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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Capital Allowances (Structures and Buildings Allowances) Regulations 2019**

**Amendment to the Capital Allowances Act 2001**

2. After section 270 of the Capital Allowances Act 2001(1) insert—

**“PART 2A**

**STRUCTURES AND BUILDINGS ALLOWANCES**

**CHAPTER 1**

**INTRODUCTION**

**270AA Structures and buildings allowances**

- (1) This Part applies if—
- (a) the construction of a building or structure begins on or after 29 October 2018,
  - (b) qualifying expenditure is incurred, on or after that date, on its construction or acquisition, and
  - (c) the first use of the building or structure, after the qualifying expenditure is incurred, is non-residential use.
- (2) A person is entitled to an allowance, in relation to a qualifying activity, for a chargeable period if—
- (a) in respect of any day during that chargeable period—
    - (i) the person has the relevant interest in the building or structure in relation to the qualifying expenditure, and
    - (ii) the building or structure is in non-residential use; and
  - (b) that day falls—
    - (i) after the later of the day on which the building or structure is first brought into qualifying use by the person and the day on which the qualifying expenditure is incurred (in either case, whether the day is in the same or an earlier chargeable period), and
    - (ii) within the period of 50 years beginning with the later of the day on which the building or structure is first brought into non-residential use and the day on which the qualifying expenditure is incurred.
- (3) A building or structure which—
- (a) is not in use, but

(b) was, immediately before it fell into disuse, in non-residential use, is treated, for the purposes of subsection (2)(a)(ii), as continuing to be in non-residential use.

(4) A person ceases to be entitled to an allowance under this section if the building or structure is demolished.

(5) The basic rule is that the allowance, in relation to a qualifying activity, for a chargeable period of one year is 2% of the qualifying expenditure.

(6) In this section—

“qualifying activity” has the meaning given by section 270CA;

“qualifying expenditure” has the meaning given by section 270BA;

“qualifying use” has the meaning given by section 270CE;

“relevant interest” is to be construed in accordance with Chapter 4;

“residential use” and “non-residential use” have the meaning given by section 270CF.

(7) This section is subject to the following provisions of this Part.

#### **270AB Date on which construction begins**

**270AB** For the purposes of section 270AA(1)(a), the construction of a building or structure is treated as beginning before 29 October 2018 if any contract for works to be carried out in the course of the construction of that particular building or structure (whether or not the contract also relates to the construction of other buildings or structures) is entered into before that date.

### **CHAPTER 2**

#### **QUALIFYING EXPENDITURE**

##### *Meaning of “qualifying expenditure”*

#### **270BA Meaning of “qualifying expenditure”**

**270BA** In this Part “qualifying expenditure” means expenditure which—

(a) is qualifying capital expenditure under any of sections 270BB to 270BE (expenditure on construction or purchase), and

(b) is not excluded expenditure under—

(i) section 270BG (acquisition or alteration of land),

(ii) section 270BH (market value rule), or

(iii) section 270BI (provision of plant or machinery).

##### *Qualifying expenditure incurred on construction*

#### **270BB Capital expenditure incurred on construction**

(1) If—

(a) capital expenditure is incurred on the construction of a building or structure, and

(b) the relevant interest in the building or structure has not been sold or, if it has been sold, it has been sold only after the building or structure has been brought into non-residential use,

the capital expenditure is qualifying capital expenditure.

(2) Subsection (3) applies where capital expenditure as mentioned in subsection (1)(a) is incurred in relation to a building or structure—

- (a) after it has been brought into qualifying use, and
- (b) on different days (whether or not in the same chargeable period).

(3) The expenditure may be treated for the purposes of this Part as being incurred—

- (a) on the latest day on which qualifying capital expenditure on the construction is incurred,
- (b) on the first day of the chargeable period following the period in which the day mentioned in paragraph (a) falls, or
- (c) on the first day of the chargeable period following the period in which the day on which the expenditure is incurred falls.

*Qualifying expenditure incurred on purchase*

**270BC Sale of unused buildings or structures (other than by a developer)**

(1) This section applies if—

- (a) capital expenditure is incurred on the construction of a building or structure,
- (b) the relevant interest in the building or structure is sold before the building or structure is first used,
- (c) a capital sum is paid by the purchaser for the relevant interest, and
- (d) section 270BD (sale by a developer: unused buildings or structures) does not apply.

(2) The lesser of—

- (a) the capital sum paid by the purchaser for the relevant interest, and
- (b) the capital expenditure incurred on the construction,

is qualifying capital expenditure.

(3) Where this section applies, the qualifying expenditure is to be treated as incurred by the purchaser when the capital sum is paid.

(4) If the relevant interest is sold more than once before the building or structure is first used, subsection (2) has effect only in relation to the last of those sales.

**270BD Sale by a developer: unused buildings or structures**

(1) This section applies if—

- (a) expenditure is incurred by a developer on the construction of a building or structure, and
- (b) the relevant interest in the building or structure is sold by the developer in the course of the development trade before the building or structure is first used.

(2) If—

- (a) the sale of the relevant interest by the developer was the only sale of that interest before the building or structure is first used, and
- (b) a capital sum is paid by the purchaser for the relevant interest,

the capital sum is qualifying capital expenditure.

(3) If—

- (a) the sale by the developer was not the only sale before the building or structure is first used, and
- (b) a capital sum is paid by the purchaser for the relevant interest on the last sale before the building or structure is first used,

the lesser of that capital sum and the sum paid for the relevant interest on its sale by the developer is qualifying capital expenditure.

(4) Where this section applies, the qualifying expenditure is to be treated as incurred by the purchaser when the capital sum referred to in subsection (2)(b) or (3)(b) is paid.

**270BE Sale by a developer: used buildings or structures**

(1) This section applies if—

- (a) expenditure is incurred by a developer on the construction of a building or structure, and
- (b) the relevant interest is sold by the developer in the course of the development trade after the building or structure has been used.

(2) This Part has effect in relation to the person to whom the relevant interest is sold (and any person who subsequently acquires the relevant interest) as if the expenditure on the construction of the building or structure had been qualifying capital expenditure.

**270BF Meaning of references to carrying on trade as a developer**

**270BF** For the purposes of sections 270BD, 270BE and 270BJ—

- (a) a developer is a person who carries on a trade which consists in whole or part in the construction of buildings or structures with a view to their sale, and
- (b) an interest in a building or structure is sold by the developer in the course of the development trade if the developer sells it in the course of the trade or (as the case may be) that part of the trade that consists in the construction of buildings or structures with a view to their sale.

*Excluded expenditure*

**270BG Acquisition or alteration of land etc**

(1) Expenditure incurred—

- (a) on the acquisition of land or rights in or over land, or
- (b) on altering land,

is “excluded expenditure” for the purposes of this Part.

(2) Expenditure incurred on, or in connection with, seeking planning permission (including fees and related costs) is “excluded expenditure” for the purposes of this Part.

(3) In subsection (1), the reference to expenditure incurred on an acquisition includes a reference to—

- (a) fees,
- (b) stamp duty land tax, land and buildings transaction tax or land transaction tax, and
- (c) other incidental costs attributable to the acquisition.

(4) For the purposes of subsection (1), “altering land” means—

- (a) land reclamation,
  - (b) land remediation, and
  - (c) landscaping (other than so as to create a structure).
- (5) In this section “land remediation” means—
- (a) in relation to land which is in a contaminated state—
    - (i) activities in respect of which conditions A to C in section 1146 of CTA 2009<sup>(2)</sup> (contaminated land remediation) are met, and
    - (ii) relevant preparatory activity as defined in subsection (4) of that section;
  - (b) in relation to land which is in a derelict state—
    - (i) activities in respect of which conditions A and B in section 1146A of CTA 2009<sup>(3)</sup> (derelict land remediation) are met, and
    - (ii) relevant preparatory activity as defined in subsection (5) of that section.
- (6) In subsection (5), references to land in a contaminated or derelict state have the same meaning as they have for the purposes of Part 14 of CTA 2009 (remediation of contaminated or derelict land).
- (7) Subsection (1)(b) is subject to section 270BK (preparation of sites).
- (8) In this section, except in subsections (4)(b), (5) and (6), “land” does not include buildings or structures.
- (9) In this section—
- “planning permission” has the meaning given by the relevant planning enactment;
  - “relevant planning enactment” has the meaning given by section 436(2).

#### **270BH Market value rule**

- (1) Expenditure is “excluded expenditure” for the purposes of this Part if, and to the extent that, it exceeds—
- (a) in a case where the qualifying capital expenditure under section 270BC or 270BD is the capital sum paid for the relevant interest in the building or structure, the market value of the interest (see section 577(1)), or
  - (b) in any other case, the market value amount of the works, services and other matters to which it relates.
- (2) The “market value amount” means the amount of expenditure which it would have been normal and reasonable to incur on the works, services or other matters—
- (a) in the market conditions prevailing when the expenditure was incurred, and
  - (b) assuming the transaction as a result of which the expenditure was incurred was between persons dealing with each other at arm’s length in the open market.

#### **270BI Provision of plant or machinery**

**270BI** Expenditure which is capital expenditure on the provision of plant or machinery for the purposes of Part 2 (plant and machinery allowances) is “excluded expenditure” for the purposes of this Part.

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(2) The Corporation Tax Act 2009 (c. 4). Section 1146 was amended by paragraph 6 of Schedule 7 to the Finance Act 2009 (c. 10).

(3) Section 1146A was inserted by paragraph 7 of Schedule 7 to the Finance Act 2009.

*Expenditure treated as expenditure on construction*

**270BJ Expenditure on renovation, conversion or incidental repairs**

- (1) This Part has effect in relation to expenditure incurred by a person—
- (a) on the renovation or conversion of a part of a building or structure, or
  - (b) on repairs to a part of a building or structure that are incidental to the renovation or conversion of that part,

as if it were expenditure on the construction of that part of the building or structure for the first time.

(2) For the purposes of subsection (1), sections 270AA(1)(a) and 270AB have effect, in relation to a building or structure that has been brought into use before 29 October 2018, as if the renovation or conversion of, or repairs to, part of the building or structure were the construction of that part for the first time.

(3) For the purposes of subsection (1), expenditure incurred as mentioned in subsection (1)(a) or (b) for the purposes of a qualifying activity is to be treated as capital expenditure if it is not expenditure that may be allowed to be deducted in calculating the profits of the qualifying activity for tax purposes.

**270BK Preparation of sites**

(1) This section applies if a person incurs capital expenditure, other than expenditure on altering land (within the meaning of section 270BG(4)), for the purposes of preparing land as a site for the construction of a building or structure.

(2) This Part has effect in relation to the expenditure as if it were capital expenditure on the construction of the building or structure.

(3) For that purpose, sections 270AA(1)(a) and 270AB have effect as if the preparation of the land mentioned in subsection (1) were the construction of the building or structure.

*Supplementary provision about expenditure*

**270BL Apportionment of sums partly referable to non-qualifying assets**

(1) If, for the purposes of this Part, an item of expenditure falls to be apportioned between qualifying expenditure and other expenditure, the apportionment is to be made on a just and reasonable basis.

(2) If the sum paid for the sale of the relevant interest in a building or structure is attributable—

- (a) partly to assets representing expenditure for which an allowance can be made under this Part, and
- (b) partly to assets representing other expenditure,

only so much of the sum as on a just and reasonable apportionment is attributable to the assets referred to in paragraph (a) is to be taken into account for the purposes of this Part.

**270BM Evidence of the amount of expenditure**

**270BM** For the purposes of this Part—

- (a) the expenditure on the construction of the building or structure is the sum of those items of expenditure the actual amount of which can be shown, and

- (b) where there are no such items, the amount of expenditure is taken to be nil.

**270BN Expenditure incurred before qualifying activity carried on**

**270BN** For the purposes of this Part, if a person incurs expenditure for the purposes of a qualifying activity—

- (a) on or after 29 October 2018, and  
(b) before the date on which the person starts to carry on that activity,

the expenditure is to be treated as if it were incurred by the person on the date mentioned in paragraph (b).

**CHAPTER 3**

**QUALIFYING USE AND QUALIFYING ACTIVITIES**

*Qualifying activities*

**270CA Qualifying activities**

**270CA** Each of the following is a qualifying activity for the purposes of this Part—

- (a) a trade,  
(b) an ordinary UK property business,  
(c) an ordinary overseas property business,  
(d) a profession or vocation,  
(e) the carrying on of a concern listed in section 12(4) of ITTOIA 2005<sup>(4)</sup> or section 39(4) of CTA 2009 (mines, quarries and other concerns), and  
(f) managing the investments of a company with investment business,

but only to the extent that the profits or gains from the activity are, or (if there were any) would be, chargeable to tax.

**270CB Property businesses**

**270CB** In section 270CA, “ordinary UK property business” and “ordinary overseas property business” have the same meaning as in Part 2 (see sections 16 and 17A<sup>(5)</sup>).

**270CC Foreign permanent establishments**

**270CC** A business carried on through one or more permanent establishments outside the United Kingdom by a company in relation to which an election under section 18A of CTA 2009<sup>(6)</sup> (exemption for profits or losses of foreign permanent establishments) has effect—

- (a) is an activity separate from any other activity of the company, and  
(b) is to be regarded for the purposes of this Part as an activity all the profits and gains from which are not, or (if there were any) would not be, chargeable to tax.

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<sup>(4)</sup> The Income Tax (Trading and Other Income) Act 2005 (c. 5).

<sup>(5)</sup> Section 16 was amended by paragraph 527 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005, paragraph 477 of Schedule 1, and Part 1 of Schedule 3, to the Corporation Tax Act 2009 and paragraph 12(4) of Schedule 14 to the Finance Act 2011 (c. 11) and section 17A was inserted by paragraph 12(6) of that Schedule.

<sup>(6)</sup> Section 18A was inserted by paragraph 4 of Schedule 13 to the Finance Act 2011 and amended by paragraph 3 of Schedule 20 to the Finance Act 2012 (c. 14), section 76(7) of the Finance Act 2016 (c. 24) and paragraph 111 of Schedule 1 to the Finance Act 2019 (c. 1).

### **270CD Companies with investment business**

(1) For the purposes of this Part, managing the investments of a company with investment business consists of pursuing those purposes expenditure on which would be treated as expenses of management within section 1219 of CTA 2009<sup>(7)</sup>.

(2) In this Part “company with investment business” has the same meaning as in Part 16 of CTA 2009 (see section 1218B of that Act<sup>(8)</sup>).

#### *Qualifying use*

### **270CE Qualifying use**

(1) A building or structure is in “qualifying use” for the purposes of this Part if it is in non-residential use for the purposes of a qualifying activity carried out by the person who has the relevant interest in the building or structure.

(2) But a building or structure is not treated for the purposes of subsection (1) as being in use for the purposes of a particular activity if the extent to which it is in use for those purposes is insignificant.

(3) The extent to which a building or structure is in use for the purposes of a particular activity is to be determined on a just and reasonable basis.

(4) Section 270EB makes provision for the calculation of the allowance in the case of a building or structure that is put to multiple uses.

### **270CF Exclusion: residential use**

(1) For the purposes of this Part, a building or structure is in “residential use” if—

(a) it is used by any person as, or for purposes ancillary to use as—

- (i) a dwelling-house,
- (ii) residential accommodation for school pupils,
- (iii) student accommodation (see subsection (3)),
- (iv) residential accommodation for members of the armed forces,
- (v) a home or other institution providing residential accommodation (whether for children or adults), except where the accommodation is provided with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder, or
- (vi) a prison or similar establishment, or

(b) it falls within—

- (i) paragraph 4 of Schedule 14 to the Housing Act 2004<sup>(9)</sup> (buildings in England or Wales occupied by students and managed or controlled by educational establishment etc), or
  - (ii) any corresponding provision having effect in Scotland or Northern Ireland,
- (and a building or structure is in “non-residential use” if it is in use which is not residential use).

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<sup>(7)</sup> Section 1219 was amended by paragraph 683 of Schedule 1 to the Corporation Tax Act 2010 (c. 4).

<sup>(8)</sup> Section 1218 was renumbered section 1218B by paragraph 21(4) of Schedule 18 to the Finance Act 2013 (c. 29).

<sup>(9)</sup> 2004 c. 34.



(2) A building or structure that is situated on land that is, or is intended to be, occupied or enjoyed with a building or structure that is in residential use as a garden or grounds is to be treated for the purposes of this Part as being in residential use.

(3) For the purposes of this Part, a building or structure is in use as student accommodation if—

(a) the accommodation is purpose-built, or is converted, for occupation by students, and

(b) the accommodation is available for occupation by students on at least 165 days of each calendar year.

(4) For the purposes of subsection (3), accommodation is occupied by students if it is occupied exclusively or mainly by persons who occupy it for the purpose of undertaking a course of education (otherwise than as school pupils).

(5) Any part of a building or structure that is used as a dwelling-house (whether or not it is also used for any other purposes) is not in qualifying use.

#### **270CG Use for the purposes of a property business**

(1) A building or structure is to be treated, for the purposes of this Part, as being used for the purposes of an ordinary UK property business or an ordinary overseas property business during any period in respect of which subsection (2) applies.

(2) This subsection applies in relation to a building or structure if the person with the relevant interest is entitled, under the terms of a lease or otherwise, to rents, or other receipts, in respect of the building or structure of such amounts as may reasonably have been expected to have been payable if the transaction had been between persons dealing with each other at arm's length in the open market.

(3) For the purposes of this section, “rents” and “other receipts” have the same meaning as in section 266 of ITTOIA 2005.

### **CHAPTER 4**

#### **THE RELEVANT INTEREST IN THE BUILDING OR STRUCTURE**

##### **270DA General rule as to what is the relevant interest**

(1) The relevant interest in relation to any qualifying expenditure is the interest in the building or structure to which the person who incurred the expenditure on its construction was entitled when the expenditure was incurred.

(2) Subsection (1) is subject to the following provisions of this Chapter and to sections 270FB (highway undertakings) and 270IG (provisions applying on termination of lease).

(3) If—

(a) the person who incurred the expenditure on construction was entitled to more than one interest in the building or structure when the expenditure was incurred, and

(b) one of those interests was reversionary on all the others,

the reversionary interest is the relevant interest.

(4) For the purposes of section 270AA(2), on the sale of the relevant interest in a building or structure, the seller (and not the purchaser) is treated as the person who has the relevant interest on the day of transfer.

### **270DB Interest acquired on completion of construction**

**270DB** For the purposes of determining the relevant interest, a person who—

- (a) incurs expenditure on the construction of a building or structure, and
- (b) is entitled to an interest in the building or structure on or as a result of the completion of the construction,

is treated as having had that interest when the expenditure was incurred.

### **270DC Effect of creation of subordinate interest**

(1) An interest does not cease to be the relevant interest merely because of the creation of a lease or other interest to which that interest is subject.

- (2) This is subject to section 270DD (leases granted for 35 years or more).

### **270DD Leases granted for 35 years or more**

(1) This section applies if—

- (a) qualifying capital expenditure has been incurred on the construction or acquisition of a building or structure,
- (b) a lease of the building or structure is granted out of the interest which is the relevant interest in relation to the qualifying expenditure, and
- (c) the effective duration of the lease is equal to, or exceeds, 35 years.

(2) If the market value of the retained interest in the building or structure is less than one third of the capital sum given as consideration for the lease—

- (a) the lessee is treated, for the purposes of this Part, as acquiring the relevant interest in the building or structure on the grant of the lease, and
- (b) on the expiry or surrender of the lease, the lessor is treated, for the purposes of this Part, as acquiring the relevant interest from the lessee.

(3) The capital sum given as consideration for the lease is treated for the purposes of subsection (2) as excluding the amount, in respect of any premium required to be paid under the lease, that is brought into account as a receipt in calculating the lessor's profits for the purposes of ITTOIA 2005 or CTA 2009 (determined in accordance with section 277 of ITTOIA 2005 or section 217 of CTA 2009).

(4) For the purposes of this section, the “effective duration” of a lease is to be determined in accordance with section 303 of ITTOIA 2005(10) or section 243 of CTA 2009.

### **270DE Merger of leasehold interest**

(1) Subsection (2) applies if the relevant interest is a leasehold interest which is extinguished on the person entitled to the interest acquiring the interest which is reversionary on it.

(2) The interest into which the leasehold interest merges becomes the relevant interest when the leasehold interest is extinguished.

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(10) Section 303 was amended by paragraph 626 of Schedule 1 to the Corporation Tax Act 2009 (c. 4).

## CHAPTER 5

### CALCULATING THE ALLOWANCE: SUPPLEMENTARY PROVISION

#### **270EA Proportionate adjustment in certain cases**

(1) This section applies if a person is entitled to an allowance under section 270AA(2) for a chargeable period.

(2) If the chargeable period is more or less than one year, the allowance is proportionately increased or reduced.

(3) If—

(a) the conditions in section 270AA(2)(a) and (b) are met on some, but not all, days during the chargeable period, or

(b) entitlement to the allowance ceases under section 270AA(4) on any day during the chargeable period,

the allowance is proportionately reduced.

#### **270EB Multiple uses**

(1) This section applies if—

(a) a person is entitled to an allowance under section 270AA(2) by reference to a building or structure for a chargeable period, and

(b) the building or structure is put to multiple uses.

(2) The allowance, in relation to a qualifying activity, for a chargeable period of one year is 2% of the appropriate proportion of the qualifying expenditure.

(3) A building or structure is “put to multiple uses” if—

(a) the building or structure is used for the purposes of two or more qualifying activities,

(b) part of the building or structure is in use for the purposes of a qualifying activity and part of the building or structure is in use for the purposes of another activity, or

(c) part of the building or structure, which is not an area within a dwelling-house, is used both for the purposes of a qualifying activity and for the purposes of another activity.

(4) For the purposes of subsection (2), the “appropriate proportion” of the qualifying expenditure is the amount of that expenditure that would be apportioned to the qualifying activity if that expenditure were apportioned, on a just and reasonable basis, between all the activities for which the building or structure is used, having regard (in particular) to the extent to which the building or structure is used for each activity in the chargeable period.

#### **270EC Research and development**

(1) This section applies if a person (the “seller”) sells the relevant interest in a building or structure, in respect of which qualifying expenditure has been incurred, to another person (the “purchaser”).

(2) Subsection (3) applies if the purchaser is entitled to an allowance in respect of qualifying expenditure incurred on the acquisition of the building or structure under Part 6 (research and development allowances).

(3) The total amount of the allowance available to the purchaser under this Part by reference to the building or structure is limited to—

- (a) the amount of qualifying expenditure (within the meaning of section 270BA) incurred on the construction or acquisition of the building or structure, less
  - (b) the total of—
    - (i) the amount of the allowance under this Part to which an entitlement arose by reference to the building or structure before its sale (or would have arisen if the building or structure had been in continuous qualifying use since it was first brought into non-residential use), and
    - (ii) the amount of the allowance under Part 6 to which the purchaser is entitled in respect of qualifying expenditure incurred on the acquisition of the building or structure.
- (and section 270AA(2)(b)(ii) is subject to this subsection).
- (4) Subsection (5) applies if—
- (a) the seller was entitled to an allowance in respect of qualifying expenditure incurred by the seller on the acquisition of the building or structure under Part 6 (research and development allowances), and
  - (b) the purchaser is not entitled to an allowance under that Part in respect of the qualifying expenditure incurred by the purchaser on the acquisition of the building or structure.
- (5) The total amount of the allowance available to the purchaser is limited to the lower of—
- (a) the amount which is equal to—
    - (i) the amount of qualifying expenditure (within the meaning of section 270BA) incurred on the construction or acquisition of the building or structure, less
    - (ii) the amount of the allowance under this Part to which an entitlement arose by reference to the building or structure before its sale (or would have arisen if the building or structure had been in continuous qualifying use since it was first brought into non-residential use), and
  - (b) the capital sum paid by the purchaser for the relevant interest.
- (and section 270AA(2)(b)(ii) is subject to this subsection).
- (6) Section 7 (no double allowances) is to be ignored for the purposes of determining the amounts referred to in subsections (3)(b)(i) and (ii) and (5)(a)(i) and (ii).

## CHAPTER 6

### HIGHWAY UNDERTAKINGS

#### **270FA Carrying on of highway undertakings**

- (1) For the purposes of this Part, the carrying on of a highway undertaking is to be treated as the carrying on of an undertaking by way of trade; and accordingly references in this Part to a trade include a highway undertaking.
- (2) For the purposes of this Part, a person carrying on a highway undertaking is to be treated as occupying, for the purposes of the undertaking, any road in relation to which it is carried on.
- (3) In this Chapter “highway undertaking” means so much of any undertaking relating to the design, building, financing and operation of roads as is carried on—
  - (a) for the purposes of, or

- (b) in connection with,  
the exploitation of highway concessions.
- (4) In this Chapter “highway concession”, in relation to a road, means—
  - (a) a right to receive sums from a public body because the road is or will be used by the general public, or
  - (b) if the road is a toll road, the right to charge tolls in respect of the road.
- (5) In subsection (4) “public body” means the Crown or any government or public or local authority (whether in the United Kingdom or elsewhere).

#### **270FB The relevant interest**

- (1) For the purposes of Chapter 4 (the relevant interest in the building or structure) as it applies to expenditure incurred on the construction of a road, a highway concession is not to be treated as an interest in the road.
- (2) But if the person who incurred the expenditure on the construction of the road—
  - (a) was not entitled to an interest in the road when the person incurred the expenditure, but
  - (b) was at that time entitled to a highway concession in respect of the road,  
the highway concession is to be treated as the relevant interest in relation to that expenditure.

#### **270FC Cases where highway concession is to be treated as extended**

- (1) A highway concession in respect of a road is to be treated as extended if—
  - (a) the person entitled to the concession takes up a renewed concession in respect of the whole or a part of the road, or
  - (b) that person or a person connected with that person takes up a new concession in respect of—
    - (i) the whole or a part of the road, or
    - (ii) a road that includes the whole or a part of the road.
- (2) But the concession is to be treated as extended only—
  - (a) to the extent that the concession which has in fact ended, and the renewed or new concession, relate to the same road, and
  - (b) for the period of the renewed or new concession.
- (3) A person who has ceased to be entitled to a highway concession is treated, for the purposes of this section, as taking up a renewed or new concession if—
  - (a) the person is granted a renewed or new concession, or
  - (b) the arrangements for the concession otherwise continue (whether or not those arrangements are legally enforceable).
- (4) For the purposes of subsection (3), it does not matter whether the concession is renewed or replaced, or the arrangements for the concession continue, on the same terms or on modified terms.

## CHAPTER 7

### ADDITIONAL VAT LIABILITIES AND REBATES

#### *Introduction*

#### **270GA Introduction**

**270GA** For the purposes of this Chapter—

- (a) “additional VAT liability” and “additional VAT rebate” have the meaning given by section 547,
- (b) the time when—
  - (i) a person incurs an additional VAT liability, or
  - (ii) an additional VAT rebate is made to a person,is given by section 548, and
- (c) the chargeable period in which, and the time when, an additional VAT liability or an additional VAT rebate accrues are given by section 549.

#### *Additional VAT liabilities*

#### **270GB Additional VAT liabilities**

- (1) This section applies if—
  - (a) a person is entitled to an allowance under this Part by reference to qualifying expenditure incurred by that person, and
  - (b) the person incurs an additional VAT liability in respect of the qualifying expenditure.
- (2) Subsection (3) applies for the purposes of calculating an allowance under this Part to which the person mentioned in subsection (1) is entitled—
  - (a) for the chargeable period in which the additional VAT liability accrues, and
  - (b) for any subsequent chargeable period.
- (3) The amount of qualifying expenditure is treated as being increased, at the beginning of the chargeable period in which the additional VAT liability accrues, by the amount of the liability.
- (4) If, immediately before the end of the period mentioned in section 270AA(2)(b) (the “allowance period”), the person who is entitled to an allowance under this Part by reference to qualifying expenditure is the person who incurred that expenditure, that person is entitled to an additional amount of allowance for the chargeable period in which the allowance period ends.
- (5) The additional amount of allowance is the amount of the difference between—
  - (a) the amount of the additional VAT liability, and
  - (b) the total amount of the allowance to which the person has been entitled during the allowance period in respect of the additional VAT liability.
- (6) But if an additional VAT rebate is made to the person in respect of the qualifying expenditure by reference to which this section applies, subsection (5) is subject to section 270GC(4) (limit on total allowance).

### *Additional VAT rebates*

#### **270GC Additional VAT rebates**

- (1) This section applies if—
- (a) a person is entitled to an allowance under this Part by reference to qualifying expenditure incurred by that person, and
  - (b) an additional VAT rebate in respect of the qualifying expenditure is made to the person.
- (2) Subsection (3) applies for the purposes of calculating an allowance under this Part to which the person mentioned in subsection (1) is entitled for—
- (a) the chargeable period in which the additional VAT rebate accrues, and
  - (b) any subsequent chargeable period.
- (3) The amount of qualifying expenditure is treated as being reduced, at the beginning of the chargeable period in which the additional VAT rebate accrues, by the amount of the rebate.
- (4) The total amount of the allowance available under this Part by reference to the qualifying expenditure incurred by the person mentioned in subsection (1) is limited to—
- (a) the amount of qualifying expenditure (including the amount of any additional VAT liability which is treated as qualifying expenditure under section 270GB), less
  - (b) the amount of any additional VAT rebate by reference to which this section applies,
- (and sections 270AA(2)(b)(ii) and 270GB(5) are subject to this subsection).

## **CHAPTER 8**

### **GIVING EFFECT TO ALLOWANCES**

#### *Trades*

#### **270HA Trades**

**270HA** If the qualifying activity of a person who is entitled to an allowance for a chargeable period is a trade, the allowance is to be given effect in calculating the profits of that person's trade, by treating the allowance as an expense of the trade.

#### *Property businesses*

#### **270HB Ordinary UK property businesses and ordinary overseas property businesses**

**270HB** If the qualifying activity of a person who is entitled to an allowance for a chargeable period is—

- (a) an ordinary UK property business, or
- (b) an ordinary overseas property business,

the allowance is to be given effect in calculating the profits of that business by treating the allowance as an expense of that business.

### *Activities analogous to trades*

#### **270HC Professions and vocations**

**270HC** If the qualifying activity of a person who is entitled to an allowance for a chargeable period is carrying on a profession or vocation, the allowance is to be given effect in calculating the profits or gains of that person's profession or vocation by treating the allowance as an expense of the profession or vocation.

#### **270HD Mines, transport undertakings etc**

**270HD** If the qualifying activity of a person who is entitled to an allowance for a chargeable period is a concern listed in section 12(4) of ITTOIA 2005<sup>(11)</sup> or section 39(4) of CTA 2009<sup>(12)</sup> (mines, transport undertakings etc) the allowance is to be given effect in calculating the profits of the concern under Chapter 2 of Part 2 of ITTOIA 2005 by treating the allowance as an expense of the concern.

### *Companies with investment business*

#### **270HE Companies with investment business**

(1) This section applies if the qualifying activity of a person entitled to an allowance for a chargeable period is managing the investments of a company with investment business.

(2) The allowance is, as far as possible, to be given effect by deducting the amount of the allowance from any income for the period of the business; and section 1233 of CTA 2009 (addition of allowances to company's expenses of management) applies only so far as it cannot be given effect in this way.

(3) Except as provided by subsection (2), the Corporation Tax Acts apply in relation to the allowance as if it were required to be given effect in calculating the profits of that person's trade for the purposes of Part 3 of CTA 2009.

(4) Corresponding allowances in the case of the same building or structure are not to be made under this Part both under this section and in any other way.

(5) Expenditure to which this section applies is not to be taken into account otherwise than under this Part or as provided by section 1233 of CTA 2009.

(6) This section is subject to sections 682(3) and 699(3) of CTA 2010<sup>(13)</sup>.

### *Long-term business*

#### **270HF Application of sections 270HG and 270HH**

(1) Sections 270HG and 270HH apply if a company which is carrying on any long-term business is entitled to an allowance under this Part for a chargeable period in respect of a relevant interest in a building or structure consisting of a management asset.

(2) In this section and section 270HG, "management asset" has the same meaning as in Chapter 1 of Part 12 (long-term business).

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<sup>(11)</sup> The Income Tax (Trading and Other Income) Act 2005 (c. 5).

<sup>(12)</sup> The Corporation Tax Act 2009 (c. 4).

<sup>(13)</sup> The Corporation Tax Act 2010 (c. 4).



### **270HG Apportionment of allowances**

- (1) This section applies if the long-term business of the company consists of—
- (a) basic life assurance and general annuity business, and
  - (b) non-BLAGAB long-term business.

(2) Any allowance under this Part to which the company is entitled for a chargeable period in respect of a management asset must be apportioned between the businesses in accordance with Chapter 7 of Part 2 of FA 2012(14).

### **270HH Different giving effect rules for BLAGAB**

- (1) This section applies if a company—
- (a) carries on basic life assurance and general annuity business, and
  - (b) is charged to tax in accordance with the I-E rules in respect of that business.

(2) Any allowance under this Part to which the company is entitled in respect of the basic life assurance and general annuity business is to be given effect by treating it for the purposes of section 76 of FA 2012 as a deemed BLAGAB management expense for the chargeable period in question.

### **270HI Supplementary**

(1) An allowance to which sections 270HG and 270HH apply is not to be given effect otherwise than in accordance with those sections.

(2) Subsection (1) does not prevent any allowance which is to be given effect under those sections from being taken into account in any calculation for the purposes of—

- (a) section 93(5) of FA 2012 (minimum profits test), or
- (b) section 103 of FA 2012 (rules for determining policyholders' share of I-E profit).

## **CHAPTER 9**

### **SUPPLEMENTARY PROVISIONS**

#### *Evidence of qualifying expenditure etc*

### **270IA Evidence of qualifying expenditure etc**

(1) This section applies if a person (the “current owner”) is entitled to an allowance for a chargeable period under section 270AA by reference to a building or structure.

(2) For the purposes of determining the amount of the allowance, the amount of the qualifying expenditure is treated as nil unless, before the current owner first makes a claim for an allowance under this Part, the allowance statement requirement is met.

- (3) The “allowance statement requirement” is met if—
- (a) in a case where the current owner incurred the qualifying expenditure in relation to the building or structure, the current owner makes an allowance statement;
  - (b) in any other case, the current owner obtains (directly or indirectly) an allowance statement (or a copy of it) from any person who has previously been entitled to a relevant interest in the building or structure.

(4) In this section an “allowance statement” means a written statement, identifying the building or structure to which it relates, of—

- (a) the date of the earliest written contract for the construction of the building or structure,
- (b) the amount of qualifying expenditure incurred on its construction or purchase, and
- (c) the date on which the building or structure is first brought into non-residential use.

#### *Anti-avoidance*

#### **270IB Anti-avoidance: general**

(1) This section applies if at any time—

- (a) avoidance arrangements exist in relation to a building or structure (whether or not a person with a relevant interest in the building or structure is party to them), and
- (b) as a result of those arrangements, a person would, but for this section, obtain a tax advantage under this Part.

(2) The tax advantage is to be counteracted by making such adjustments as are just and reasonable.

(3) Adjustments made under this section may affect the tax treatment of persons other than the person in relation to whom the tax advantage is counteracted.

(4) In subsection (1)(a) “avoidance arrangements” means arrangements the main purpose, or one of the main purposes, of which is to obtain a tax advantage (for any person) under this Part.

(5) References in this section to obtaining a tax advantage under this Part include obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained.

(6) In subsection (4) “arrangements” includes any agreement (including an agreed valuation), understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

#### *Co-ownership authorised contractual schemes*

#### **270IC Co-ownership schemes: carrying on qualifying activity**

(1) This section applies where the participants in a co-ownership authorised contractual scheme together carry on a qualifying activity.

(2) Each participant in the scheme is for the purposes of this Part to be regarded as carrying on the qualifying activity.

(3) Subsection (2) applies in relation to a participant only to the extent that the profits or gains arising to the participant from the qualifying activity are, or (if there were any) would be, chargeable to tax.

(4) But in determining for the purposes of subsection (1) whether or to what extent the participants in a co-ownership authorised contractual scheme together carry on a qualifying activity, assume that profits or gains arising to all participants from the qualifying activity are, or (if there were any) would be, chargeable to tax.

### **270ID Co-ownership schemes: election**

(1) The operator of a co-ownership authorised contractual scheme may make an election under this section if an election under section 262AB(15) (plant and machinery allowances: co-ownership schemes) has been made, before the relevant date, in relation to the scheme (whether or not that election has subsequently been withdrawn in accordance with section 262AEA(16)).

(2) The election must specify an accounting period of the scheme as the first accounting period in relation to which the election has effect.

(3) But the election may not specify an accounting period ending—

- (a) more than 12 months before the election is made, or
- (b) more than 12 months after the end of the accounting period in which a building or structure which is subject to the scheme, and by reference to which an allowance is available under this Part, is first brought into qualifying use.

(4) The first accounting period must not be longer than 12 months.

(5) The election has effect for that first accounting period and all subsequent accounting periods of the scheme.

(6) The election is irrevocable.

(7) The election is made by notice to an officer of Revenue and Customs.

(8) For the purposes of this section and section 270IE, the “relevant date” is the date on which this Part comes into force.

### **270IE Co-ownership schemes: calculation of allowance after an election**

(1) This section applies if—

- (a) an election under section 270ID, or
- (b) an election under section 262AB (plant and machinery allowances: co-ownership schemes) made on or after the relevant date,

has effect for an accounting period of a co-ownership authorised contractual scheme (“the relevant period”).

(2) The operator of the scheme is to calculate the allowances that would be available to the scheme under this Part in relation to the relevant period on the basis of the assumptions in subsection (3).

(3) The assumptions are—

- (a) the scheme is a person;
- (b) the relevant period is a chargeable period for the purposes of this Act;
- (c) any qualifying activity carried on by the participants in the scheme together is carried on by the scheme;
- (d) property which was subject to the scheme at the beginning of the first accounting period for which the election has effect—
  - (i) ceased to be owned by the participants at that time, and
  - (ii) was acquired by the scheme at that time;
- (e) any property which became subject to the scheme at a time during an accounting period for which the election has effect was acquired by the scheme at that time;

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(15) Sections 262AA to 262AF were inserted by section 40 of the Finance (No. 2) Act 2017 (c. 32).

(16) Section 262AEA is inserted by regulation 3(8).

- (f) property which ceased to be subject to the scheme at any such time ceased to be owned by the scheme at that time.
- (4) The operator of the co-ownership authorised contractual scheme must allocate to each participant in the scheme a proportion (which may be zero) of the allowances calculated under this section.
- (5) The allocation is to be on the basis of what is just and reasonable.
- (6) In determining what is just and reasonable—
- (a) regard is to be had in particular to the relative size of each participant’s holding of units in the scheme;
  - (b) no regard is to be had to—
    - (i) whether or to what extent a participant is liable to income tax or corporation tax, or
    - (ii) any other circumstances relating to a participant’s liability to tax.
- (7) If the participants in the scheme together carry on more than one qualifying activity, the calculation and allocation under this section are to be made separately for each activity.
- (8) The proportion of an allowance allocated by the operator to a participant under this section for a qualifying activity is the total amount of the allowance available to the participant under this Part in relation to the relevant period by virtue of carrying on that activity as a participant in the scheme.
- (9) For the purposes of subsection (3)(c), assume that profits or gains arising to all participants from the qualifying activity are, or (if there were any) would be, chargeable to tax.
- (10) For the purposes of section 270IA (evidence of qualifying expenditure etc), the operator of a co-ownership scheme may be treated as—
- (a) the “current owner” in relation to property which is subject to the scheme, or
  - (b) the “previous owner” in relation to property which has ceased to be subject to the scheme.

#### **270IF Co-ownership schemes: definitions relating to schemes**

**270IF** Section 262AF (co-ownership schemes: definitions relating to schemes) applies for the purposes of sections 270IC to 270IE as it applies for the purposes of sections 262AA to 262AF.

#### *Leases*

#### **270IG Treatment of leases**

- (1) This section applies for the purposes of this Part.
- (2) A lease is treated as continuing if it is renewed, extended or replaced.
- (3) If a lease is terminated and, with the consent of the lessor, the lessee of a building or structure remains in possession of the building or structure after the termination without a new lease being granted to the lessee, the lease is treated as continuing so long as the lessee remains in possession.
- (4) If, on the termination of a lease, a new lease is granted to the lessee as a result of the exercise of an option available to the lessee under the terms of the first lease, the second lease is treated as a continuation of the first.

(5) If, on the termination of a lease, the lessor pays a sum to the lessee in respect of a building or structure comprised in the lease, the lease is treated as if it had come to an end by surrender in consideration of the payment.

(6) If—

- (a) on the termination of a lease, another lease is granted to a different lessee, and
- (b) in connection with the transaction that lessee pays a sum to the person who was the lessee under the first lease,

the two leases are to be treated as if they were the same lease which had been assigned by the lessee under the first lease to the lessee under the second lease in consideration of the payment.

### **270IH Meaning of “lease” etc**

(1) In this Part “lease” includes—

- (a) an agreement for a lease if the term to be covered by the lease has begun,
- (b) any tenancy, and
- (c) in the case of land outside the United Kingdom, an interest corresponding to a lease,

but does not include a mortgage (and “lessee”, “lessor” and “leasehold interest” are to be read accordingly).

(2) In the application of this Part to Scotland—

- (a) “leasehold interest” (or “leasehold estate”) means the interest of a tenant in property subject to a lease, and
- (b) any reference to an interest which is reversionary on a leasehold interest or on a lease is to be read as a reference to the interest of the landlord in the property subject to the leasehold interest or lease.”.