

# CAPITAL ALLOWANCES ACT 2001

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Glossary*

#### **Part 2: Plant and machinery allowances**

#### *Chapter 14: Fixtures*

#### **Overview**

635. This Chapter determines entitlement to allowances in respect of capital expenditure on plant and machinery which is or becomes a fixture.
636. Special rules are needed to deal with fixtures since land law treats them as belonging to the owner of the freehold. In many cases, this will mean that the person incurring expenditure on them for use in a qualifying activity will not be the owner of the fixture. In the absence of these rules, many taxpayers incurring capital expenditure on a fixture would fail to qualify for allowances under the general rule in section 11.
637. This Chapter contains six blocks of sections:
- sections 172 to 175 set out the scope of the Chapter and define “fixture” and other terms used in the Chapter;
  - sections 176 to 184 determine who is treated as the owner of a fixture and when. The basic rule is that a person who incurs expenditure on a fixture is treated as the owner so long as they have an interest in the relevant land (section 176). Other taxpayers, who may be treated as the owner, are:
    - an equipment lessor (see section 177);
    - a person who buys an interest in the land (see sections 181 and 182); and
    - a lessee (see sections 183 and 184).

It should be noted that sections 193 to 195 also provide for circumstances in which a taxpayer is treated as owning a fixture;

- sections 185 to 187 restrict the amount of qualifying expenditure for plant and machinery allowances in some circumstances. Broadly, these apply if capital allowances have already been claimed in respect of the fixture;
- sections 188 to 192 give disposal events for fixtures in addition to those in Chapter 5;
- sections 193 to 195 provide additional cases in which a taxpayer is treated as owning a fixture. These are listed separately because they are dependent on another taxpayer being treated as ceasing to own the fixture;

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- sections 196 to 201 give the disposal values for fixtures. They take the place of the general rules in Chapter 5; and
- sections 202 to 204 deal with interpretation and administrative matters.

***Section 172: Scope of Chapter etc.***

638. This section is based on parts of sections 51, 52, 53, 54, 55, 56, 56A, 56B, 56C, 57 and 58 of CAA 1990. It defines the scope of the fixtures Chapter.
639. *Subsection (3)* makes clear that the provisions that treat a person as the owner of the fixture are subject to the provisions that treat a person as ceasing to be the owner of the fixture.
640. *Subsection (4)* ensures that references to a person being treated as the owner (or ceasing to be the owner) are references to ownership for the purposes of Part 2.
641. **Section 51(1)** ensures that if one person is treated as the owner of a fixture then no other person is entitled to an allowance in respect of the fixture. This provision has not been rewritten. See *Change 26* in Annex 1.

***Section 173: Meaning of “fixture” and “relevant land”***

642. This section is based on section 51(2A) and part of section 51(2) of CAA 1990. It provides a definition of “fixture” and determines what is the “relevant land” for any fixture.

***Section 174: Meaning of “equipment lease” and “lease”***

643. This section is based on section 53(4) and parts of sections 51(2) and (3) and 53(1) of CAA 1990. It provides definitions for “equipment lease”, “equipment lessor”, “equipment lessee” and “lease”.
644. *Subsection (1)(a)* defines an “equipment lease” as an agreement entered into in the circumstances given in *subsection (2)*. *Subsection (1)(b)* includes the actual lease entered into “under or as a result of such an agreement”. Section 53(4) refers to a lease “entered into pursuant to such an agreement”. Although the words used in this Act are simpler, the meaning is the same.

***Section 175: Meaning of “interest in land”, etc.***

645. This section is based on section 51(4) and parts of section 51(2) and (3) of CAA 1990. It provides a definition of “interest in land” for the purposes of the Chapter.
646. *Subsection (2)* is necessary because of Northern Ireland land law. In Northern Ireland, it remains possible for mortgagees to hold an interest in land as security. The interest in land may be conveyed or assigned to them. This subsection ensures that it is the mortgagor (borrower), and not the mortgagee (lender), that is treated as the owner of the interest.

***Section 176: Person with interest in relevant land having fixture for purposes of qualifying activity***

647. This section is based on part of section 51(1) and (2) of CAA 1990. It provides one of the ways in which a person may be treated as the owner of a fixture.
648. This provision deals with the circumstances in which a person, with an interest in the relevant land, incurs capital expenditure on the provision of plant or machinery and the plant or machinery becomes a fixture. *Subsection (1)* deals with this basic rule.

649. *Subsections (2) and (3)* provide tie-breaker rules if two (or more) persons might otherwise be treated as the owner under subsection (1). In *Rule 3*, it is the lesser interest that qualifies.

**Example**

Suppose R and J would both be treated as the owner of a fixture under subsection (1). The interest in the relevant land held by R is the fee simple estate. J has a leasehold interest in the land.

Provided that Rules 1 and 2 do not apply in respect of any other person, then J (and not R) may be treated as the owner of the fixture because J's interest is not in reversion on the interest held by R.

***Section 177: Equipment lessors***

650. This section is based on section 53(1A) and on part of section 53 of CAA 1990. The section deals with the cases which allow equipment lessors to be treated as the owner of a fixture.
651. There are three sets of rules that allow equipment lessors to be treated as the owner of a fixture. The conditions that need to be met are in sections 178 to 180. *Subsection (1)* sets out the conditions that need to be met in all three cases.
652. *Subsections (2) and (3)* deal with the time from which the equipment lessor may be treated as the owner of the fixture. This is generally the time when the equipment lessor incurs the capital expenditure on the plant or machinery. However, this is modified if the conditions of section 178 are met (and the conditions of sections 179 and 180 are not met). If the equipment lessee does not yet carry on the qualifying activity, then the equipment lessor is not to be treated as the owner of the fixture until the time when the equipment lessee begins to carry on the qualifying activity. See *Note 37* in Annex 2.

***Section 178: Equipment lessee has qualifying activity etc.***

653. This section is based on part of section 53(1) of CAA 1990. It sets out the additional conditions that need to be met for an equipment lessor to be treated as the owner if the plant or machinery is provided for the purposes of the equipment lessee's qualifying activity.

***Section 179: Equipment lessor has right to sever fixture that is not part of building***

654. This section is based on section 53(1C) and on part of section 53(1B) of CAA 1990. This provision was introduced in FA 1997 to treat lessors of street furniture (for example bus-shelters) as the owner of the fixture. The section contains the additional conditions that need to be met in such cases.

***Section 180: Equipment lease is part of affordable warmth programme***

655. This section is based on section 53(1E) and (1F) and on part of section 53(1D) and (1G) of CAA 1990. These provisions were introduced in FA 2000 to treat lessors of domestic heating equipment as the owner of the fixture. The section contains the additional conditions that need to be met in such cases.

***Section 181: Purchaser of land giving consideration for fixture***

656. This section is based on part of sections 54 and 56A of CAA 1990. The section sets out the conditions that need to be met if the purchaser of an interest in the relevant land is to be treated as the owner of the fixture.
657. This section only deals with cases in which a person purchases an existing interest in the relevant land.

658. The basic rule is dealt with in *subsection (1)*. *Subsections (2) and (3)* provide that subsection (1) does not apply if another person is treated as the owner of the fixture in respect of a different interest in the relevant land.

**Example**

L Limited owns the fee simple estate in a building. The company incurs capital expenditure on the provision of a fixture for the purposes of its qualifying activity. Suppose, however, that the company does not make a claim in respect of its expenditure (as defined in section 202).

Suppose also that H Limited has a leasehold interest in the building and that H Limited assigns this interest to N Limited. Provided that N's consideration for the lease includes a capital sum that falls to be treated as expenditure on the provision of the fixture, then N Limited would be treated as the owner of the fixture under this section.

However, if L Limited were to make a claim then subsections (2) and (3) of this section would prevent N Limited from being treated as the owner of the fixture.

***Section 182: Purchaser of land discharging obligations of equipment lessee***

659. This section is also based on part of sections 54 and 56A of CAA 1990. The section provides an equivalent to the previous section if the fixture was let under an equipment lease. It deals with cases in which the person acquiring the interest in the relevant land pays a capital sum to discharge the obligations of the equipment lessee under the equipment lease.
660. The basic rule is dealt with in *subsection (1)*. *Subsections (2) and (3)* provide that subsection (1) does not apply if another person is treated as the owner of the fixture in respect of a different interest in the relevant land.
661. This section does not deal with cases in which the equipment lessor is treated as the owner of the fixture under section 177. Instead, such situations are dealt with in sections 192 and 195.

***Section 183: Incoming lessee where lessor entitled to allowances***

662. This section is based on section 55 of CAA 1990. It deals with cases in which a lease is granted in the relevant land and the lessor is entitled to an allowance. It also covers cases in which the lessor is not entitled to an allowance simply because the lessor is not within the charge to tax. The section provides when the new lessee may be treated as the owner of a fixture.
663. Because the section effectively transfers deemed ownership from the lessor to the lessee it is necessary for both to make an election for these provisions to apply.
664. One of the conditions for this section to apply is that the lessor is entitled to an allowance in respect of the fixture for the chargeable period in which the lease is granted. CAA 1990 deals with this in section 55(1)(b). However, it includes the words "apart from section 57"; section 57 deals with fixtures treated as ceasing to belong to a person. These words have no effect and have not been rewritten.

***Section 184: Incoming lessee where lessor not entitled to allowances***

665. This section is based on part of sections 56 and 56A of CAA 1990. It is similar to section 183 but deals cases in which the lessor is not entitled to an allowance (or would not be entitled even if the lessor were within the charge to tax).
666. As the lessor is not giving up ownership in such situations, there is no requirement for an election. However, a restriction applies if another person is treated as the owner of

the fixture in respect of a different interest in the relevant land. This is dealt with in *subsections (2) and (3)*.

***Section 185: Fixture on which a plant and machinery allowance has been claimed***

- 667. This section is based on section 56B of CAA 1990. It restricts the amount of expenditure that may be taken into account if a previous “owner” has claimed a plant and machinery allowance in respect of the fixture.
- 668. The broad effect of this section is to restrict the amount of future claims to the lowest disposal value brought into account by previous owners. This provision ensures that taxpayers cannot artificially inflate the amount attributed to a fixture on which plant and machinery allowances may be available at the expense of land on which plant and machinery allowances are not available. The limit is known as the “maximum allowable amount”.
- 669. *Subsection (2)(b)* ensures that if excessive expenditure has already been taken into account, then an adjustment should be made.
- 670. *Subsection (3)* provides that the “maximum allowable amount” may be increased to the extent that any of the new qualifying expenditure falls within section 25.
- 671. *Subsection (4)* ensures that if more than one disposal event has occurred, then the section only considers the most recent event. *Subsection (5)* makes it clear that a person’s qualifying expenditure may be restricted by reference to a disposal value brought into account by the same person in respect of a previous period of ownership.
- 672. If there is a sale of the plant or machinery as a chattel between unconnected persons, then *subsections (6) and (7)* provide that taxpayers may ignore ownership and disposal values in respect of any time before such a sale.

***Section 186: Fixture on which an industrial buildings allowance has been made***

- 673. This section is based on section 56C of CAA 1990. It restricts the amount of expenditure that may be taken into account if a person has claimed an industrial buildings allowance in respect of the fixture.
- 674. There is a general rule in section 9 that a fixture on which an industrial buildings allowance has been claimed may not be subject to a claim for plant and machinery allowances. However, this rule is relaxed if this section applies.
- 675. If this section applies, the qualifying expenditure is restricted to a proportion of the residue of the expenditure (as defined in section 313). This proportion is the proportion of the consideration that relates to the fixture on the transfer from the former owner.

***Section 187: Fixture on which a research and development allowance has been made***

- 676. This section is based on section 56D of CAA 1990. It restricts the amount of expenditure that may be taken into account if a person has claimed a R&D allowance in respect of the fixture.
- 677. As in the previous section, the rule in section 9 is relaxed if this section applies.
- 678. If this section applies, the qualifying expenditure is restricted to a proportion relating to the fixture of the Part 6 expenditure (or, if lower, the disposal value brought into account).

***Section 188: Cessation of ownership when person ceases to have qualifying interest***

679. This section is based on part of section 57(2) to (4) of CAA 1990. It provides that a taxpayer is treated as ceasing to own a fixture when ceasing to have the “qualifying interest”.

***Section 189: Identifying the qualifying interest in special cases***

680. This section is based on part of section 57(3) of CAA 1990. It provides that in certain circumstances, a person is not treated as ceasing to own a fixture even when ceasing to own the “qualifying interest”.

681. These circumstances broadly apply when the person acquires another interest in the relevant land which replaces the previous “qualifying interest”. In such cases, the new interest becomes the qualifying interest.

***Section 190: Cessation of ownership of lessor where section 183 applies***

682. This section is based on section 57(5) of CAA 1990. It applies if an incoming lessee begins to be treated as the owner of a fixture under section 183.

683. One of the conditions for section 183 to apply is that the lessor is treated as the owner of the fixture. This section provides that when the lessee begins to be treated as the owner of the fixture, the lessor must be treated as ceasing to be the owner.

***Section 191: Cessation of ownership on severance of fixture***

684. This section is based on section 57(7) of CAA 1990. It deals with cases in which a fixture is permanently severed from the relevant land.

685. In such cases, the person who was previously treated as owning the fixture is treated as ceasing to own it. However, this does not apply if the person becomes the actual owner of the plant or machinery as a result of the severance.

***Section 192: Cessation of ownership of equipment lessor***

686. This section is based on part of section 58(1) and (5) of CAA 1990. It provides for cases in which an equipment lessor is to be treated as ceasing to own the fixture.

687. This section applies if either:

- the equipment lessor assigns the rights under the equipment lease; or
- the equipment lessee’s financial obligations are discharged.

688. *Subsection (3)* provides that references to “equipment lessee” include any person in whom the financial obligations under the equipment lease may have been vested.

***Section 193: Acquisition of ownership by lessor or licensor on termination of lease or licence***

689. This section is based on section 57(6) of CAA 1990. It deals with cases in which a person is treated as ceasing to be the owner of a fixture because of the termination of the person’s interest in the relevant land under section 188.

690. The section applies if the interest is a lease or a licence. In such cases the lessor (or licensor) under the lease (or licence) is treated as the owner of the fixture from that time.

***Section 194: Acquisition of ownership by assignee of equipment lessor***

691. This section is based on section 58(3) and part of section 58(2) of CAA 1990. It deals with cases in which, under section 192, an equipment lessor assigns the rights under the equipment lease.

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692. This section provides that the assignee is treated as being the owner of the fixture. Further, the assignee is treated as incurring on the provision of the fixture any consideration given for the assignment.
693. *Subsection (2)* provides that the assignee is subsequently treated as an equipment lessor for the purposes of sections 192 and 195 and future operations of *subsection (1)* of this section.

***Section 195: Acquisition of ownership by equipment lessee***

694. This section is based on part of section 58(4) and (5) of CAA 1990. It provides that an equipment lessee may be treated as being the owner of a fixture. This section applies if:
- in a case dealt with by section 192, it is the equipment lessee who discharges the equipment lessee's financial obligations under the equipment lease; and
  - the equipment lessee does so by paying a capital sum.
695. *Subsection (2)* provides that references to "equipment lessee" include any person in whom the financial obligations under the equipment lease may have been vested.

***Section 196: Disposal values in relation to fixtures: general***

696. This section is based on sections 57(1) and 59 and part of section 58(2), (4) and (5) of CAA 1990. It determines the basic disposal value to be taken into account in different scenarios in respect of a fixture.
697. *Subsection (1)* provides a Table showing the different disposal values depending on the circumstances. Item 2 of the Table refers to a condition that needs to be satisfied. The alternate legs of this condition are in *subsection (2)*.
698. *Subsection (3)* makes it clear that disposals dealt with by item 1 or 5 are subject to an election being made under section 198 or 199.
699. *Subsection (4)* provides that references to "equipment lessee" include any person in whom the financial obligations under the equipment lease may have been vested.
700. *Subsection (5)* makes it clear that a taxpayer may need to bring a disposal value into account under the rules of Chapter 5 because of an event not covered by this Chapter.
701. *Subsection (6)* makes it clear that these disposal values are subject to section 197 which deals with avoidance cases.
702. Section 59(11) of CAA 1990 has been rewritten in paragraph 41 of Schedule 3.

***Section 197: Disposal values in avoidance cases***

703. This section is based on section 59A(1) to (3) of CAA 1990. It substitutes a "notional written-down value" for the disposal value in avoidance cases.
704. *Subsection (1)(d)* refers to a taxpayer obtaining a "tax advantage". This term is defined in section 577(4).
705. The paragraph also refers to a disposal event which "is part of, or occurs as a result of" a scheme or arrangement. Section 59A(1)(c) of CAA 1990 uses the words "is comprised in, or occurs in pursuance of". The wording in this Act is simpler than that in CAA 1990 without changing its meaning.
706. *Subsection (3)* uses a formula to define the "notional written-down value" in line with the similar provisions elsewhere in this Act. See *Note 24* in Annex 2.

***Section 198: Election to apportion sale price on sale of qualifying interest***

707. This section is based on part of section 59B(1) to (4) of CAA 1990. It provides that, in certain circumstances, the parties to a transaction may elect to fix a disposal and acquisition value in respect of a fixture.
708. *Subsection (1)* ensures that an election under this section may only apply if the disposal event is one for which item 1 of the Table in section 196 would otherwise apply. (This item applies if there is a sale of the qualifying interest, but item 2 of the Table does not apply.)
709. *Subsection (2)* ensures that the amount fixed by the election is to be used as the disposal value instead of the value determined by item 1. It also ensures that the amount is to be used for other purposes of this Part. In particular, if the purchaser is to claim allowances in respect of the fixture then the election will determine the expenditure treated as incurred. In all cases, this subsection provides that the election must be made jointly by the purchaser and seller.
710. *Subsection (3)* provides two limits for the amount that may be fixed under an election under this provision. The amount may not exceed the actual sale price. It must also not exceed the amount which was treated as incurred by the seller on the provision of the fixture.
711. *Subsection (4)* deals with the attribution of any part of the sale price not attributed to the fixture by the election.
712. *Subsection (5)* provides that an election cannot override a restriction on allowances under section 186 or 187. If appropriate, those sections still apply to limit the purchaser's expenditure that may be brought into account under the rules for plant and machinery allowances.
713. The subsection also ensures that the seller's disposal proceeds may still be substituted by the notional written-down value in avoidance cases (see section 197).

***Section 199: Election to apportion capital sum given by lessee on grant of lease***

714. This section is also based on part of section 59B(1) to (4). It provides that the parties to a transaction may elect to fix a disposal and acquisition value in respect of a fixture in cases dealt with by item 5 of the Table in section 196.
715. *Subsection (2)* ensures that the amount fixed by the election is to be used as the disposal value instead of the value determined by item 5. It also ensures that the amount is to be used for other purposes of this Part. In particular, if the incoming lessee is to claim allowances in respect of the fixture then the election will determine the expenditure treated as incurred. In all cases, this subsection provides that the election must be made jointly by the lessor and the lessee.
716. *Subsection (3)* provides two limits for the amount that may be fixed under an election under this provision. The amount may not exceed the actual capital sum incurred by the lessee. It must also not exceed the amount which was treated as incurred by the lessor on the provision of the fixture.
717. *Subsection (4)* deals with the attribution of any part of the capital sum not attributed to the fixture by the election.
718. *Subsection (5)* provides that an election cannot override a restriction on allowances under section 186 or 187. If appropriate, those sections still apply to limit the lessee's expenditure that may be brought into account under the rules for plant and machinery allowances.
719. The subsection also ensures that the lessor's disposal proceeds may still be substituted by the notional written-down value in avoidance cases (see section 197).



***Section 200: Elections under section 198 and 199: supplementary***

720. This section is based on section 59B(5) and 59C(6) and part of section 59C(3) of CAA 1990. It provides additional rules that apply to elections under either of the previous two sections.
721. *Subsection (2)* ensures that an election overrides any apportionment made under sections 562 to 563.
722. *Subsection (4)* provides for cases in which, after an election is made, circumstances arise which have the effect of reducing the maximum amount that may be fixed under the election (under either section 198(3) or 199(3)). If the reduced value is less than the amount specified by the election, then the election is treated as having specified the lower amount.

**Example**

V acquires from O the fee simple interest in a building on 1 March 2002. On 2 April 2003, V sells this interest to R.

V and R make an election under section 198 and apportion £10,000 to a fixture. Subsequently, but within the two-year limit imposed by section 201(1), V and O enter into an election and apportion £5,000 to the same fixture.

The election made by O and V fixes V's expenditure on the provision of the fixture at £5,000 for all purposes of the rules for plant and machinery allowances. In particular, it means that on a subsequent transaction involving the fixture, any election under either section 198 or 199 may not apportion an amount more than £5,000 to the fixture. This therefore includes the transaction between V and R.

Even though an election had already been made in respect of the sale by V to R, section 200(4) provides that this election is treated as fixing £5,000 as the consideration in respect of the fixture.

As a result, V must bring a disposal value of £5,000 into account and R may claim allowances in respect of expenditure of only £5,000 and not £10,000. Section 203(4) provides for adjustments to be made (for example to any assessments) as necessary.

***Section 201: Elections under sections 198 and 199: procedure***

723. This section is based on part of sections 51(2) and 59C of CAA 1990. It contains the procedural rules that apply to elections under sections 198 and 199.

***Section 202: Interpretation***

724. This section is based on section 51(2), (5) and (5A) and part of section 147(2D) of CAA 1990. It makes provision as to when a person is entitled to an allowance in respect of expenditure on the provision of a fixture. It also defines when "a person makes a claim under this Chapter".
725. As in section 8, this has been rewritten so as to refer to allocating expenditure to a pool. CAA 1990 refers to taking expenditure "into account" for the purposes of section 24 of CAA 1990.
726. *Subsection (1)* means "entitled to an allowance in respect of expenditure on the provision of a fixture" includes having a pool to which that expenditure has been allocated.
727. This ensures that the term picks up cases in which:
- a balancing charge arises in a particular pool; and

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- the amount of the balancing charge is reduced because of the expenditure having been allocated to the pool.
728. *Subsection (2)* restricts this rule. It ensures that the term does not apply to a particular pool if, in a previous chargeable period, the taxpayer has been required to bring a disposal value into account in the pool in respect of the fixture.
729. Only disposal values brought into account by virtue of section 61(1) are affected by this. So, for example, a taxpayer is “entitled to an allowance” even if an additional VAT rebate has been made in respect of the fixture.
730. Furthermore, if a taxpayer starts to use a fixture partly for purposes other than that of the qualifying activity, a disposal value will be brought into account in respect of the pool to which the expenditure on the provision of the fixture was originally allocated. Subsection (2) means that the taxpayer will not be “entitled to an allowance in respect of the fixture” as far as that pool is concerned. However, the re-allocation of expenditure to a single asset pool under section 206(3) will mean that the taxpayer will be “entitled to an allowance in respect of the fixture” as far as the single asset pool is concerned. This is until there is a disposal event in respect of the single asset pool. The same applies if the taxpayer is in receipt of a partial depreciation subsidy.
731. *Subsection (3)* defines what is meant in the Chapter by “making a claim” in respect of expenditure.

***Section 203: Amendment of returns and adjustment of assessments***

732. This section is based on sections 51(6) and (6A) and 53(1H) and part of sections 51(2) and 53(1G) of CAA 1990. It puts an obligation on taxpayers to notify the Inland Revenue if a return has become incorrect for one of four specified reasons. It also provides that any necessary adjustments may be made to give effect to the various provisions of the Chapter.
733. *Subsection (2)* lists the four reasons that could give rise to an obligation on the taxpayer to notify the Inland Revenue of any return that has become incorrect.
734. *Subsection (3)* requires the notice to be given within three months of the taxpayer first becoming aware that the return had become incorrect because of such a reason. To deal with cases in which the taxpayer does not meet this obligation, there are penalty provisions within section 98 of TMA 1970.
735. *Subsection (4)* provides that any necessary adjustments may be made to give effect to the various provisions of the Chapter.

***Section 204: Appeals etc.***

736. This section is based on sections 51(7) and 59C(8) of CAA 1990. It provides for special rules in appeals cases involving fixtures.
737. *Subsections (1) to (3)* deal with cases in which:
- there is a question as to whether any plant or machinery is a fixture; and
  - that question is material to the tax liability of two or more persons.
738. *Subsections (4) to (6)* consider cases in which there is a question relating to an election under section 198 or 199 which is to be determined by the Special or General Commissioners.
739. These special rules are required as hearings by Commissioners are usually in private and these situations affect the tax liabilities of different taxpayers. It is therefore necessary to modify the normal procedures to allow all parties to appear before, or make written representations to, the Commissioners.