These notes refer to the Capital Allowances Act 2001 (c.2) which received Royal Assent on 22nd March 2001

CAPITAL ALLOWANCES ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Glossary

Part 1: Introduction

Overview

39. Part 1 introduces readers to capital allowances.

40. Chapter 1 sets out the allowances the Act provides for and how they are claimed and given effect generally.

41. Chapter 2 stops expenditure getting double allowances.

Background

42. CAA 1990 does not have an introductory Part. It starts with initial allowances for buildings and structures in enterprise zones. This Act helps readers (especially readers new to capital allowances) by setting out at the start the general provisions in Chapter 1.

43. Chapter 2 is more detailed. It is in Part 1 to signal that taxpayers may have a choice as to which allowances they claim.

Section 1: Capital Allowances

44. This section introduces readers to the allowances (and charges) the Act provides for capital expenditure (and some contributions to certain types of expenditure).

Section 2: General means of giving effect to capital allowances

45. This section is based on parts of sections 137, 140 and 144 of CAA 1990. It sets out the general means of giving effect to the allowances and charges.

46. *Subsection (4)* is based on section 834(2) of ICTA. This applies section 6(4) of ICTA to sections 144 and 145 of CAA 1990. Section 6 is referred to in this Act rather than (as in CAA 1990) leaving readers to discover in section 834(2) of ICTA that section 6(4) applies for the purposes of giving effect to capital allowances for corporation tax.

    Section 6 of ICTA provides that for corporation tax " 'profits' means income and chargeable gains".

Section 3: Claims for capital allowances

47. This section is based mainly on section 140(3) and parts of section 141 of CAA 1990 together with paragraph 79(1) of Schedule 18 to FA 1998. It deals with claims for capital allowances.

48. Before this Act, there was no statutory provision which said that capital allowances must be claimed before they are made. That point was, however, established in a tax case in 1987. See *Note 1* in Annex 2. *Subsection (1)* incorporates the point.

49. In CAA 1990, there are numerous references to claims before readers reach section 140(3). That requires any claim for allowances for income tax in taxing a trade to be claimed in a return. For corporation tax the corresponding provision is in Schedule 18 to FA 1998. *Subsections (2)* and *(3)* make this key point at the start of this Act.

50. *Subsections (4)* and *(5)* give the exceptions in which claims for allowances are not made in a tax return. These are subject instead to the general provisions for claims for income tax or corporation tax. In CAA 1990 section 140(3) (together with section 141(1) and (5)) provides for allowances given "by way of discharge or repayment of tax" to be subject to a claim to which section 42 of TMA 1970 applies in contrast to claims in a tax return where it does not. Section 17(3) of CAA 1990 makes additional provision for claims to carry back balancing allowances in connection with certain mines, oil wells, and so on. Section 528(2) of ICTA provides that a claim is required for patent allowances by someone not carrying on a trade. This Act cuts out the potentially misleading term "discharge or repayment" and refers direct to the provisions under which a claim is made other than in a return.

51. *Subsection (5)* refers to paragraphs 54 to 60 of Schedule 18 to FA 1998. Those deal with how such allowances must fall to be claimed for corporation tax purposes. This is despite the apparent rule in paragraph 79(1) of that Schedule that claims for capital allowances are made in a company's tax return. See *Note 2* in Annex 2.

52. *Subsection (6)* points readers to the provisions in section 42(6) and (7) of TMA 1970. These require claims for capital allowances for a trade, profession or business carried on by a partnership to be claimed in the "partnership return".

Section 4: Capital Expenditure

53. This section is based on section 159(1) and 159(1A) of CAA 1990 and section 532(4) of ICTA. It explains how "capital expenditure" and "capital sums" are used in this Act. Putting these provisions near the start of the Act lets readers see what expenditure does and does not stand a chance of qualifying for allowances.

Section 5: When capital expenditure is incurred

54. This section is based on section 159 of CAA 1990. It determines the time when capital expenditure is incurred.

55. Section 159(3) to (6) of CAA 1990 is expressed in terms of the time an obligation to pay "becomes" unconditional. This section is expressed in terms of when there is first an unconditional obligation to pay. This responds to the question "what if the obligation was never conditional?" See *Note 3* in Annex 2.

Section 6: Meaning of "chargeable period"

56. This section is based on section 160(2) to (6) of CAA 1990 together with parts of sections 161(2) and 147(1) and (2). It defines "chargeable period". This is a term used throughout the Act. It is, broadly, the period for which people work out their entitlement to allowances or liability to charges.

57. *Subsection (1)* gives the general rule. It is based on part of section 161(2) but omits the words which define a "chargeable period related to" the incurring of expenditure, or a sale or other event, as a reference to the chargeable period in which the expenditure is incurred, or the sale or other event takes place. These words reflect the definition before the introduction of self assessment and the amendments made by section 212 of FA 1994. Before self assessment the "chargeable period related to" the incurring of expenditure referred to the chargeable period in which, or to that in the basis period

for which, the expenditure was incurred. But they meant the latter if, and only if, the chargeable period was a year of assessment. With the simplification introduced by self assessment this Act can refer directly to expenditure incurred in a chargeable period.

58. *Subsection (1)* refers to the accounting period of a company. Schedule 1 gives that the same meaning as in section 12 of ICTA.

59. *Subsection (2)* gives the general rules for what is the period of account for income tax purposes. Section 160(5) of CAA 1990 applies in terms only to allowances or charges under Parts I to VI and VIII of CAA 1990. In contrast, subsection (2)(b) applies to all Parts of this Act. This is however not a change in the law because the provisions for patents and know-how were previously treated as contained within a particular Part of CAA 1968 and so subject to the same rules; and because R&D allowances are only available to persons carrying on a trade. See *Note 4* in Annex 2.

60. *Subsections (4)* to *(6)* provide exceptions to the general rule for allowances and charges which go into the calculation of profits of a trade, profession or vocation. They are based on section 160(3), (4) and (6) of CAA 1990. Section 160(6) deals, among other things, with two periods of account which coincide. Subsection (4) does not contain any words to reflect the reference in section 160(6) to the coincidence of two periods. This could happen before self assessment with "basis periods". It cannot now. So it has been omitted from this section. See *Note 5* in Annex 2.

Chapter 2: Exclusion of double relief

Overview

61. This Chapter contains provisions designed to prevent allowances being claimed twice in respect of the same expenditure under different Parts.

62. The Chapter also provides a special rule applying to claims for allowances in respect of fixtures. The general effect of the rules in this Chapter is that different people can claim allowances under different Parts in respect of an asset – for example successive owners. But this does not apply for fixtures. In such cases, one person's claim binds a subsequent claimant.

Section 7: No double allowances

63. This section is based on part of section 147(1) and (2) of CAA 1990. It prevents allowances from being claimed under one Part if an allowance has been made under another Part in respect of the same capital expenditure.

64. *Subsection (1)(b)* extends this and prevents allowances from being claimed under different Parts in respect of expenditure on the same asset.

65. Before this Act, patents and know-how allowances were dealt with in ICTA rather than CAA 1990. As a result, they are not covered by section 147 of CAA 1990. *Subsection (2)* replicates this exclusion by excluding Parts 7 and 8 from the rule in this section. In practice, however, this is likely to be of little effect since it is extremely unlikely (even if possible) that expenditure qualifying for allowances under either of these Parts would also qualify for allowances under any other Part. See *Note 6* in Annex 2.

Section 8: No double relief through pooling under Part 2 (plant and machinery allowances)

66. This section is also based on part of section 147(1) and (2) of CAA 1990. It caters for the fact that, if expenditure on plant or machinery has been allocated to a pool, it is not possible to state that an allowance has been made in respect of the expenditure itself even though an allowance may have been made in respect of the pool.

67. Chapter 5 of Part 2 sets out how expenditure on plant and machinery is pooled to arrive at allowances and charges. See also the commentary on Part 2, paragraphs 93 and 94 below.

68. *Subsections (1)* and *(2)* extend section 7 to deal with cases in which, under Part 2, capital expenditure has been allocated to a pool and an allowance or charge has been made in respect of that pool. In such cases, allowances are not available under any other Part (other than Parts 7 and 8) in respect of that expenditure (or on the provision of a related asset).

69. *Subsections (3)* and *(4)* extend section 7 to deal with cases in which an allowance has been made in respect of capital expenditure under a Part other than Part 2. In such cases, that expenditure (or any expenditure on the provision of a related asset) may not also be allocated to a pool under Part 2.

70. *Subsection (5)* makes it clear that this section does not apply to Part 7 or 8. Again, see *Note 6* in Annex 2.

71. CAA 1990 refers to taking "expenditure into account" for the purposes of the plant and machinery rules. This section is more direct in its approach and refers to expenditure being allocated to a pool and allowances or charges being made. However, there is no change effected by use of these different words.

Section 9: Interaction between fixtures claims and other claims

72. This section is based on section 147(2A), (2B) and (2C) and part of section 147(2D) of CAA 1990. It prevents a person from making a claim under one Part in respect of a fixture if a claim for an allowance has been made under another Part in respect of the same fixture. This applies even if the two claims are made by different persons or in respect of different expenditure.

73. *Subsection (1)* provides the rule that prevents a fixtures claim being made if a claim has been made under a Part other than Part 2.

74. *Subsection (2)* relaxes this rule if the earlier claim is made under Part 3 or 6 and section 186 or 187 applies.

75. *Subsection (3)* provides the mirror image of the rule in subsection (1). If, in respect of an asset, a fixture claim has been made then no person may claim an allowance under any other Part in respect of capital expenditure relating to that asset.

76. *Subsection (4)* explains what is meant by "a fixtures claim".

Section 10: Interpretation

77. This section is based on part of section 147(4) of CAA 1990. It provides the interpretation of terms used in the Chapter.