

# CAPITAL ALLOWANCES ACT 2001

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Glossary*

#### **Part 3: Industrial buildings allowances**

##### **Overview**

930. This Part provides for industrial buildings allowances. These may be writing-down allowances or balancing allowances – or, exceptionally, initial allowances. It also provides for balancing charges. Allowances are, broadly, available if there is qualifying expenditure on a building which is an industrial building. The main type of industrial building is one in use for manufacturing or processing. Only persons with the relevant interest in the building can claim allowances on qualifying expenditure.
931. [Chapter 1](#) deals with the basic requirements for allowances. It defines “industrial building”. “Building” is short for “building or structure”.
932. [Chapter 2](#) deals with what is and is not an industrial building. The main kind of industrial building is one in use for the purposes of a qualifying trade.
933. [Chapter 3](#) defines the “relevant interest” in relation to the construction expenditure on the building.
934. [Chapter 4](#) defines “qualifying expenditure” and “qualifying enterprise zone expenditure”.
935. [Chapter 5](#) contains the conditions for initial allowances. They are available at a rate of 100% to persons who incur qualifying enterprise zone expenditure and meet certain conditions.
936. [Chapter 6](#) contains the conditions for writing-down allowances.
937. [Chapter 7](#) provides for balancing allowances and balancing charges following a balancing event.
938. [Chapter 8](#) sets out how and when qualifying expenditure is written-off.
939. [Chapter 9](#) contains special rules for highway undertakings and highway concessions.
940. [Chapter 10](#) contains special provisions relating to additional VAT liabilities and rebates under the VAT capital goods scheme.
941. [Chapter 11](#) provides for allowances and charges to be given effect.
942. [Chapter 12](#) makes supplementary provisions.

## **Background**

943. The broad theme underlying the legislation is to give relief for capital expenditure on a new building provided that the building is used in particular ways – mainly for manufacturing or processing.
944. There are significant differences from the provisions for plant and machinery allowances in Part 2 of this Act. For example:
- there is normally a single amount of qualifying expenditure, allowances on which may be shared between successive “owners” of the building;
  - expenditure is not “pooled” for the purposes of working out allowances and charges;
  - writing-down allowances are made on what is generally known as a “straight line” basis. See paragraph 27 above; and
  - balancing adjustments are not normally made more than 25 years after the first use of the building.

## **History**

945. Allowances for mills, factories and similar premises were made from 1878 until the Income Tax Act 1945 introduced allowances for capital expenditure on new industrial buildings. There were initial allowances at 10% and writing-down allowances at 2%. A balancing adjustment which could be an allowance or a charge, was made when the asset was sold or destroyed. This broadly meant tax relief was equal to the actual depreciation over the period of ownership. Since then the main changes with enduring effect are that:
- FA 1978 extended allowances to qualifying hotels;
  - FA 1980 introduced special provisions for buildings in enterprise zones with initial allowances at 100% and writing-down allowances at 25%. Commercial buildings such as offices also qualified for these allowances;
  - FA 1994 introduced provisions to prevent abuse of enterprise zone allowances; and
  - FA 1995 replaced toll road undertakings by highway concessions.
946. This list excludes relief for regional projects under legislation which applied only until the mid 1980s. FA 1984 made transitional provisions for the withdrawal of relief. Section 2 of CAA 1990 consolidated those provisions. But enquiries show that no claims could in practice now be made under the legislation referred to in that section. So it is unnecessary to preserve the effect of section 2 in this Act.

## ***Chapter 1: Introduction***

### **Overview**

947. This Chapter introduces industrial buildings allowances.
948. [Section 271](#) sets out the basic requirements for industrial buildings allowances and who gets them. It defines “industrial building”.
949. [Section 272](#) identifies some expenditure which is regarded as expenditure on the construction of a building and some which is not.
950. [Section 273](#) provides for some expenditure on preparation of a site for plant or machinery to be treated as expenditure on the construction of a building.

### ***Section 271: Industrial buildings allowances***

951. This section is based mainly on parts of sections 1, 3, 6, 7, 10, 10A, 10B and 14 of CAA 1990. It sets out the basic requirements for industrial buildings allowances.
952. *Subsection (1)* identifies four types of building which can be classified as an industrial building or structure. This allows *subsection (2)* to define “industrial building”. It also provides that in Part 3 “building” is short for “building or structure”.

### ***Section 272: Expenditure on the construction of a building***

953. This section is based on sections 21(1) and 12 of CAA 1990. It provides that construction expenditure:
- excludes any expenditure on land or rights to land; and
  - includes expenditure on repairs to a part of the building if not relieved as a revenue deduction.

### ***Section 273: Preparation of sites for plant or machinery***

954. This section is based on section 13 of CAA 1990. Its effect is to give industrial buildings allowances for certain expenditure on preparing land for plant or machinery.
955. *Subsection (2)(a)* is not in section 13 of CAA 1990. But it helps to make clear the effect of the legislation. See *Note 44* in Annex 2.

## ***Chapter 2: Industrial buildings***

### **Overview**

956. This Chapter refines the definition of industrial buildings in section 271(2)(b). So the provisions here determine whether or not a building is an industrial building.
957. [Section 274](#) defines “qualifying trades”. These may be trades or undertakings carried on by way of trade. A building used for the purposes of a qualifying trade is an industrial building. See section 271(1)(b)(i).
958. [Section 275](#) provides that some buildings used for the welfare of workers are industrial buildings when used for the purposes of a qualifying trade.
959. [Section 276](#) deals with the case in which part of the trade or undertaking is qualifying and part is not. It provides that a building is an industrial building only if it is in use for the part which qualifies. It also provides that maintenance or repair is not necessarily a qualifying trade.
960. [Section 277](#) provides that some uses of a building do not constitute use for the purposes of a qualifying trade. The main uses are as houses, shops, showrooms, hotels and offices.
961. [Section 278](#) similarly excludes buildings used by more than one licensee unless all the licensees use the building for qualifying trades.
962. [Section 279](#) defines a “qualifying hotel”. Section 271(1)(b)(ii) means that these are industrial buildings despite the general exclusion of hotels in section 277.
963. [Section 280](#) defines “qualifying sports pavilions”. Section 271(1)(b)(iii) includes these as industrial buildings.
964. [Section 281](#) defines “commercial buildings”. A commercial building is an industrial building if qualifying enterprise zone expenditure was incurred on the building (section 271(1)(b)(iv)). Commercial buildings include offices (no matter how they are used) but exclude dwelling-houses.

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965. **Section 282** provides that buildings outside the United Kingdom in use for a trade are not industrial buildings unless the profits of the trade are assessable under the rules of Case I of Schedule D.
966. **Section 283** provides a *de minimis* rule. It ignores the fact that part of a building is not an industrial building if the expenditure on that part is not more than 25% of the total expenditure on the building.
967. **Section 284** provides that a road on an industrial estate is an industrial building if the buildings on the estate are mainly industrial buildings. For enterprise zones this extends to business parks and the like which comprise mainly commercial buildings.
968. **Section 285** provides that a building which is temporarily not in use is not treated as having ceased altogether to be used. This stops temporary disuse triggering a balancing event. See section 315(1)(d). An industrial building continues to be treated as an industrial building during temporary disuse.

***Section 274: Trades and undertakings which are “qualifying trades”***

969. This section is based on parts of sections 18(1), (9) and (10) and 21(5AA) of CAA 1990. It defines “qualifying trade”. Use for a qualifying trade is the main way buildings qualify as industrial buildings.
970. *Subsection (1)* sets out in Table A seven kinds of qualifying trades and in Table B ten kinds of undertakings which are qualifying trades when carried on by way of trade. The equivalent list in section 18(1) of CAA 1990 starts with “a trade carried on in a mill, factory or other similar premises”. This Act does not include this. These words add nothing which is not covered by section 18(1)(e), “a trade which consists in the manufacture of goods or materials or the subjection of goods or materials to any process.” Items 1 and 2 of Table A are derived from this. See *Note 45* in Annex 2.
971. Item 7 of Table A contains a definition of “mineral deposits” derived from section 161(2) of CAA 1990 but omits the examples of geothermal energy. They are not needed. See *Note 46* in Annex 2.
972. Item 7 of Table B deals with tunnels and is derived from section 18(1)(c) of CAA 1990 which is subject to section 18(11) of the same Act. There is no provision equivalent to section 18(11) in this Act. See *Note 78* in Annex 2.
973. *Subsection (2)* gives pointers to special rules which apply only to highway undertakings.

***Section 275: Building used for welfare of workers***

974. This section is based on part of section 18(1) of CAA 1990. It deals with buildings for the welfare of workers.

***Section 276: Parts of trades and undertakings***

975. This section is based on section 18(2) and (3) of CAA 1990. It deals with cases in which part of a trade or undertaking is qualifying and part is not.
976. *Subsection (1)* gives the general rule. This is that part of a trade can count as a qualifying trade. *Subsection (2)* supplements this general rule by providing that a building must be in use for the part of a trade which does qualify for it to be an industrial building.
977. *Subsection (3)* excludes from qualifying trades what is, broadly speaking, “in-house” maintenance and repair work in a business which is not a qualifying trade.

***Section 277: Exclusion of dwelling-houses, retail shops, showrooms, hotels and offices etc.***

978. This section is based on sections 18(4) and (9) and 161(2) of CAA 1990. *Subsection (1)* excludes some types of building from being treated as in use for the purposes of a qualifying trade. Normally they are not industrial buildings.
979. *Subsections (2) to (4)* make an exception to the general rule in subsection (1) for buildings occupied by or in use for the welfare of employees working foreign plantations or mineral deposits.
980. *Subsection (5)* makes clear that the *de minimis* rule in section 283 takes precedence over the rule in subsection (1).

***Section 278: Building used by more than one licensee***

981. This section is based on part of section 18(6) of CAA 1990. It excludes buildings used by more than one licensee unless all the licensees use the building for qualifying trades.
982. There is a minor change. Section 18(6) of CAA 1990 applies only to trades. This means a building might fail to qualify as an industrial building because one licensee is carrying on not a trade but an undertaking by way of trade – despite the fact that such undertakings are “qualifying trades”. This section removes the anomaly. See *Change 32* in Annex 1.

***Section 279: Qualifying hotels***

983. This section is based on section 19 of CAA 1990. It defines “qualifying hotel”. A qualifying hotel is an industrial building. See section 271(1)(b)(ii).
984. Section 19(1) of CAA 1990 refers to accommodation in “a building or buildings”. This Act refers only to “a building”. But section 6(c) of the Interpretation Act 1978 provides that, unless there is a clear contrary intention, words in the singular include the plural.

***Section 280: Qualifying sports pavilions***

985. This section is based on section 14 of CAA 1990. It defines a “qualifying sports pavilion”. This is an industrial building. See section 271(1)(b)(iii).

***Section 281: Commercial buildings (enterprise zones)***

986. This section is based on section 21(5) of CAA 1990. In relation to qualifying enterprise zone expenditure (sections 298 to 301) it defines “commercial building”. These are industrial buildings for enterprise zones. See section 271(1)(b)(iv).

***Section 282: Buildings outside the United Kingdom***

987. This section is based on section 18(13) and (14) of CAA 1990. It provides that a building outside the UK which is used for the purposes of a qualifying trade only qualifies for allowances if the profits of that trade are assessable under Case I of Schedule D.
988. In CAA 1990 this condition applies explicitly to all buildings other than commercial buildings. This section applies it to all buildings including commercial buildings. But commercial buildings are, by definition, in enterprise zones in the United Kingdom so the section does not apply to them in any event.

***Section 283: Non-industrial part of building disregarded***

989. This section is based on section 18(7) of CAA 1990. It is a *de minimis* rule. Its effect is that allowances are given on all the qualifying expenditure if 25% or less relates to a part of the building which would not otherwise qualify.

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990. *Subsection (1)* refers to section 571. That provides that references to a building include references to part of a building. So parts of a building which are used differently need to be looked at separately to see if they are industrial buildings. *Subsection (2)* gives the *de minimis* rule.

***Section 284: Roads on industrial estates etc.***

991. This section is based on section 18(8) of CAA 1990. It means that roads are industrial buildings if they are on:

- industrial estates where the buildings are mainly industrial buildings; or
- business parks in enterprise zones where the buildings are mainly commercial buildings.

992. There is a minor change. In CAA 1990 this provision applies only for buildings used for qualifying trades. It does not cater for estates with undertakings carried on by way of trade or qualifying hotels. Nor does it cater for commercial buildings in enterprise zones which make up a business park or the like. The section extends industrial buildings allowances to roads on such estates. See *Change 33* in Annex 1.

***Section 285: Cessation of use and temporary disuse of building***

993. This section is based on section 15(1) of CAA 1990. It ignores temporary disuse of a building so there is no balancing event and any writing-down allowances continue to be given. See section 315 for the definition of “balancing event”.

994. [Section 317](#) makes special provision for qualifying hotels which are disused for more than two years.

***Chapter 3: The relevant interest in the building***

**Overview**

995. This Chapter defines the “relevant interest” in a building for the purposes of Part 3. Allowances are given to the person who holds the relevant interest in a building. See section 271(3).

996. [Section 286](#) gives the general rule. The relevant interest is the interest in the building held by the person who incurred the construction expenditure on the building.

997. [Section 287](#) deals with cases in which a person becomes entitled to an interest in a building as a result of expenditure on its construction. The interest is treated as acquired when the expenditure was incurred.

998. [Section 288](#) deals with a lease or other subordinate interest created out of the relevant interest.

999. [Section 289](#) deals with a relevant interest which is a lease which is then extinguished. The interest into which it merges becomes the relevant interest.

1000. [Sections 290](#) and [291](#) allow the creation of a long lease to be treated as if it were a sale of the relevant interest out of which it was created.

***Section 286: General rule as to what is the relevant interest***

1001. This section is based on section 20(1) and (2) of CAA 1990. It gives the basic definition of “relevant interest” for this Part. It also indicates some of the ways in which that definition may be modified.

***Section 287: Interest acquired on completion of construction***

1002. This section is based on section 21(2) of CAA 1990. It deals with the case of a person who only gets an interest in a building as a result of incurring expenditure on its construction. For example, a person who incurs expenditure on constructing an industrial building may not get a lease until construction is completed.
1003. There is a minor change. CAA 1990 caters only for the interest the person holds on completion of the building. This could be harsh if there is a gap between completion and the interest being acquired. So this section provides for an interest acquired as a result of completion. See *Change 34* in Annex 1.

***Section 288: Effect of creation of subordinate interest***

1004. This section is based on part of section 20(3) and section 11(5) of CAA 1990. It deals with the case in which a subordinate interest is created out of an existing relevant interest. The relevant interest remains unchanged. *Subsection (2)* provides a signpost to an exception to this rule at section 290.

***Section 289: Merger of leasehold interest***

1005. This section is based on part of section 20(3) of CAA 1990. It provides that if the relevant interest is a lease which ends either:
- on being surrendered to the person holding the reversion; or
  - by the person holding the lease acquiring the reversion,
- then the interest into which the lease has merged is the relevant interest.

***Sections 290 and 291: Election to treat grant of lease exceeding 50 years as sale***

1006. These two sections are based on section 11 of CAA 1990. They allow a lessor and lessee to elect that a long lease granted out of a relevant interest becomes the relevant interest as if it were a sale of the relevant interest to the lessee. The effect of this is broadly that the lessee rather than the lessor becomes entitled to industrial buildings allowances.
1007. An election is made by way of “notice”. See section 577.

***Chapter 4: Qualifying expenditure***

**Overview**

1008. This Chapter sets out what is qualifying expenditure for the purposes of Part 3. Allowances under this Part are made in relation to qualifying expenditure.
1009. [Section 292](#) introduces five ways in which expenditure may be qualifying expenditure in this Chapter.
1010. [Section 293](#) defines for the purposes of this Chapter “developer” and “development trade”.
1011. [Section 294](#) provides that capital expenditure on the construction of a building is qualifying expenditure if the relevant interest in the building has not been sold or was sold only after its first use.
1012. [Section 295](#) provides qualifying expenditure for the purchase of an unused building if a developer is not involved in the transaction.
1013. [Section 296](#) provides qualifying expenditure for the purchase of an unused building built by a developer.

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1014. **Section 297** provides qualifying expenditure for a used building purchased from a developer.
1015. **Sections 298 to 304** make additional provision for enterprise zones and “qualifying enterprise zone expenditure”.
1016. **Section 298** sets the time limits for expenditure on the construction of a building in an enterprise zone to be qualifying enterprise zone expenditure. It also defines “enterprise zones” and “EZ building”.
1017. **Sections 299 and 300** provide that qualifying expenditure under sections 294 to 296 on an EZ building is qualifying enterprise zone expenditure. All construction expenditure must be within the time limit.
1018. **Section 301** provides for qualifying expenditure on the purchase of an EZ building within 2 years of its first use.
1019. **Sections 302 to 304** deal with cases which would be within section 300 or 301 but for the fact that only part of the expenditure was within the time limit. They provide for part of the qualifying expenditure on its construction to be qualifying enterprise zone expenditure.

***Section 292: Meaning of “qualifying expenditure”***

1020. This section introduces Chapter 4 and provides signposts to the sections which give qualifying expenditure for the purposes of this Part.

***Section 293: Meaning of references to carrying on trade as a developer***

1021. This section is based on sections 10(3) and (4) and 10A(9) of CAA 1990. It defines terms used in this Chapter.

***Section 294: Capital expenditure on construction of a building***

1022. This section is based on parts of sections 1(1), 3(1), 6(1), 10(1)(a) and 10A(2)(a) of CAA 1990. It deals with the straightforward case of capital expenditure incurred on the construction of a building by a person who used the building whether or not the relevant interest was subsequently sold.

***Section 295: Purchase of unused building where developer not involved***

1023. This section is based on parts of sections 10(1) and 10A(1) and (2) and sections 10(2) and 10A(8) of CAA 1990. It deals with a building sold before it is used. No developer is involved. The qualifying expenditure is the lesser of:

- the price paid; and
- the construction expenditure.

***Section 296: Purchase of building which has been sold unused by developer***

1024. This section is based on parts of sections 10(1) and (3) and 10A(2) and (9) of CAA 1990. It deals with buildings sold by a developer before being used.

1025. *Subsection (2)* gives the qualifying expenditure if the sale in question is the first sale.

1026. *Subsection (3)* gives the qualifying expenditure if there are previous sales.

***Section 297: Purchase of used building from developer***

1027. This section is based on section 10(4) and (5) of CAA 1990. If a building is purchased from a developer after it has been first used, this section:



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- gives the qualifying expenditure for the buyer; and
  - writes off expenditure in respect of the time the developer had the building.
1028. *Subsection (3)* provides that sections 301 and 303 take precedence over this section. These sections only apply to buildings in enterprise zones which are purchased within two years of first use.

***Sections 298 to 304: qualifying enterprise zone expenditure***

1029. These seven sections identify qualifying enterprise zone expenditure. They draw on the provisions earlier in this Chapter for qualifying expenditure. But they also make special provision for buildings purchased within two years of their first use.
1030. *Section 298* is based on parts of sections 1, 6, 10A and 10B, 17A and 21 of CAA 1990. It sets a time limit on construction expenditure in an enterprise zone. And it defines two terms used in the following sections.
1031. *Section 299* is based on parts of section 10A(1), (2), (8) and (9) of CAA 1990. It provides that qualifying expenditure under section 294 is qualifying enterprise zone expenditure if incurred on the construction of an EZ building within the time limit.
1032. *Section 300* is based on parts of sections 1(1) and 6(1) of CAA 1990. It provides that qualifying expenditure under sections 295 and 296 is qualifying enterprise zone expenditure if the construction expenditure was all incurred within the time limit of an EZ building.
1033. *Section 301* is based on parts of section 10B(1), (2), (4), (5) and (8) of CAA 1990. It provides special rules for an EZ building sold after it has first been used but within two years of that first use. If the conditions in *subsection (1)* are met the sale is treated as a balancing event (see [Chapter 7](#)) and the qualifying expenditure is subsequently ignored. But the purchaser is treated as having incurred qualifying enterprise zone expenditure on an unused building.
1034. *Section 302* is the first of three sections which deal with the situation in which only part of the expenditure incurred on constructing a building comes within the enterprise zone time limit as defined in section 298. It is based on parts of section 10A(1), (3) and (4) and on section 10A(6) of CAA 1990. It deals with the two situations covered by sections 295(1) and 296(1). It provides that part of the qualifying expenditure identified by those sections is qualifying enterprise zone expenditure. It does so by apportioning the qualifying expenditure between the amount of expenditure incurred on the EZ building within the time limit and the total expenditure on the building.
1035. *Section 303* is based on parts of sections 10B(1), (2) and (4) and 10B(6) and (7) of CAA 1990. It is similar to section 301 but deals with cases in which only part of the expenditure on constructing the building is within the enterprise zone time limit as defined in section 298.
1036. *Subsection (4)* sets out the method of calculating that part of the qualifying expenditure which will be qualifying enterprise zone expenditure and that part which will not. It applies if a developer is not involved. (The calculations to be made if a developer is involved are provided by section 304.)
1037. *Section 304* is based on section 10B(8) of CAA 1990. It is similar to section 303 but deals with cases in which a developer is involved.

## **Chapter 5: Initial Allowances**

### **Overview**

1038. This Chapter provides initial allowances for qualifying enterprise zone expenditure on a building which is to be an industrial building occupied by the person who incurred that expenditure or by a qualifying lessee or licensee. In relation to qualifying enterprise zone expenditure “industrial building” includes “commercial buildings” as defined in section 281.
1039. **Section 305** provides entitlement to allowances. It defines “qualifying lessees and licensees”.
1040. **Section 306** provides:
- the amount of the initial allowance is 100% of the qualifying enterprise zone expenditure; and
  - the allowance is made for the chargeable period in which the qualifying expenditure is incurred.
1041. **Section 307** denies or withdraws allowances if the building is not an industrial building when first used.
1042. **Section 308** denies or withdraws allowances if expenditure is met by certain grants.

### **Section 305: Initial allowances for qualifying enterprise zone expenditure**

1043. This section is based on parts of section 1(1), (3) and (4) of CAA 1990. It provides entitlement to initial allowances for qualifying enterprise zone expenditure.
1044. There is a minor change. The section makes clear that initial allowances are available in respect of all commercial buildings in enterprise zones whether or not occupied for the purposes of a trade. See *Change 35* in Annex 1.

### **Section 306: Amount of initial allowance and period for which allowance made**

1045. This section is based on parts of sections 1(1) and 161(2) and on section 1(5) and (10) of CAA 1990. It provides that initial allowances are 100% of the qualifying enterprise zone expenditure but allows a person to claim less than the full amount.
1046. There is a minor change. *Subsection (4)* deals with the case in which expenditure is incurred for the purposes of a trade, profession or vocation which has not yet begun. This rule is needed to identify the chargeable period under subsection (3) in respect of which the initial allowance is to be made. In CAA 1990 this applies only for trades. But the addition of professions and vocations follows logically. See *Change 36* in Annex 1.

### **Section 307: Building not industrial building when it comes to be used etc.**

1047. This section is based on sections 1(6), 10(1)(a) and 10A(2)(a) of CAA 1990. It denies or withdraws initial allowances if a building is not an industrial building when first used.
1048. The need to withdraw allowances arises because section 305 gives entitlement to an initial allowance for a building which “is to be” an industrial building. This means that an initial allowance may be made on the basis of intentions that are not fulfilled.
1049. There is a minor change. *Subsection (4)* applies for both subsection (2) and (3) in this section. In CAA 1990 the equivalent (section 1(6)) applies only for cases within subsection (2) of this section. Cases within subsection (3) would be dealt with under the more general provisions in TMA 1970. See *Change 37* in Annex 1.

***Section 308: Grants affecting entitlement to initial allowances***

1050. This section is based on section 1(7), (8) and (9) of CAA 1990. It denies or withdraws initial allowances if expenditure is met by certain grants.
1051. *Subsection (6)* provides that the adjustments or assessments required under subsection (5) may be made at any time up to the end of a 3-year period following the end of the chargeable period in which the grant, payment or repayment was made. This caters for the fact that there may be considerable gaps between expenditure and grants, or between grants being made and repaid. The three years it provides to make such adjustments does not displace any other provisions which may allow an assessment or adjustment later.

***Chapter 6: Writing-down allowances***

**Overview**

1052. This Chapter provides writing-down allowances. It deals with who is entitled to writing-down allowances and how they are calculated. Writing-down allowances are made for qualifying enterprise zone expenditure and other qualifying expenditure.
1053. **Section 309** gives entitlement to a writing-down allowance to the person entitled to the relevant interest at the end of the chargeable period provided the building is at that time an industrial building.
1054. **Section 310** gives the basic rule for calculating the amount of a writing-down allowance:
- 4% a year of qualifying expenditure; but
  - 25% a year of qualifying enterprise zone expenditure.
1055. **Section 311** provides the writing-down allowance due to the purchaser of the relevant interest in an industrial building. The allowance is calculated to write off the residue of the qualifying expenditure after the sale over the remainder of the period of 25 years from the first use of the building. Section 313 defines “the residue of qualifying expenditure”. It is the amount of qualifying expenditure not yet written off (see Chapter 8).
1056. **Section 312** limits the amount of writing-down allowance which can be made for a chargeable period to the residue of expenditure.

***Section 309: Entitlement to writing-down allowance***

1057. This section is based on section 3(1) of CAA 1990. It sets out the conditions for a writing-down allowance.
1058. There is a minor change. *Subsection (2)* permits a person who is entitled to a writing-down allowance to claim any amount which is less than the amount due. See *Change 38* in Annex 1.

***Section 310: Basic rule for calculating amount of allowance***

1059. This section is based on section 3(2) and section 6(2) of CAA 1990. It provides the basic rule for the amount of a writing-down allowance.

***Section 311: Calculation of amount after sale of relevant interest***

1060. This section is based on parts of section 3(2B) and (3) of CAA 1990. It provides the amount of a writing-down allowance after the sale of the relevant interest in a building which is or has been an industrial building. It can also apply after an additional VAT liability or rebate.

1061. The starting point for the calculation is “the residue of qualifying expenditure”. This is defined in section 313 by reference to Chapter 8. The writing-down allowance is then calculated as a fraction of the residue of qualifying expenditure. That fraction is the length of a chargeable period divided by the balance, after the date of the relevant event, of the 25-year period which began when the building was first used. The effect of this is to write off the residue over the remainder of the 25-year period.

***Section 312: Allowance limited to residue of qualifying expenditure***

1062. This section is based on section 3(4) of CAA 1990. It caps the amount of writing-down allowance for a chargeable period which may be given. This makes sure that allowances do not exceed the qualifying expenditure.

***Section 313: Meaning of “the residue of qualifying expenditure”***

1063. This section is based on part of section 8(1) of CAA 1990. It defines “the residue of qualifying expenditure” as the amount of qualifying expenditure which has not been written off in accordance with Chapter 8.

***Chapter 7: Balancing adjustments***

**Overview**

1064. This Chapter provides for balancing adjustments. These are made on the occurrence of certain events, referred to in this Part as balancing events. A balancing adjustment is either a balancing allowance or a balancing charge.
1065. [Section 314](#) provides for balancing allowances and charges. It also provides that no balancing adjustment is made if a balancing event occurs more than 25 years after first use of the building.
1066. [Section 315](#) sets out the main balancing events and points to provisions which provide other balancing events.
1067. [Section 316](#) identifies the proceeds from balancing events.
1068. [Section 317](#) provides one of the other balancing events mentioned in section 315. It applies if a hotel has ceased to be a qualifying hotel (see section 279) for more than two years.
1069. [Sections 318 to 320](#) state the general rules for calculating a balancing adjustment. The calculation differs according to whether or not the building was used as an industrial building, or for R&D, throughout a person’s relevant period of ownership.
1070. [Section 318](#) provides the rule if the building has been so used throughout.
1071. [Section 319](#) provides the rule if a building has not been in such use throughout.
1072. [Section 320](#) limits the amount of a balancing charge to the total allowances made.
1073. [Sections 321 to 324](#) define terms used in section 319.
1074. [Sections 325 and 326](#) restrict balancing allowances if:
- a sale subject to a subordinate interest is made involving connected persons; or
  - it appears that the main purpose was to obtain an allowance.
1075. [Sections 327 to 331](#) are concerned with expenditure on the construction of buildings in enterprise zones.

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(c.2) which received Royal Assent on 22nd March 2001*

1076. **Section 328** provides that a balancing event occurs if capital value is realised on a building. No balancing allowance is made for such an event. And there are special rules for calculating a balancing charge.
1077. **Section 329** gives the amount of the capital value attributable to a subordinate interest. This amount is treated in section 328 as the proceeds from the balancing event.
1078. **Section 330** provides an exception to section 328. That section does not apply if capital value is realised more than seven years after an agreement was made to incur qualifying expenditure.
1079. **Section 331** defines various terms for the purposes of sections 328 to 330.

***Section 314: When balancing adjustments are made***

1080. This section is based on section 4(1) and (2) of CAA 1990. It provides balancing adjustments for industrial buildings allowances. A balancing adjustment is made on the occurrence of a balancing event. See section 315.
1081. *Subsection (5)* provides a balancing adjustment only for the first balancing event to happen in a period when a building is not an industrial building. This prevents double allowances or charges.

***Section 315: Main balancing events***

1082. This section is based on parts of sections 4(1) and 161(2) of CAA 1990. It gives the main balancing events for industrial buildings allowances. It also provides signposts to sections within Part 3 which give additional balancing events.

***Section 316: Proceeds from main balancing events***

1083. This section is based on section 156 of CAA 1990. It gives the proceeds from four of the main balancing events.

***Section 317: Balancing event where hotel not qualifying hotel for 2 years***

1084. This section is based on part of section 7(1) and sections 6(3) and 7(2) of CAA 1990. It provides an additional balancing event for what was previously a qualifying hotel. This occurs if for a period of two years it is no longer a qualifying hotel. “Qualifying hotel” is defined in section 279.
1085. *Subsection (1)* sets out the circumstances in which the balancing event arises.
1086. *Subsection (2)* contains provisions for the application of balancing adjustments by treating the event as a sale with proceeds equal to the market value of the building.
1087. *Subsections (3) and (4)* provide that the general rule in section 285 about temporary disuse applies for up to two years in which the building is not a qualifying hotel but not beyond that period.
1088. *Subsection (5)* provides that this section does not apply to qualifying enterprise zone expenditure.

***Section 318: Building an industrial building etc. throughout***

1089. This section is based on section 4(3) and (4) of CAA 1990. It calculates the balancing adjustment if a building has been an industrial building throughout the relevant period of ownership. “The relevant period of ownership” is defined in section 321.
1090. *Subsection (2)* provides a balancing allowance if there are no proceeds from the balancing event or the proceeds are less than the residue of qualifying expenditure

before that event. “The residue of qualifying expenditure” is defined in section 313. *Subsection (3)* gives the amount of the balancing allowance.

1091. *Subsection (4)* provides a balancing charge if the proceeds from the balancing event are greater than the residue of qualifying expenditure before that event. *Subsection (5)* gives the amount.

### ***Section 319: Building not an industrial building etc. throughout***

1092. This section is based on section 4(5), (6), and (7)(a) and (b) of CAA 1990. It calculates balancing adjustments if a building was at some time during the relevant period of ownership not used as an industrial building or for R&D. “The relevant period of ownership” is defined by section 321.

1093. *Subsections (2)* and *(3)* provide a balancing allowance if the proceeds from a balancing event are less than the starting expenditure and the net allowances made are less than the adjusted net cost of the building. “The starting expenditure” is defined in section 322. “Net allowances” is defined in section 324. “Adjusted net cost” is defined in section 323. The amount of the balancing allowance is the difference between the adjusted net cost of the building and the net allowances made.

1094. *Subsections (4)* and *(5)* provide a balancing charge if the proceeds from the balancing event are equal to or greater than the starting expenditure. The proceeds from a balancing event are given by section 316. The amount of the balancing charge is the net allowances made.

1095. *Subsections (6)* and *(7)* provide a balancing charge if the proceeds from the balancing event are less than the starting expenditure (so subsection (4) does not apply) and the net allowances made are more than the adjusted net cost of the building. The amount of the balancing charge is the difference between the net allowances made and the adjusted net cost of the building.

### ***Section 320: Overall limit on balancing charge***

1096. This section is based on part of section 4(10) of CAA 1990. It limits the balancing charge that can be made to the amount of the net allowances.

### ***Section 321: The relevant period of ownership***

1097. This section is based on part of section 4(9) of CAA 1990. It defines the “relevant period of ownership”. This term is used in sections 318 and 319.

### ***Section 322: Starting expenditure***

1098. This section is based on part of section 4(9) of CAA 1990. It defines “starting expenditure” for the purposes of Chapter 7.

1099. *Subsection (2)* makes the starting expenditure equal to qualifying expenditure if the person on whom the balancing adjustment is made is the same person who incurred the qualifying expenditure.

1100. *Subsection (3)* provides that in cases not covered by subsection (2) above the starting expenditure will be the residue of qualifying expenditure at the beginning of the relevant period of ownership. “The residue of qualifying expenditure” is defined in section 313. “The relevant period of ownership” is defined in section 321.

1101. *Subsection (4)* is concerned with cases which fall within section 340. These are cases involving the demolition of a building if the person in respect of whom the balancing adjustment is made also incurs demolition costs. Under this subsection the starting expenditure is increased by “the net cost of the demolition” which is defined in section 340(3).

***Section 323: Adjusted net cost***

1102. This section is based on part of section 4(9) of CAA 1990. It defines the “adjusted net cost”. It employs the concept of “relevant period of ownership” which is defined by section 321.

***Section 324: Net allowances***

1103. This section is based on part of section 4(10) of CAA 1990. It defines “net allowances” for the purposes of Chapter 7.

***Section 325: Balancing allowances restricted where sale subject to subordinate interest***

1104. This section is based on section 5(1), (2), (3) and (5) of CAA 1990. It restricts balancing allowances in two situations involving the sale of the relevant interest in a building which is subject to a subordinate interest:

- *subsection (2)* – if at least two of the three persons involved are connected persons. “Connected persons” are defined in section 575;
- *subsection (3)* – if the sole or main benefit appears to be the obtaining of an allowance under this Part.

1105. *Subsection (4)* provides that in either of these situations the balancing adjustment is calculated with an increase in the net proceeds of the sale.

1106. *Subsection (5)* limits the amount that is added to the proceeds. This prevents subsection (4) imposing a balancing charge.

1107. *Subsection (6)* deals with a variation of the terms on which the subordinate interest is granted prior to the sale of the relevant interest. Anything received in return for that variation is to be treated as a premium under subsection (4). And the rent, if any, is to be taken as the rent payable under the terms applying immediately before the sale of the relevant interest.

1108. *Subsection (7)* provides that the residue of qualifying expenditure after the sale is to be calculated regardless of an adjustment made by this section. “The residue of qualifying expenditure” is defined in section 313.

***Section 326: Interpretation of section 325***

1109. This section is based on section 5(4) of CAA 1990. It defines terms used in this section and section 325.

***Section 327: Capital value provisions: application of provisions***

1110. This section is based on parts of section 120(7) and (8) of FA 1994. It introduces the application of sections 328 to 331. These provisions were introduced to prevent abuse of enterprise zone allowances.

***Section 328: Balancing adjustment on realisation of capital value***

1111. This section is based on sections 4(1)(dd), 4A(1), 5(2A) and (9A)(a) and (b) of CAA 1990. It provides an additional balancing event if capital value is realised in respect of a building which is or has been an industrial building in an enterprise zone. “Capital value” is defined in section 331(1).

1112. *Subsection (2)* prohibits a balancing event within this section from giving rise to a balancing allowance.

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- 1113. *Subsection (3)* provides that the proceeds from the balancing event are to be taken as the amount of capital value realised.
- 1114. *Subsection (4)* provides two special rules for calculating a balancing adjustment when there is a balancing event under this section.
- 1115. *Subsection (5)* provides that capital value is realised if capital value is paid in respect of a subordinate interest in land to which the relevant interest in the building is or will be subject. *Subsection (6)* gives the date that capital value is realised as the date that payment is made.
- 1116. *Subsection (7)* provides that “the amount of capital value realised” in subsection (3) is the capital value that is attributable to the subordinate interest under section 329.

***Section 329: Capital value that is attributable to subordinate interest***

- 1117. This section is based on section 4A(2), (4), (5), (6) and (8) of CAA 1990. It identifies what capital value is attributable to a subordinate interest.

***Section 330: Exception for payments more than 7 years after agreement***

- 1118. This section is based on section 4A(7), (11) and (12) of CAA 1990. It provides an exception to section 328 for certain payments made more than 7 years after the agreement to incur qualifying expenditure.
- 1119. *Subsections (1)* and *(2)* set out the circumstances in which the exception applies. And *subsections (3)* and *(4)* set out the circumstances when it does not. The latter are broadly relevant if arrangements are in place which make a disposal certain or substantially more likely.

***Section 331: Capital value provisions: interpretation***

- 1120. This section is based on section 4A(3), (9), (10) and (13) of CAA 1990. It defines terms used in the capital value provisions.
- 1121. *Subsection (1)* refers to section 34 of ICTA. Section 34 of ICTA provides for certain capital sums paid (for example as premiums under a lease) to be treated as rent or profits in the hands of the landlord.

***Chapter 8: Writing off qualifying expenditure***

**Overview**

- 1122. This Chapter provides what qualifying expenditure is written off and when for the purposes of Part 3. How much qualifying expenditure has been written off determines “the residue of qualifying expenditure”. This is defined by section 313 as the qualifying expenditure not written off in accordance with this Chapter.
- 1123. **Section 332** introduces this Chapter.
- 1124. **Section 333** writes off an initial allowance when the building is first used.
- 1125. **Section 334** writes off a writing-down allowance at the end of the chargeable period for which it is made. This is taken to be done immediately before any balancing event which occurs at the end of the chargeable period.
- 1126. **Section 335** writes off R&D allowances in the same way as in the previous section.
- 1127. **Section 336** writes off notional writing-down allowances for periods after the first use of a building when it is not an industrial building.
- 1128. When a relevant interest in a building is sold, section 337 applies to:



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- write off balancing allowances; and
  - increase the residue of qualifying expenditure if a balancing charge is made.
1129. **Section 338** writes off capital value realised if section 328 gives rise to a balancing event.
1130. **Section 339** writes off qualifying expenditure if the Crown or a person not within the charge to tax is entitled to the relevant interest in a building.
1131. **Section 340** adds net demolition costs to the residue of qualifying expenditure in some circumstances.

### ***Section 332: Introduction***

1132. This section is based on part of section 8(1) of CAA 1990. It introduces Chapter 8. There is a minor change in this Chapter which appears in section 335. See *Change 39* in Annex 1.

### ***Section 333: Writing off initial allowances***

1133. This section is based on section 8(2)(b) of CAA 1990. Initial allowances are written off when the building is first used.

### ***Section 334: Writing off writing-down allowances***

1134. This section is based on section 8(3) and (4) of CAA 1990. It provides for writing off writing-down allowances.
1135. *Subsection (2)* deals with the situation in which a balancing event occurs at the end of a chargeable period. In order to calculate the balancing adjustment any writing-down allowance written off for that chargeable period has to be taken into account in calculating the residue of qualifying expenditure immediately before the event. “Residue of qualifying expenditure” is defined in section 313.

### ***Section 335: Writing off research and development allowances.***

1136. This section is based on part of section 8(5) and section 8(6) of CAA 1990. It provides for writing off R&D allowances. It otherwise follows the same rules as for writing-down allowances in section 334.
1137. There is a minor change. As a result of a change in approach in Part 6 of this Act from that in CAA 1990 less qualifying expenditure may be written off by this section. See *Change 39* in Annex 1.

### ***Section 336: Writing off expenditure when building not an industrial building***

1138. This section is based on section 8(7) of CAA 1990. It writes off notional writing-down allowances for any time after a building is first used when it is not an industrial building.

### ***Section 337: Writing off or increase of expenditure where balancing adjustment made***

1139. This section is based on section 8(9), (10) and (11) of CAA 1990. It adjusts the residue of qualifying expenditure for a balancing adjustment if a building is sold.
1140. If a balancing allowance is made on the sale, *subsection (2)* writes off the excess of the residue of qualifying expenditure before the balancing event over the net proceeds from that event. If there is a balancing charge, *subsection (3)* adds it to the residue of qualifying expenditure at the time of the balancing event.

1141. *Subsection (4)* modifies this rule if a balancing charge is made under section 319(6). This occurs if a building has not been an industrial building throughout a relevant period of ownership and a balancing charge is made on the difference between the net allowances made and the adjusted net cost of the building. In this situation the residue of qualifying expenditure after the balancing event must not exceed the net proceeds from that event.

### ***Section 338: Writing off capital value which has been realised***

1142. This section is based on section 8(12B) of CAA 1990. It deals with balancing events under section 328 which concern the realisation of capital value. The amount of that capital value realised is written off at the time of the balancing event.

### ***Section 339: Crown or other person not within the charge to tax entitled to the relevant interest***

1143. This section is based on section 8(13) and part of section 8(14) of CAA 1990. It is concerned with writing off qualifying expenditure for buildings which belonged to the Crown or persons not within the charge to tax.
1144. *Subsection (2)* provides that all the rules concerning writing off qualifying expenditure found in sections 331 to 336 are applied to writing-down allowances and balancing adjustments.
1145. The section refers to “a person who is not within the charge to tax” without the additional words “in the United Kingdom” used in section 8(14) of CAA 1990. The words are not necessary. Omitting them brings this section into line with the wording used elsewhere in CAA 1990 and ICTA. See *Note 42* in Annex 2.

### ***Section 340: Treatment of demolition costs***

1146. This section is based on section 8(12) of CAA 1990. It applies to a person who, having incurred demolition costs, faces a balancing allowance or balancing charge as a result of a building being demolished. The net cost of the demolition is added to the residue of qualifying expenditure prior to the demolition. This means the net cost gets tax relief through industrial buildings allowances.
1147. *Subsection (4)* allows the cost of demolition or the net cost of demolition to be treated as expenditure on a replacement property only for the purposes of assured tenancy allowances (Part 10).

## ***Chapter 9: Highway undertakings***

### **Overview**

1148. This Chapter makes special provision for highway undertakings and highway concessions.
1149. **Section 341** provides that carrying on a highway undertaking is always an “undertaking carried on by way of trade” for the purposes of Part 3. It gives “highway undertaking” the same meaning as in section 274(1) and defines “highway concession”.
1150. **Section 342** provides that a highway concession is not an interest in the road but can be treated as the relevant interest in relation to expenditure on the road if the person incurring the expenditure was not entitled to an interest in the road.
1151. **Section 343** provides a balancing event if the relevant interest is a highway concession which comes to an end and is not treated as extended. It also defines “proceeds” from that event.

1152. **Section 344** provides for a concession to be treated as extended if the person entitled to the concession or a connected person takes up a renewed or new concession in the whole or part of the road.

### ***Section 341: Carrying on of highway undertakings***

1153. This section is based on section 21(5AA), (5A) and (5B) of CAA 1990. It sets out the special rules that are to apply in Part 3 of this Act to the carrying on of highway undertakings.
1154. *Subsection (1)* makes a highway undertaking an undertaking by way of trade.

### ***Section 342: The relevant interest***

1155. This section is based on sections 4(2AB) and 20(5) and (6) of CAA 1990. It sets out how the concept of “the relevant interest” in the building in Chapter 3 is to be applied in the case of a highway concession.
1156. *Subsection (1)* gives the general rule that a highway concession is not regarded as an interest in a road on which construction expenditure has been incurred.
1157. *Subsection (2)* provides an exception to subsection (1). If:
- expenditure has been incurred on the construction of a road by a person; and
  - at that time that person holds no interest in the road but instead was entitled to a highway concession over it;
- then that highway concession can be treated as the relevant interest in relation to that construction expenditure.
1158. *Subsection (3)* refers to section 344. That section is concerned with a new or renewed concession being treated as an extension of the previous or original concession. This is also to be applied when determining the relevant interest.

### ***Section 343: Balancing adjustment on ending of concession***

1159. This section is based on sections 4(1)(da), part of 4(2AA) and 156(e) of CAA 1990. It deals with the balancing adjustment when a highway concession ends.
1160. *Subsection (1)* provides that the ending of a highway concession is a balancing event, unless it is treated as extended. *Subsection (2)* identifies the proceeds from such a balancing event.

### ***Section 344: Cases where highway concession is to be treated as extended***

1161. This section is based on section 4(2AB) and part of 4(2AA) of CAA 1990. It treats a highway concession as extended if a renewed or new concession includes the whole or part of the road covered by the previous concession. There is then no balancing event.

## ***Chapter 10: Additional VAT liabilities and rebates***

### **Overview**

1162. This Chapter deals with the interaction of the industrial buildings allowances and the VAT capital items legislation.
1163. **Section 345** applies for this Chapter definitions in Chapter 2 of Part 12.
1164. **Sections 346 to 348** deal with additional VAT liabilities. Broadly they:

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- give entitlement to initial allowances if the person was entitled to an initial allowance for qualifying enterprise zone expenditure and the additional VAT is incurred no more than 10 years after the site was included in an enterprise zone; or
- give rise to qualifying expenditure increasing the residue of qualifying expenditure and so increase allowances.

1165. [Sections 349 to 351](#) deal with additional VAT rebates. The rebate:

- reduces the residue of qualifying expenditure (and so reduces allowances); and
- may give rise to a balancing charge.

***Section 345: Introduction***

1166. This section applies definitions in Chapter 2 of Part 12 for this Chapter.

***Section 346: Additional VAT liabilities and initial allowances***

1167. This section is based on section 1(1A) and parts of sections 1(5) and 159A(3) of CAA 1990. It provides for initial allowances to be given in respect of additional VAT liabilities incurred in respect of the qualifying expenditure.

1168. *Subsection (1)(a)* provides the main condition – that the original expenditure entitled the person incurring it to an initial allowance in respect of qualifying enterprise zone expenditure.

1169. *Subsection (1)(b) to (d)* provides the other conditions that need to be met for an initial allowance to be given.

1170. *Subsection (6)* makes it clear that the person entitled to the initial allowance in respect of the original expenditure need not be the person incurring the additional VAT liability.

1171. Initial allowances may also be due in respect of additional VAT liabilities arising if the original capital expenditure was incurred in the year ended 31 October 1993. This rule is now of limited application and is dealt with in paragraphs 75 to 77 of Schedule 3.

***Section 347: Additional VAT liabilities and writing-down allowances***

1172. This section is based on section 3(2A) and (2B) and part of section 159A(3) of CAA 1990. It provides the general rule for additional VAT liabilities.

1173. In order to ensure that the additional VAT liability (and increase in the residue of qualifying expenditure) gives rise to increased writing-down allowances, *subsection (3)* provides that the incurring of an additional VAT liability is a relevant event for the purposes of section 311.

**Example**

In 1998 U incurs qualifying expenditure of £500,000 on an industrial building. In 2003 U incurs an additional VAT liability of £10,000 in respect of the building. At that time the residue of qualifying expenditure is £400,000.

The £10,000 is added to the residue of qualifying expenditure giving a total of £410,000. Section 311 means that (subject to other relevant events) subsequent writing-down allowances must reflect the increased qualifying expenditure.

If from the time the additional VAT liability accrued 20 years remain, (out of the period of 25 years since first use of the building,) the revised writing-down allowance will be £20,500 for each year (£410,000 divided by 20).

***Section 348: Additional VAT liabilities and writing off initial allowances***

1174. This section is based on section 8(2)(a) and part of section 159A(3) of CAA 1990. It provides that an initial allowance in respect of an additional VAT liability is written off when the additional VAT liability accrues.
1175. Most initial allowances will relate to qualifying enterprise zone expenditure and will be given at 100%. In such cases the residue will be increased by this amount (under section 347(2)(b)) and immediately reduced again by this section.
1176. If a reduced initial allowance is made (or under paragraph 75(3) of Schedule 3 only a 20% initial allowance is available) then the net effect of these two rules is that the residue is increased by the difference between the additional VAT liability incurred and the initial allowance made.

***Section 349 and 350: Additional VAT rebates***

1177. These sections are based on parts of sections 3, 4 and 159A of CAA 1990. They deal with additional VAT rebates received in respect of qualifying expenditure.
1178. *Section 349* applies when the additional VAT rebate received is less than the residue of qualifying expenditure immediately before the rebate accrues. In such cases, *subsection (2)* provides that writing-down allowances are revised accordingly. Section 351 provides that the residue is first reduced by the amount of the rebate.
1179. *Section 350* applies in all cases when an additional VAT rebate is made. However, it is only relevant if the additional VAT rebate exceeds the residue of qualifying expenditure. *Subsection (1)* provides that the making of the additional VAT rebate is a balancing event. Under section 314, this can give rise to balancing allowances and balancing charges. However, *subsection (2)* provides that no balancing allowance can arise as a result of an additional VAT rebate.
1180. *Subsection (3)* provides that a balancing charge will only arise if the additional VAT rebate exceeds the residue of qualifying expenditure. *Subsection (4)* ensures that the balancing charge is equal to the difference.
1181. *Subsection (5)* deals with starting expenditure. If and only if:
- a balancing charge is made under this section; and
  - the person to whom it is made is the person who incurred the qualifying expenditure, then the starting expenditure is reduced by the amount of the balancing charge.

***Section 351: Additional VAT rebates and writing off qualifying expenditure***

1182. This section is based on section 8(12A) and part of section 159A(3) of CAA 1990. It provides that the residue of qualifying expenditure is reduced by the amount of any additional VAT rebate made.

***Chapter 11: Giving effect to allowances and charges***

**Overview**

1183. This Chapter provides how allowances and charges under Part 3 are given effect.
1184. *Section 352* gives the rule for trades. Allowances and charges are treated as expenses and receipts of the trade. The same rule applies for professions and vocations occupying commercial buildings built with qualifying enterprise zone expenditure.
1185. *Section 353* deals with buildings which are leased or licensed. The allowances and charges are treated as expenses and receipts of the person's:

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- Schedule A business; or
- overseas property business;

as appropriate. If the building is not an asset of any property business then the person is treated as carrying on a Schedule A business and the allowances and charges are given effect in that notional business.

1186. **Section 354** provides for allowances and charges for certain buildings temporarily out of use to be given as if they were leased or licensed.
1187. **Section 355** contains special rules under which balancing allowances in respect of industrial buildings used for mining may be carried back to earlier chargeable periods.

**Section 352: Trades**

1188. This section is based on parts of sections 9, 140, 144 and 161 of CAA 1990. It deals with allowances and charges under Part 3 for trades and, for commercial buildings, professions and vocations.
1189. There is a minor change. This is to provide for allowances and charges on commercial buildings to be given effect for professions and vocations. See *Change 36* in Annex 1.
1190. *Subsection (3)* makes clear that the general rule in subsection (1) may be displaced by subsequent provisions.

**Section 353: Lessors and licensors**

1191. This section is based on sections 9 and 161(2A) of CAA 1990. It gives effect to allowances and charges in respect of an industrial building which is leased or licensed.
1192. Section 9 of CAA 1990 refers only to a Schedule A business. But section 161(2A) means this must be read as including an overseas property business. This section deals with both explicitly. So it gives effect to allowances and charges in the business of which the building is an asset. See *Note 47* in Annex 2.
1193. *Subsection (4)* deals with the case in which this section applies but the person's interest in the building is not an asset of any property business. As in CAA 1990, it provides a notional Schedule A business in which allowances and charges are given effect.

**Section 354: Buildings temporarily out of use**

1194. This section is based on section 15ZA of CAA 1990. It deals with the way allowances or charges are given effect if there has been temporary disuse of the building but it is still treated as an industrial building.
1195. *Subsection (2)* deals with cases in which a trade is discontinued or the relevant interest was subject to a lease or licence which ends. It provides for section 353(4) to apply so allowances and charges can be given effect.
1196. *Subsection (3)* provides that if:
- liability to a balancing charge arises; and
  - the person liable last used the industrial building for the purposes of a trade which has subsequently ceased,
- then certain deductions may be made from that balancing charge. The deductions are those allowable under section 105 of ICTA against income from post cessation receipts and so on.
1197. *Subsection (4)* makes clear this does not prevent other deductions.

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1198. *Subsection (5)* excludes from this section events which are treated as the permanent discontinuance of a trade by sections 113(1) or 337(1) of ICTA.
1199. *Subsection (6)* provides that in the case of a commercial building (see section 281), the word “trade” includes a profession or vocation. This is a minor change. See *Change 36* in Annex 1.

### ***Section 355: Buildings for miners etc.: carry-back of balancing allowances***

1200. This section is based on section 17(1) and (2) of CAA 1990. It provides for balancing allowances in respect of certain mining structures to be carried back to earlier chargeable periods.

## ***Chapter 12: Supplementary provisions***

### **Overview**

1201. This Chapter makes various supplementary provisions for Part 3.
1202. **Section 356** provides for the apportionment of sale proceeds if only part of the proceeds is in respect of qualifying expenditure.
1203. **Section 357** is an anti-avoidance provision directed against arrangements which distort pricing.
1204. **Section 358** deals with certain land requisitioned by the Crown.
1205. **Section 359** provides rules for when a lease comes to an end.
1206. **Section 360** defines “lease” and related terms.

### ***Section 356: Apportionment of sums partly referable to non-qualifying assets***

1207. This section is based on section 21(3) of CAA 1990. It is an additional provision over and above those in Part 12 which apportion sale proceeds between different property. It apportions the proceeds if there is a sale of the relevant interest in a building and only some of the assets represent qualifying expenditure.
1208. There is a minor change. Section 21(3) of CAA 1990 refers to an amount which “on a just apportionment is attributable to assets...”. *Subsection (1)* uses the words “on a just and reasonable apportionment is attributable to assets...”. In practice this should not make any difference to the outcome of an apportionment. See *Change 40* in Annex 1.
1209. *Subsection (2)* makes clear that this applies not only on the sale of the relevant interest in a building but also to other balancing events which give rise to proceeds. See sections 315 and 316.

### ***Section 357: Arrangements having an artificial effect on pricing***

1210. This section is based on sections 10D and 151(1A) of CAA 1990. It deals with arrangements which have an artificial effect on pricing.
1211. *Subsection (1)* is directed at the sale of a relevant interest at an artificially inflated price. In order to determine qualifying expenditure that price is, broadly speaking, reduced to what it would have been in the absence of the arrangements which had an artificial effect.
1212. *Subsection (2)* deals similarly with the proceeds from a sale at an artificially inflated price.

***Section 358: Requisitioned land***

1213. This section is based on section 16(1), (2) and (3) of CAA 1990. It treats a person who is legitimately occupying and trading on requisitioned land as holding an interest in that land.
1214. *Subsection (1)* applies this section for the “period of requisition” when compensation for requisitioned land would be payable under section 2(1)(a) of the Compensation (Defence) Act 1939. It does not matter whether or not agreement has been reached concerning the compensation payable.
1215. *Subsection (2)* provides that for the period of requisition of land by the Crown it is as if the Crown were in possession of the land under a lease.
1216. *Subsection (3)* is concerned with a person who is authorised by the Crown to occupy any part of the land and carries on a trade during the period of requisition. That person is to be treated as holding a sublease of the land from the Crown.
1217. *Subsection (4)* provides that the lease mentioned in subsection (2) or the sublease in subsection (3) is to be regarded as falling within the appropriate provisions of this Part.
1218. *Subsection (5)* deals with a person entitled to the land, who makes a payment in respect of a building constructed on the land during the period of requisition. If the payment is made to the Crown, it is to be treated as in consideration of the surrender of the lease. If the payment is made in accordance with subsection (3) to the occupier, then it is to be treated as the surrender of the sublease.

***Section 359: Provision applying on termination of lease***

1219. This section is based on section 16(4), (5), (6) and (7) of CAA 1990. It is of general application to this Part whenever a lease is terminated.

***Section 360: Meaning of “lease” etc.***

1220. This section is based on parts of sections 4A(13), 161(2) and 162 of CAA 1990. It defines terms for Part 3.