

# Enterprise Zones: First-Year Allowances for Designated Areas

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## Who is likely to be affected?

Companies investing in plant or machinery for use in designated assisted areas in Enterprise Zones.

## General description of the measure

The measure will introduce 100 per cent first-year allowances (FYAs) for companies investing in plant or machinery for use primarily in designated assisted areas within Enterprise Zones.

## Policy objective

The Enterprise Zones are being introduced from 2012-13 to encourage economic growth and investment. FYAs of 100 per cent are intended to contribute to this objective by promoting investment by capital intensive companies in a limited number of designated assisted areas within Enterprise Zones.

## Background to the measure

The proposal to introduce Enterprise Zones was announced at Budget 2011. The core offer for businesses in the new zones comprises simplified planning and business rates discounts. The Budget statement also announced that the Government would work with individual Local Enterprise Partnerships (LEPs) to consider the scope for introducing enhanced capital allowances, to support zones in assisted areas where there is a strong focus on manufacturing. In an HM Treasury Press Notice on 17 August 2011, the Government announced its decision to proceed with the enhanced capital allowances proposal. On 26 August 2011, HM Treasury wrote to LEPs providing details of the proposed design of the new 100 per cent FYAs scheme and seeking bids from the LEPs based on that design. In addition, the letter outlined the criteria against which the bids would be judged.

The Chancellor of the Exchequer announced the successful bids in the Autumn Statement on 29 November 2011. Discussions are ongoing with the devolved administrations about setting up Enterprise Zones which could include a limited number of designated assisted areas in which 100 per cent FYAs would be made available.

## Detailed proposal

### Operative date

This measure will have effect for expenditure incurred in the five year period from 1 April 2012 to 31 March 2017 inclusive. The expenditure must be incurred at a time when the designated area is in an assisted area (as defined by the Assisted Areas Order 2007 (S.I. 2007/107)).

### Current law

Capital allowances allow businesses to deduct the costs of certain capital assets, such as plant or machinery, from their taxable income. They take the place of commercial depreciation, which is not allowed for tax.

Any qualifying expenditure on plant or machinery, not covered by a claim to the annual investment allowance (AIA) or a FYA, qualifies for writing-down allowances at either 18 per cent or 8 per cent a year (the rates that will apply from April 2012), depending on the nature of the asset.

## Proposed revisions

Legislation will be introduced in Finance Bill 2012 to provide 100 per cent FYAs for expenditure incurred by trading companies on qualifying plant or machinery for use primarily in designated assisted areas within Enterprise Zones. The qualifying expenditure must be incurred between 1 April 2012 and 31 March 2017 and the area in which the plant or machinery is to be used must be an assisted area at the time when the expenditure is incurred. In addition, the plant or machinery must not be held for use in an area outside of the designated assisted area for a period of five years.

As with existing FYAs, the general exclusions in section 46 of the Capital Allowances Act 2001 will apply to the new FYA; this includes the exclusion of expenditure on assets for leasing.

In order to comply with the state aid General Block Exemption rules (Commission Regulation (EC) No 800/2008), a number of additional conditions will also apply to the new FYA. In particular, the company incurring the qualifying expenditure must not be a firm:

- in difficulty for the purposes of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02);
- subject to an outstanding recovery order following a European Commission decision declaring an aid illegal;
- engaged in the fisheries and aquaculture sectors, as covered by Council Regulation (EC) No 104/200, nor in the management of waste of undertakings;
- engaged in any of the coal, steel, shipbuilding or synthetic fibres sectors; or,
- engaged in the primary production of agricultural products.

In addition, the expenditure must be on plant or machinery that is unused and not second-hand and must:

- comprise investment not replacement expenditure;
- not be on a means of transport, or transport equipment for the purposes of a business in the road freight or air transport sectors;
- not be taken into account for the purposes of another State aid grant or relevant payment made towards that expenditure; and,
- not exceed a total of €125 million for the investment project.

## Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
	-	-25	-40	-25	-5	negligible
	These figures were set out in Table 2.1 of the Autumn Statement and have been certified by the Office of Budget Responsibility. More detail can be found in the policy costings document published alongside the Autumn Statement.					

<b>Economic impact</b>	The 100 per cent first-year allowances are expected to lead to more investment being made in the Enterprise Zones.
<b>Impact on individuals and households</b>	There is no impact on individuals or households. This change only affects companies that invest in plant or machinery in designated assisted areas in Enterprise Zones.
<b>Equalities impacts</b>	This change only affects companies investing in plant or machinery in designated assisted areas and not individuals. It is therefore considered that these proposals have no impacts on protected equality groups.
<b>Impact on business including civil society organisations</b>	A limited number of companies will qualify for FYAs in the Enterprise Zones. These companies will benefit from 100 per cent first-year allowances, which will enable them to write off qualifying expenditure more quickly for tax purposes. The impacts of this measure on businesses' administrative burdens are expected to be negligible.
<b>Operational impact (£m) (HMRC or other)</b>	The measure is expected to have some small operational impact on HM Revenue & Customs.
<b>Other impacts</b>	<u>Small firms impact test:</u> The direct impact on small firms is likely to be negligible because the designated assisted areas have been identified as areas where companies intending to make significant capital investments plan to locate. Smaller firms in Enterprise Zones are likely to benefit more indirectly (from the general increase in local investment) and from other elements of the package (such as the business rates discount). In any event, the capital investment in plant or machinery by the vast majority of small firms will normally be wholly covered by the AIA.

## Monitoring and evaluation

The measure will be monitored and assessed alongside other measures in the Government's package for Enterprise Zones.

## Further advice

If you have any questions about this change, please contact Joy Guthrie (email: [joy.guthrie@hmrc.gsi.gov.uk](mailto:joy.guthrie@hmrc.gsi.gov.uk)) or Malcolm Smith (email: [malcolm.smith3@hmrc.gsi.gov.uk](mailto:malcolm.smith3@hmrc.gsi.gov.uk)) or telephone 020 7147 2610.

**1 Expenditure on plant and machinery for use in designated assisted areas**

Schedule 1 contains provision about first-year allowances in respect of expenditure on plant and machinery for use in designated assisted areas.

## SCHEDULE 1

Section 1

## EXPENDITURE ON PLANT AND MACHINERY FOR USE IN DESIGNATED ASSISTED AREAS

- 1 CAA 2001 is amended as follows.
- 2 In section 39 (first-year allowances available for certain types of qualifying expenditure only), at the appropriate place in the list insert –

“section 45K	expenditure on plant and machinery for use in designated assisted areas.”
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- 3 After section 45J insert –

**“45K Expenditure on plant and machinery for use in designated assisted areas**

- (1) Expenditure is first-year qualifying expenditure if –
  - (a) it is incurred by a company on the provision of plant or machinery for use primarily in an area which at the time the expenditure is incurred is a designated assisted area,
  - (b) it is incurred in the period of 5 years beginning with 1 April 2012,
  - (c) Conditions A to E are met.
- (2) “Designated assisted area” means an area which –
  - (a) is designated by an order made by the Treasury, and
  - (b) falls wholly within an assisted area.
- (3) An area may be designated by an order under subsection (2)(a) only if at the time the order is made –
  - (a) the area falls wholly within an enterprise zone, and
  - (b) a memorandum of understanding, in respect of the area, relating to the availability of allowances in respect of expenditure to which this section applies has been entered into by the Treasury and the responsible authority for the area.
- (4) An order made under subsection (2)(a) may provide that an area designated by the order is to be treated as having been so designated at times falling before the order is made.
- (5) But where an area has previously been designated by an order under subsection (2)(a), section 14 of the Interpretation Act 1978 does not apply, by virtue of subsection (4), so as to imply a power to make an order (“the new order”) treating that area (or any part of it) as if it were not so designated at times falling before the new order is made.
- (6) Condition A is that the company is within the charge to corporation tax.
- (7) Condition B is that the expenditure is incurred for the purposes of a qualifying activity within section 15(1)(a) or (f).
- (8) Condition C is that the expenditure is incurred for the purposes of –

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- (a) a business of a kind not previously carried on by the company,
    - (b) expanding a business carried on by the company, or
    - (c) starting up an activity which relates to a fundamental change in a product or production process of, or service provided by, a business carried on by the company.
  - (9) Condition D is that the plant or machinery is unused and not second-hand.
  - (10) Condition E is that the expenditure is not replacement expenditure.
  - (11) “Replacement expenditure” means expenditure incurred on the provision of plant or machinery (“new plant or machinery”) intended to perform the same, or a similar function, for the purposes of the qualifying activity of the company, as other plant or machinery (“replaced plant or machinery”) –
    - (a) on which the company has previously incurred qualifying expenditure, and
    - (b) which has been superseded by the new plant or machinery.
  - (12) But if and to the extent that –
    - (a) the expenditure is incurred on the provision of new plant or machinery that is capable of and intended to perform a significant additional function, when compared to the replaced plant or machinery, and
    - (b) the additional function enhances the capacity or productivity of the qualifying activity in question,so much of the expenditure as is attributable to the additional function is not to be regarded as replacement expenditure.
  - (13) The part of the expenditure attributable to the additional function is to be determined on a just and reasonable basis.
  - (14) In this section –
    - “assisted area” means –
      - (a) an area specified as a development area under section 1 of the Industrial Development Act 1982, or
      - (b) Northern Ireland;
    - “enterprise zone” means an area recognised by the Treasury as an area in respect of which there is a special focus on economic development and identified on a map published by the Treasury for the purposes of this section;
    - “the responsible authority”, for an area, means –
      - (a) if the area is in England, a local authority for all or part of the area or two or more such local authorities,
      - (b) if the area is in Scotland, the Scottish Ministers,
      - (c) if the area is in Wales, the Welsh Ministers, and
      - (d) if the area is in Northern Ireland, the Department of Enterprise, Trade and Investment in Northern Ireland.
  - (15) The Treasury may by order amend the definition of “assisted area” in subsection (14) in consequence of any changes made to the areas in the United Kingdom granted assisted area status by virtue of

Article 107(3) of the Treaty on the Functioning of the European Union.

- (16) This section is subject to—
- section 45L (plant or machinery partly for use outside designated assisted areas),
  - section 45M (exclusions from section 45K allowances),
  - section 45N (effect of plant or machinery subsequently being primarily used in an area other than a designated assisted area), and
  - section 46 (general exclusions).

**45L Exclusion of plant or machinery partly for use outside designated assisted areas**

- (1) Expenditure on plant or machinery is not first-year qualifying expenditure under section 45K if—
- (a) at the time when it is incurred, the company incurring it intends the plant or machinery to be used partly in a non-designated area, and
  - (b) the main purpose, or one of the main purposes, for which any person is a party to the relevant arrangements is the obtaining of a first-year allowance, or a greater first-year allowance, in respect of the part of the expenditure that is attributable to that intended use in a non-designated area.
- (2) For the purposes of subsection (1)(b), the part of the expenditure that is attributable to that intended use in a non-designated area is to be determined on a just and reasonable basis.
- (3) In this section—
- “non-designated area” means an area which is not a designated assisted area within the meaning of section 45K;
  - “the relevant arrangements” means—
    - (a) the transaction under which the expenditure is incurred, and
    - (b) any scheme or arrangements of which that transaction forms part.

**45M Exclusions from allowances under section 45K**

- (1) Expenditure incurred by a person is not first-year qualifying expenditure under section 45K if it is within subsection (2), (4), (6) or (7).
- (2) Expenditure is within this subsection if, at the time a claim is made under section 3 for a section 45K allowance in respect of the expenditure, the person who incurred the expenditure is, or forms part of, an undertaking within subsection (3).
- (3) An undertaking is within this subsection if one or both of the following conditions are met—
- (a) it is reasonable to assume that the undertaking would be regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02);

- (b) the undertaking is subject to an outstanding recovery order made by virtue of Article 108(2) of the Treaty on the Functioning of the European Union (Commission Decision declaring aid illegal and incompatible with the common market).
- (4) Expenditure is within this subsection if it is incurred for the purposes of a qualifying activity –
  - (a) in the fishery or aquaculture sector, as covered by Council Regulation (EC) No 104/2000,
  - (b) in the coal sector, steel sector, shipbuilding sector or synthetic fibres sector,
  - (c) relating to the management of waste of undertakings, or
  - (d) relating to –
    - (i) the primary production of agricultural products,
    - (ii) on-farm activities necessary for preparing an animal or plant product for the first sale, or
    - (iii) the first sale of agricultural products by a primary producer to wholesalers, retailers or processors, in circumstances where that sale does not take place on separate premises reserved for that purpose.
- (5) In subsection (4)(c) the reference to waste of undertakings does not include waste of the person who incurred the expenditure or of any other person forming part of the same undertaking as that person.
- (6) Expenditure is within this subsection if it is incurred on a means of transport or transport equipment for the purposes of a qualifying activity in the road freight sector or the air transport sector.
- (7) Expenditure is within this subsection to the extent that it is taken into account for the purposes of a relevant grant, or relevant payment, made towards that expenditure.
- (8) A grant or payment is relevant if it is –
  - (a) a State aid, other than an allowance under this Part, or
  - (b) a grant or subsidy, other than a State aid, which the Treasury by order declares to be relevant for the purposes of the withholding of a section 45K allowance.
- (9) If a relevant grant or relevant payment towards the expenditure is made after the making of a section 45K allowance, the allowance is to be withdrawn to that extent.
- (10) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (9).
- (11) If a person who has made a return becomes aware that, after making it, anything in it has become incorrect because of the operation of this section, that person must give notice to an officer of Revenue and Customs specifying how the return needs to be amended.
- (12) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section.
- (13) In this section –

“agricultural product”, “coal sector”, “steel sector”, “shipbuilding sector” and “synthetic fibres sector” have the same meaning as in the General Block Exemption Regulation; “General Block Exemption Regulation” means Commission Regulation (EC) No 800/2008 (General block exemption Regulation); “management” and “waste” have the meaning given by Article 1 of Directive 2006/12/EC of the European Parliament and of the Council; “section 45K allowance” means a first-year allowance in respect of expenditure that is first-year qualifying expenditure under section 45K; “undertaking” means –

- (a) an autonomous enterprise, or
- (b) an enterprise (not within paragraph (a)) and its partner enterprises (if any) and its linked enterprises (if any),

and for this purpose “enterprise”, “autonomous enterprise”, “partner enterprises” and “linked enterprises” have the meaning given by Annex 1 to the General Block Exemption Regulation.

- (14) Nothing in this section limits references to “State aid” to State aid which is required to be notified to and approved by the European Commission.
- (15) The Treasury may by order make such provision amending this section as appears to them appropriate for the purpose of giving effect to any future amendments of or instruments replacing –
  - (a) the General Block Exemption Regulation,
  - (b) the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02),
  - (c) Council Regulation (EC) No 104/2000,
  - (d) Directive 2006/12/EC of the European Parliament and of the Council, or
  - (e) the Treaty on the Functioning of the European Union.

**45N Effect of plant or machinery subsequently being primarily for use outside designated assisted areas**

- (1) Expenditure on the provision of plant or machinery is to be treated as never having been first-year qualifying expenditure under section 45K if, at any relevant time –
  - (a) the primary use to which the plant and machinery is put is other than in an area which was a designated assisted area within the meaning of section 45K at the time the expenditure was incurred, or
  - (b) the plant or machinery is held for use otherwise than primarily in an area which was such a designated assisted area at that time.
- (2) “Relevant time” means a time which –
  - (a) falls within the relevant period, and
  - (b) is a time when the plant or machinery is owned by –

- (i) the person who incurred the expenditure, or
  - (ii) a person who is, or at any time in that period has been, connected with that person.
- (3) “The relevant period” means the period of 5 years beginning with—
- (a) the day on which the plant or machinery in question is first brought into use for the purposes of a qualifying activity carried on by the company, or
  - (b) if earlier, the day on which it is first held for such use.
- (4) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (1).
- (5) If a person who has made a return becomes aware that, after making it, anything in it has become incorrect because of the operation of this section, that person must give notice to an officer of Revenue and Customs specifying how the return needs to be amended.
- (6) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section.”
- 4 In section 46 (general exclusions applying to first-year qualifying expenditure), in subsection (1), at the appropriate place in the list insert—

“section 45K	(expenditure on plant and machinery for use in designated assisted areas).”
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- 5 (1) Section 52 (first-year allowances) is amended as follows.
- (2) In subsection (3), at the appropriate place in the Table insert—

“Expenditure qualifying under section 45K (expenditure on plant and machinery for use in designated assisted areas)	100%”
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- (3) In subsection (5)—
- (a) omit the “and” at the end of the entry for section 212T, and
  - (b) after that entry insert—
    - “section 212U (cap on first-year allowances: expenditure on plant and machinery for use in designated assisted areas), and”.
- 6 In section 52A (prevention of double relief) for the words after “not” substitute “claim—

- (a) an annual investment allowance and a first-year allowance in respect of the same expenditure, or
  - (b) first-year allowances under two or more of the provisions listed in section 39 in respect of the same expenditure.”
- 7 (1) In Chapter 16B (cap on first-year allowances: zero-emission goods vehicles), after section 212T insert –

**“212U Cap on first-year allowances: expenditure on plant and machinery for use in designated assisted areas**

- (1) A section 45K allowance is not available in respect of expenditure (“the current expenditure”) incurred by a person (“the investor”) in respect of a particular designated assisted area –
  - (a) if section 45K allowances have previously been made in respect of undertaking expenditure of 125 million euros incurred in respect of that area, or
  - (b) (where paragraph (a) does not apply) if, and to the extent that, the aggregate of –
    - (i) the undertaking expenditure incurred in respect of that area in respect of which section 45K allowances have previously been made, and
    - (ii) the current expenditure, exceeds 125 million euros.
- (2) “Undertaking expenditure” means –
  - (a) expenditure incurred by the investor, and
  - (b) if the investor and one or more other persons together form, or have at any time formed, an undertaking, expenditure which is –
    - (i) incurred by that undertaking, or
    - (ii) incurred by any of those other persons at a relevant time.
- (3) Expenditure is incurred by a person at a “relevant time” if it is incurred –
  - (a) at a time when the investor and the person are part of the same undertaking, or
  - (b) at a time before the investor and the person became part of the same undertaking (or, if they became part of the same undertaking on more than one occasion, before the last time).
- (4) Expenditure is incurred “in respect of a particular designated assisted area” if it is incurred on the provision of plant or machinery for use primarily in that area.
- (5) For the purposes of subsection (1), expenditure incurred in a currency other than the euro is to be converted into its equivalent in euros using the spot rate of exchange for the day on which the expenditure is incurred.
- (6) The Treasury may by regulations increase the amount specified in subsection (1)(a) and (b).
- (7) In this section –

“designated assisted area” has the meaning given by section 45K;

“section 45K allowance” means a first-year allowance in respect of expenditure that is first-year qualifying expenditure under section 45K;

“undertaking” means –

- (a) an autonomous enterprise, or
- (b) an enterprise (not within paragraph (a)) and its partner enterprises (if any) and its linked enterprises (if any),

and “enterprise”, “autonomous enterprise”, “partner enterprise” and “linked enterprise” have the meaning given by Annex 1 to the Commission Regulation (EC) No 800/2008 (General block exemption Regulation).”

- (2) Accordingly, in the heading for that Chapter omit “: **zero-emission goods vehicles**”.

- 8 The amendments made by this Schedule have effect for chargeable periods ending on or after 1 April 2012.

**EXPLANATORY NOTE**

**EXPENDITURE ON PLANT AND MACHINERY FOR USE IN DESIGNATED ASSISTED AREAS**

**SUMMARY**

1. This Clause and Schedule provide 100 per cent first-year allowances (FYAs) for companies investing in plant or machinery for use primarily in designated assisted areas within Enterprise Zones. To qualify for this new relief, the expenditure must be incurred in the period from when an area is treated as being a designated assisted area and 31 March 2017.

**DETAILS OF THE SCHEDULE**

2. Paragraph 1 is introductory and explains that the Capital Allowances Act 2001 (CAA) is to be amended.
3. Paragraph 2 adds expenditure on plant and machinery for use in designated assisted areas to the categories of expenditure, listed in section 39 of CAA, that can qualify for FYAs.
4. Paragraph 3 introduces new sections 45K to 45N into CAA.

**Section 45K Expenditure on plant and machinery for use in designated assisted areas.**

5. New section 45K(1) sets out the circumstances in which expenditure on plant or machinery constitutes first-year qualifying expenditure. The conditions are that the expenditure must be incurred:
  - by a company on the provision of plant or machinery for use primarily in an area which is a designated assisted area at that time. (The restriction of the new FYAs to “a company” means that unincorporated businesses and partnerships of companies, even if the partnership may be a body corporate, are not eligible for these new FYAs);
  - in the period of five years beginning with 1 April 2012;and -
  - five further conditions (conditions A to E) must also be met.
6. New section 45K(2) sets out the meaning of “designated assisted area”: this means an area which has been designated by an order made by the Treasury, and an area that falls wholly within an assisted area (see new subsection 14). This latter requirement is the first of a

number designed to ensure that these new FYAs fall within Commission Regulation (EC) No 800/2008 known as the General Block Exemption Regulation (“GBER”) (see new subsection (13)) in respect of State aid. Because they provide a geographically selective benefit, the new FYAs would constitute regional State aid..

7. New section 45K(3) sets out the circumstances in which an area may be designated by an order. There are two requirements:
  - the area must fall wholly within an enterprise zone (see new subsection 14), and
  - the Treasury and the responsible authority (see new subsection 14) must have entered into a memorandum of understanding relating to the availability of the new FYAs in the area. (The memoranda of understanding, each of which will include a map of the relevant designated assisted area, will be published on the HM Treasury website.)
8. New section 45K(4) ensures that, where appropriate, the order may have retrospective effect. So, for example, if the order so provides, the new FYAs may be made available in respect of qualifying expenditure incurred on or after 1 April 2012, even if the order is not made until some time after Royal Assent to Finance Bill 2012, say, in late August 2012.
9. New section 45K(5) prevents an area being revoked or reduced in size with retrospective effect.
10. New sections 45K (6) to (10) set out the five further conditions (that is, in addition to those in New section 45K(1)), which also have to be met:
  - conditions A and B restrict the new relief to UK resident companies, which are liable to corporation tax, and that carry on a trade or a mining, transport or similar undertaking (as mentioned in section 12(4) of Income Tax (Trading and Other Income) Act 2005 (ITTOAI) or 39(4) of Corporation Tax Act 2009 (CTA 2009));
  - condition C ensures that the GBER requirement for the expenditure to comprise investment aid, rather than operating aid, is met. This effectively means that the expenditure must be incurred on setting up a new business, expanding an existing business or on a fundamental change to a product or production process of, or service provided by, a business carried on by a company;
  - condition D focuses the relief on new and unused plant and machinery, which is a GBER requirement; and

- condition E is that the expenditure is not “replacement expenditure” (as defined in New section 45K(11)), which is also a GBER requirement.
11. New sections 45K(11), (12) and (13) explain the meaning and scope of “replacement expenditure” and also provide for a just and reasonable apportionment where part only of the expenditure is replacement expenditure.
  12. New section 45K (14) defines “assisted area”, “enterprise zone” and “the responsible authority”.
  13. New section 45K (15) allows the Treasury to amend the definition of “assisted area” by order, if any changes are made to the areas in the UK which are granted assisted area status. The current list of assisted areas is due to be revised by the Commission with effect from 1 January 2014.
  14. New section 45K(16) provides that new section 45K is subject to
    - new section 45L (plant or machinery partly for use outside designated assisted areas),
    - new section 45M (exclusions from section 45K allowances),
    - new section 45N (effect of plant or machinery subsequently being primarily used in an area other than a designated assisted area), and
    - section 46 (general exclusions).

**Section 45L Exclusion of plant and machinery partly for use outside designated assisted areas.**

15. New Section 45L is an anti avoidance rule to prevent exploitation where the company incurring the expenditure intends to use the plant or machinery outside the designated assisted area, but enters into “relevant arrangements”, designed to meet the “for use primarily in the area” test, where the main, or one of the main, purposes of those arrangements is to obtain the FYA, or a greater amount of FYA. For example, a bus operator group of companies, that would normally have set up two new companies to operate two new bus fleets of similar size in two different areas (where one is a designated assisted area and the other is not), might seek to exploit the new FYAs by setting up one company and using both fleets alternately in both areas, to contrive the result that both fleets are used just over 50 per cent in the designated assisted area. In such a case, the part (here, one-half) of the combined fleet which the group intended to use outside of the designated assisted area would be determined on a just

and reasonable basis, and the expenditure on that part would be excluded from the FYA.

**Section 45M Exclusions from allowances under section 45K**

16. New section 45M(1) provides that expenditure incurred by a person is not first-year qualifying expenditure under new section 45K if it falls within sections 45M(2), (4), (6) or (7). The exclusions in these subsections are GBER requirements.
17. New sections 45M(2) to (5) provide that expenditure does not qualify for new section 45K allowances if the person who incurred the expenditure is, or forms part of, an “undertaking” that is:
  - a “firm in difficulty”;
  - subject to an outstanding recovery order, declaring aid illegal;
  - in the fishery or aquaculture sectors;
  - in the coal, steel, shipbuilding or synthetic fibres sectors;
  - engaged in the management of waste of other “undertakings”;or -
  - is engaged in:
    - i. the primary production of agricultural products,
    - ii. on-farm activities necessary for preparing an animal or plant product for the first sale,
    - iii. the first sale of agricultural products by a primary producer to wholesalers, retailers or processors where that sale does not take place on separate premises reserved for that purpose.
18. New section 45M(6) provides that expenditure does not qualify for relief if it is incurred on a means of transport or transport equipment by a person carrying on a qualifying activity in the road freight or air transport sectors. This does not mean that all expenditure incurred by businesses in those sectors is excluded; only their expenditure on means of transport and transport equipment is ineligible for relief.
19. New sections 45M(7) and (8) provide that no new section 45K allowances are to be made to the extent that the expenditure is taken into account for the purposes of a relevant grant or relevant payment. A grant or payment is relevant if it is a State aid (other than a FYA under these new provisions), or if it is declared, by Treasury order, to be relevant.

20. New sections 45M(9) to (12) provide that if a relevant grant or payment is made after the making of the new FYA allowance, the allowance is to be withdrawn to that extent. Provision is made for all necessary assessments and adjustments to be made for this purpose. In addition, a person who has made a return, who becomes aware that anything in the return has become incorrect because of the operation of this section, must give notice to an Officer of Revenue and Customs of the necessary amendment, within 3 months of first becoming aware of it.
21. New section 45M(13) defines various terms used in new section 45M.
22. New section 45M(14) makes it clear that any reference to State aid in the section is not to be read narrowly, so as to apply only to State aid that is required to be notified to, and approved by, the European Commission. So, for example, State aid that is brought within the terms of the GBER, so that it is exempt from prior notification, is still a relevant grant or payment.
23. New section 45M(15) states that the Treasury may, by order, make such provision to amend new section 45M as appears to them appropriate to give effect to any future amendments to, or instruments replacing, the particular European Regulations, Guidelines, Directive or Treaty, listed in this new subsection.

**Section 45N Effect of plant or machinery subsequently being primarily for use outside designated assisted area.**

24. New section 45N(1) of this new section requires that the plant or machinery, in relation to which the new section 45K FYAs have been claimed, must be primarily used by the person claiming the allowance (or a connected person) for at least 5 years within the relevant designated assisted area. If, within that 5 year period, the person claiming the allowance, or a connected person, begins to use the plant or machinery primarily outside that area, the FYAs must be withdrawn, as if the expenditure had never qualified for the new FYAs. This section is included both to prevent exploitation of the new FYAs and also to satisfy the GBER State aid requirements in relation to regional aid.
25. New sections 45N(2) and (3) define ‘relevant time’ and ‘relevant period’.
26. New sections 45N(4) to (6) provide that all such necessary assessments and adjustments are to be made for the purpose of withdrawing the relief. In addition, a person who has made a return, who becomes aware that anything in the return has become incorrect because of the operation of this section, must give notice to an

Officer of Revenue and Customs of the necessary amendment, within 3 months of first becoming aware of it.

27. Paragraph 4 adds new section 45K to the list of provisions to which the general exclusions in section 46 apply. These general exclusions provide that expenditure is not FYA expenditure if, for example, it is incurred on the provision of a car, or on plant or machinery for leasing, or in the chargeable period in which the qualifying activity of the business is permanently discontinued.
28. Paragraph 5 adds expenditure on plant and machinery for use in designated assisted areas to the Table of FYAs, and their respective rates, in section 52(3) of CAA, and sets the rate of these new FYAs at 100 per cent. It also provides an addition to section 52(5), to the effect that the new FYAs are subject to new “section 212U (cap on first-year allowances: expenditure on plant and machinery for use in designated assisted areas)”.
29. Paragraph 6 changes section 52A to make it clear that not only can a person not claim an annual investment allowance and a FYA in relation to the same expenditure, but also a person cannot claim a FYA under two or more of the provisions listed in section 39 in respect of the same expenditure.
30. Paragraph 7(1) introduces new section 212U into CAA.

**Section 212U Cap on first-year allowances: expenditure on plant and machinery for use in designated assisted areas**

31. New section 212U(1) caps the amount of expenditure incurred on plant or machinery, primarily for use in a particular designated assisted area that can qualify for the new FYAs, at a maximum of €125 million per person (“the investor”) or at a maximum of €125 million for any “undertaking expenditure”. The cap is designed to ensure compliance with the GBER aid intensity rules.
32. New section 212U(2) defines “undertaking expenditure”. This is broadly expenditure incurred by the investor, and if the investor or one or more persons together form, or have formed, an undertaking, expenditure incurred by that undertaking.
33. New section 212U(5) provides how expenditure incurred in a currency other than the euro is to be converted into Euros for the purposes of the €125 million cap.
34. New section 212U(6) provides that the Treasury may by regulations increase the cap.
35. New section 212U (7) defines various terms used in new section 212U, including the meaning of “undertaking”.

36. Paragraph 7(2) makes a minor consequential amendment to the heading to Chapter 16B.
37. Paragraph (8) provides that the amendments made by the new Schedule have effect for chargeable periods ending on or after 1 April 2012.

**BACKGROUND NOTE**

38. The proposal to introduce Enterprise Zones was announced at Budget 2011. The main benefits for businesses in the new zones comprise simplified planning and business rates discounts. The Budget statement also announced that the Government would work with Local Enterprise Partnerships (LEPs) to consider introducing enhanced capital allowances (in other words, first-year capital allowances ('FYAs') in Enterprise Zones in assisted areas.
39. In an HM Treasury Press Notice on 17 August 2011, the Government announced its decision to proceed with the enhanced capital allowances (that is, FYA) proposal. On 26 August 2011, HM Treasury wrote to LEPs providing details of the proposed design of the new 100 per cent FYAs scheme, and seeking bids from the LEPs, based on that design. In addition, the letter outlined the criteria against which the bids would be judged.
40. The standard rates of writing-down allowances for businesses' qualifying capital expenditure on plant or machinery are either 18 per cent or 8 per cent per annum (the rates that will apply from April 2012), depending on the nature of the asset. 100 per cent FYAs therefore provide business with a valuable tax-timing benefit.
41. Discussions are ongoing with the relevant devolved administrations about establishing Enterprise Zones in Scotland, Wales and Northern Ireland, which could include a limited number of designated assisted areas in which 100 per cent FYAs would be made available.
42. If you have any questions about this change, or comments on the draft legislation, please contact Joy Guthrie (email: [joy.guthrie@hmrc.gsi.gov.uk](mailto:joy.guthrie@hmrc.gsi.gov.uk)) or Malcolm Smith (email: [malcolm.smith3@hmrc.gsi.gov.uk](mailto:malcolm.smith3@hmrc.gsi.gov.uk)) or telephone 020 7147 2610