

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 30 of the Finance Act 2019 (c. 1) and provide for the introduction of new allowances under the Capital Allowances Act 2001 (c. 2) (“CAA 2001”) for certain expenditure on buildings and structures.

Regulation 1 provides for citation and commencement.

Regulation 2 inserts a new Part 2A into CAA 2001 containing the main provisions governing the allowances. Part 2A is divided into the following Chapters:

Chapter 1 outlines the basic conditions required for allowances to be available. These conditions are contained in section 270AA and are expanded upon in the remaining Chapters of Part 2A. Section 270AB contains rules for ascertaining the date upon which construction of a building or structure begins for the purposes of the allowances. Where the conditions are met, allowances are available in respect of qualifying expenditure incurred on or after 29th October 2018, authority for retrospective effect being provided for in section 30(1)(a) of the Finance Act 2019.

Chapter 2 contains rules governing what constitutes “qualifying expenditure”. Section 270BA defines “qualifying expenditure” as expenditure which is qualifying capital expenditure under any of sections 270BB to 270BE and is not excluded expenditure under sections 270BG to 270BI. Sections 270BJ and 270BK provide for certain expenditure to be treated as if it were expenditure on construction. Sections 270BL to 270BN contain supplementary provision about expenditure.

Chapter 3 contains rules governing what constitutes a “qualifying activity” (sections 270CA to 270CD) and a “qualifying use” (sections 270CE to 270CG) for the purposes of the allowances.

Chapter 4 contains rules to determine which person has the “relevant interest” in a given building or structure and so may be entitled to claim the allowances. Section 270DA contains the general rule as to what is the relevant interest. Sections 270DB to 270DE contain supplementary rules.

Chapter 5 contains rules dealing with the calculation of allowances in three particular sets of circumstances. First, section 270EA provides for the proportionate adjustment of allowances where a chargeable period is more or less than a year. Secondly, section 270EB provides for the proportionate adjustment of allowances where a building or structure is put to multiple uses. Finally, section 270EC reduces the availability of allowances to a purchaser on a transfer where the purchaser is entitled to research and development allowances under Part 6 of CAA 2001 in respect of the expenditure.

Chapter 6 contains rules governing the operation of the allowances in the context of “highway undertakings” (sections 270FA to 270FC).

Chapter 7 contains rules governing the interaction between the allowances and VAT. Section 270GA defines various terms related to VAT. Section 270GB increases the amount of allowances available where an additional VAT liability arises in respect of qualifying expenditure. Conversely, section 270GC decreases the amount of allowances available where an additional VAT rebate becomes available in respect of qualifying expenditure.

Chapter 8 contains rules governing how the allowances affect the tax computation of the person claiming them. Section 270HA provides that, if the qualifying activity of a person is a trade,

the allowances are to be treated as an expense of the trade in calculating the profits of that trade. Sections 270HB to 270HE contain similar provisions governing how effect is to be given to the allowances in the context of ordinary UK property businesses and ordinary overseas property businesses (section 270HB), activities analogous to trades (sections 270HC and 270HD) and companies with investment business (section 270HE). Sections 270HF to 270HI govern how effect is to be given to the allowances where expenditure is on a “management asset” (as defined in Chapter 1 of Part 12 of CAA 2001 (long-term business)).

Chapter 9 contains supplementary provisions. Section 270IA requires that a person provides evidence of qualifying expenditure by way of an “allowance statement” in order to be able to claim the allowances and outlines what constitutes such a statement. Section 270IB contains an anti-avoidance rule requiring the counteraction of a tax advantage obtained by a taxpayer under the new Part 2A as a result of entering into “avoidance arrangements”. Sections 270IC to 270IF are concerned with the application of the allowances in the context of co-ownership authorised contractual schemes. Section 270IG deals with the availability of the allowances where a lease is renewed, extended or replaced and, in a variety different scenarios, terminated. Section 270IH defines “lease” for the purposes of the allowances.

Regulation 3 makes further amendments to CAA 2001. Paragraphs (2) to (6) and paragraphs (12) to (14) make consequential amendments by inserting references to the allowances elsewhere in CAA 2001. Paragraphs (7) and (8) introduce a new section 262AEA which enables an entity to withdraw an election made under section 262AB (co-ownership schemes: election). Paragraphs (9) and (10) make consequential amendments relating to the interaction between the allowances and contribution allowances. Paragraph (11) inserts a new section 538A which is the main provision governing the availability of allowances where a person makes a contribution to qualifying expenditure for the purposes of a qualifying activity.

Regulation 4 makes amendments to the Taxation of Chargeable Gains Act 1992 (c. 12). Paragraph (2) amends section 24 to deal with the availability of allowances on the destruction of a building or structure where the land the building or structure was situated upon is separately leased. Paragraph (3) inserts a new section 24A to deal with the availability of contribution allowances under Part 2A of CAA 2001 on the demolition of a building or structure. Paragraph (4) inserts a new section 37B which provides that, subject to certain exclusions, on a disposal of a building or structure qualifying for allowances, the person making the disposal should add to the consideration received an amount equal to the allowances that have been claimed as at the time of disposal. Paragraph (5) inserts a new subsection (3B) to ensure that section 39 is not taken as excluding from the sums allowable under section 38 as a deduction in the computation of the gain any expenditure in respect of which the allowances have been claimed. Paragraph (6) inserts a new section 39A to deal with the disposal of leases of 35 years or more and to prevent expenditure qualifying for allowances from being included in the base cost where the parties are connected. Paragraph (7) amends section 41 to ensure that it does not apply in relation to the allowances. Paragraph (8) amends section 52 to ensure that, except in section 41, the allowances are “capital allowances” for the purposes of Chapter 3 of Part 2 of the Act. Finally, paragraph (9) amends section 103D to ensure that new section 37B is engaged where an investor in a co-ownership authorised contractual scheme or offshore transparent fund disposes of units in the fund.

Regulation 5 amends sections 96A and 96B of the Income Tax (Trading and Other Income) Act 2005 (c. 5). The amendments deal with the interaction between the allowances and the cash basis (conditions for which are contained in Chapter 3A of Part 2 of that Act).

Regulation 6 amends section 123 of the Income Tax Act 2007 (c. 3). The amendment prevents the allowances from being taken into account when considering whether a loss has a capital allowances connection for the purposes of that section.

Regulation 7 amends the Corporation Tax Act 2009 (c. 4). Paragraph (2) makes an amendment to section 1147 which prevents the claiming of the allowances from disqualifying an entity from being entitled to a deduction for capital expenditure where that expenditure is qualifying

land remediation expenditure incurred on contaminated or derelict land. Paragraph (3) makes amendments to section 1233 which deal with the interaction between the allowances and excess capital allowances in the context of expenses of management.

Regulation 8 amends Schedule 61 to the Finance Act 2009 (c. 10). The amendments are designed to accommodate the allowances within the statutory regime for alternative finance investment bonds.

Regulation 9 amends sections 682 and 699 of the Corporation Tax Act 2010 (c. 4). The amendments relate to the deduction of expenses of management where such expenditure qualifies for the allowances and is apportioned between two notional accounting periods in accordance with sections 685 and 702 of that Act.

Regulation 10 amends section 78 of the Finance Act 2012 (c. 14). The amendment deals with the meaning of “deemed BLAGAB management expense for the accounting period” for the purposes of section 76 of that Act and is designed to accommodate expenditure qualifying for the allowances.

Regulation 11 amends the Friendly Societies (Modifications of the Tax Acts) Regulations 2012 (S.I. 2012/3008). It inserts a new regulation 4A which modifies new section 270HG of CAA 2001 to deal with the interaction between the allowances and the tax treatment of long-term business.

A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.