



# Capital Allowances Act 2001

## 2001 CHAPTER 2

### PART 3

#### INDUSTRIAL BUILDINGS ALLOWANCES

### CHAPTER 7

#### BALANCING ADJUSTMENTS

*Qualifying enterprise zone expenditure: effect of realising capital value*

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

Sections 328 to 331 apply only if expenditure on the construction of a building has been incurred—

- (a) at a time—
  - (i) when the site of the building was wholly or mainly in an enterprise zone, and
  - (ii) which was not more than 10 years after the site was first included in the zone, or
- (b) under a contract entered into at such a time.

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

- (1) There is a balancing event if, while the building is an industrial building or after it has ceased to be one, any capital value is realised.
- (2) No balancing allowance is to be made because of a balancing event under this section.
- (3) The amount of capital value realised is to be treated as the proceeds from the balancing event.
- (4) If a balancing event under this section occurs—

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- (a) section 319 (balancing adjustment where building not an industrial building etc. throughout) has effect as if, immediately after the balancing event, the starting expenditure were reduced by the amount of capital value realised, and
  - (b) if the net proceeds of a sale of the relevant interest fall to be increased under section 325(4) (balancing allowances restricted where sale subject to subordinate interest), those proceeds as so increased are reduced by the amount of any capital value realised before the sale.
- (5) Capital value is realised if an amount of capital value is paid which is attributable to an interest in land (“the subordinate interest”) to which the relevant interest in the building is or will be subject.
- (6) The capital value is realised on the making of the payment.
- (7) The amount of capital value realised is the amount of capital value that is attributable to the subordinate interest under section 329.

### **329 Capital value that is attributable to subordinate interest**

- (1) Capital value is attributable to the subordinate interest if it is paid—
- (a) in consideration of the grant of the subordinate interest,
  - (b) instead of any rent payable by the person entitled to the subordinate interest,
  - (c) in consideration of the assignment of such rent, or
  - (d) in consideration of—
    - (i) the surrender of the subordinate interest, or
    - (ii) the variation or waiver of any of the terms on which it was granted.
- (2) If—
- (a) no premium is given in consideration of the grant of the subordinate interest or any premium so given is less than the commercial premium, and
  - (b) no commercial rent is payable in respect of the subordinate interest,
- capital value is attributable under subsection (1)(a) as if the commercial premium had been paid on and in consideration of the grant of the subordinate interest.
- (3) If any value given instead of any rent payable by the person entitled to the subordinate interest is less than the commercial amount, capital value is attributable under subsection (1)(b) as if the commercial amount had been paid.
- (4) If—
- (a) any rent payable in respect of the subordinate interest is assigned, but
  - (b) no value is given in consideration of the assignment or any value so given is less than the commercial amount,
- capital value is attributable under subsection (1)(c) as if the commercial amount had been given on and in consideration of the assignment.
- (5) If—
- (a) the subordinate interest is surrendered, or any of the terms on which the subordinate interest was granted are varied or waived, but
  - (b) no value is given in consideration of the surrender, variation or waiver or any value so given is less than the commercial amount,
- capital value is attributable under subsection (1)(d) as if the commercial amount had been given on and in consideration of the surrender, variation or waiver.

- (6) Capital value is not attributable to the subordinate interest if it is paid in consideration of the grant of a lease to which an election under section 290 (treating grant of lease exceeding 50 years as sale) applies.

### **330 Exception for payments more than 7 years after agreement**

- (1) Capital value is not realised for the purposes of section 328 if the payment is made more than 7 years after—
- (a) the agreement under which the qualifying expenditure was incurred was entered into, or
  - (b) if that agreement was conditional, the time when the agreement became unconditional.
- (2) If an agreement is made to pay in respect of any event an amount of capital value which would be attributable to the subordinate interest, and—
- (a) the agreement is made, or if conditional becomes unconditional, before the end of the period of 7 years referred to in subsection (1), and
  - (b) the event occurs, or any payment in consideration of the event is made, after the end of that period,
- the event or payment is treated for the purposes of subsection (1) as occurring or made before the end of the 7 years.
- (3) Subsection (1) does not apply if arrangements—
- (a) under which the person entitled to the relevant interest acquired it, or
  - (b) which were made in connection with its acquisition,
- include provision which requires, or makes substantially more likely, any of the events set out in subsection (4).
- (4) The events are—
- (a) the subsequent sale of the relevant interest;
  - (b) the subsequent grant of an interest in land out of the relevant interest;
  - (c) any other event on which capital value attributable to the subordinate interest would be paid or treated as paid.

### **331 Capital value provisions: interpretation**

- (1) “Capital value” means any capital sum—
- (a) including what would have been a capital sum if it had been a money payment (and references to payment are to be read accordingly), but
  - (b) excluding so much of any sum as corresponds to an amount of rent or profits calculated by reference to that sum under section 34 of ICTA (premiums etc. treated as rent).
- (2) “Interest in land” means—
- (a) a leasehold estate in the land, whether in the nature of a head lease, sub-lease or under-lease;
  - (b) an easement or servitude;
  - (c) a licence to occupy land.
- (3) References to granting an interest in land include agreeing to grant any such interest.

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(4) In section 329—

“commercial amount” means the amount that would have been given if the transaction had been at arm’s length,

“commercial premium” means the premium that would have been given if the transaction had been at arm’s length, and

“commercial rent” means such rent as may reasonably be expected to have been required in respect of the subordinate interest (having regard to any premium paid in consideration of the grant of the interest) if the transaction had been at arm’s length.

(5) In the application of section 329 to Scotland, references to assignment are to be read as references to assignation.