accordance with paragraph (c) to be machinery or plant to which this subsection applies, such assessments or adjustments of assessments shall be made to recover from the lessor any relief from tax given to the lessor because the machinery or plant was treated as machinery or plant to which this subsection applies.

(e) This subsection shall not apply to machinery or plant provided for leasing on or after the 13th day of May, 1986, if the expenditure incurred on the provision of the machinery or plant was incurred under an obligation entered into by the lessor and the lessee before—

(i) the 13th day of May, 1986, or

(ii) the 1st day of September, 1986, pursuant to negotiations which were in progress between the lessor and the lessee before the 13th day of May, 1986.

(10) For the purposes of subsections (6), (7) and (9)—

(a) an obligation shall be treated as having been entered into before a particular date only if before that date there was in existence a binding contract in writing under which that obligation arose, and

(b) negotiations pursuant to which an obligation was entered into shall not be regarded as having been in progress between a lessor and a lessee before a particular date unless on or before that date preliminary commitments or agreements in relation to that obligation had been entered into between the lessor and the lessee.