

Calculation of balancing allowances and balancing charges in certain cases. ITA67 s277 289.—(1) In this section, “open-market price”, in relation to any machinery or plant, means the price which the machinery or plant would have fetched if sold in the open market at the time of the event in question.

(2) Where—

(a) an event occurs which gives rise or might give rise to a balancing allowance or balancing charge in respect of machinery or plant,

(b) the event is the permanent discontinuance of a trade, and

(c) at or about the time of the discontinuance there occurs in relation to the machinery or plant any event mentioned in paragraphs (a) to (c) of section 318, not being a sale at less than open-market price other than a sale to which section 312 applies,

then, for the purpose of determining—

(i) whether the discontinuance gives rise to a balancing allowance or balancing charge, and, if so,

(ii) the amount of the allowance or, as the case may be, the amount on which the charge is to be made,

the amount of the net proceeds, compensation, receipts or insurance moneys mentioned in paragraphs (a) to (c) of section 318 which arise on the last-mentioned event shall be deemed to be an amount of sale, insurance, salvage or compensation moneys arising on the permanent discontinuance of the trade.

(3) (a) Subject to subsections (4) and (6), paragraph (b) shall apply where an event occurs which gives rise or might give rise to a balancing allowance or balancing charge in respect of machinery or plant, and—

(i) the event is the permanent discontinuance of the trade and immediately after the time of the discontinuance the machinery or plant continues to belong to the person by whom the trade was carried on immediately before that time and the case is not one within subsection (2),

(ii) the event is the permanent discontinuance of the trade and at the time of the discontinuance the machinery or plant is either sold at less than the open-market price, the sale not being one to which section 312 applies, or the machinery or plant is given away,

(iii) the event is the sale of the machinery or plant at less than the open-market price, not being a sale to which section 312 applies, or is the gift of the machinery or plant, or

(iv) the event is that, after the setting up and before the permanent discontinuance of the trade, the machinery or plant permanently ceases to be used for the purposes of a trade carried on by the person by whom the first-mentioned trade is being carried on, and so ceases either by reason of that person's transferring the machinery or plant to other use or, on a transfer of the trade which is not treated as involving a

discontinuance of the trade, by reason of the retention of the machinery or plant by the transferor.

(b) For the purpose of determining whether a balancing allowance or balancing charge is to be made and, if so, the amount of the allowance or, as the case may be, the amount on which the charge is to be made, the event shall be treated as if it had given rise to sale, insurance, salvage or compensation moneys of an amount equal to the open-market price of the machinery or plant.

(4) References in subsection (3) to the sale of machinery or plant at less than the open-market price do not include references to the sale of machinery or plant in such circumstances that there is a charge to income tax under Schedule E by virtue of Chapter 3 of Part 5, and subsection (3)(b) shall not apply by reason of the gift of machinery or plant if the machinery or plant is given away in any such circumstances.

(5) Subject to subsection (6), where subsection (3)(b) applies by reason of the gift or sale of machinery or plant to any person, and that person receives or purchases the machinery or plant with a view to using it for the purposes of a trade carried on by that person, then, in determining whether any, and if so what, wear and tear allowances, balancing allowances or balancing charges are to be made in connection with that trade, the like consequences shall ensue as if the recipient or purchaser had purchased the machinery or plant at the open-market price.

(6) Where in a case within subsection (5) the recipient or purchaser and the donor or seller, by notice in writing to the inspector, jointly so elect, the following provisions shall apply:

(a) subsections (3)(b) and (5) shall apply as if for the references in those subsections to the open-market price there were substituted references to that price or the amount of the expenditure on the provision of the machinery or plant still unallowed immediately before the gift or sale, whichever is the lower;

(b) notwithstanding anything in this Chapter, such balancing charge, if any, shall be made on the recipient or purchaser on any event occurring after the date of the gift or sale as would have been made on the donor or seller if the donor or seller had continued to own the machinery or plant and had done all such things and been allowed all such allowances in connection with the machinery or plant as were done by or allowed to the recipient or purchaser.