

CAPITAL ALLOWANCES ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Glossary

Part 4: Agricultural buildings allowances

Chapter 5: Balancing adjustments

Section 389: Balancing allowances restricted where sale subject to subordinate interest etc.

1334. This section is based on section 130(1), (2), (3) and (5) of CAA 1990. It stops sales of relevant interests which are subject to a subordinate interest being used to create balancing allowances. It is an anti-avoidance rule.
1335. *Subsections (1), (2) and (3)* are based on section 130(1) of CAA 1990. These give the conditions which must be met for the section to apply.
1336. *Subsection (4)* reduces the balancing allowance by increasing the proceeds of the sale by the sum of:
- any premium receivable for the grant of the subordinate interest; and
 - the amount by which the open market value of the relevant interest, if sold with the subordinate interest in receipt of a commercial rent, exceeds the actual proceeds of the sale.
1337. *Subsection (5)* limits subsection (4) so as not to impose a balancing charge.
1338. *Subsection (6)* is based on section 130(5) of CAA 1990. It is a rule concerning the net proceeds of sale which is in addition to the rules set out in subsections (4) and (5). It only applies if, before the sale of the relevant interest, there is a variation in the terms of the grant of the subordinate interest. The result of that variation is:
- any capital payment for the variation is treated as if it were a premium for the grant of the subordinate interest; and
 - whatever rent, if any, is payable under the subordinate interest is found by looking at the terms in force immediately before the sale.
1339. *Subsection (7)* is based on section 130(3) of CAA 1990. It means that the residue of qualifying expenditure immediately after the transfer is to be calculated as if the full balancing allowance before reduction by this section, had been made.