



# Capital Allowances Act 1990 (repealed)

## 1990 CHAPTER 1

### PART I

#### INDUSTRIAL BUILDINGS AND STRUCTURES

#### CHAPTER I

##### INITIAL ALLOWANCES

### **1 Buildings and structures in enterprise zones.**

- (1) Subject to the provisions of this Act, in any case where—
- (a) a person incurs capital expenditure on the construction of a building or structure which is to be an industrial building or structure occupied for the purposes of a trade carried on either by that person or by such a lessee as is mentioned in subsection (3) below, and
  - (b) the expenditure is incurred, or is incurred under a contract entered into, at a time when the site of the industrial building or structure is in an enterprise zone, being a time not more than 10 years after the site was first included in the zone,

there shall be made to the person who incurred the expenditure, for the chargeable period which is that related to the incurring of the expenditure, an allowance (“an initial allowance”) equal to 100 per cent. of the amount of that expenditure.

- (2) In this section, and in Chapter III as it applies for the purposes of this section, any reference to an industrial building or structure shall include a reference to [<sup>F1</sup>a qualifying hotel and to] a commercial building or structure.
- (3) The lessees mentioned in subsection (1) above are lessees occupying the building or structure on the construction of which the expenditure was incurred under a lease to which the relevant interest is reversionary.

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- (4) The reference in subsection (1) above to the occupation of a building or structure for the purposes of a trade carried on by the person who incurred the capital expenditure on the construction of that building or structure shall include a reference to the use of that building or structure for the purposes of a trade carried on by a licensee of that person or of a lessee of that person.

This subsection does not apply in relation to licences granted before 10th March 1982.

- (5) A person making a claim by virtue of subsection (1) above . . . <sup>F2</sup> may require the initial allowance to be reduced to a specified amount; . . . <sup>F2</sup>.
- (6) Notwithstanding anything in subsection (1) above, no initial allowance shall be made in respect of any expenditure if, when the building or structure comes to be used, it is not an industrial building or structure, and where an initial allowance has been granted in respect of any expenditure otherwise than in accordance with the provisions of this section all such assessments shall be made as are necessary to secure that effect is given to those provisions.
- (7) No initial allowance shall be made in respect of so much of any expenditure (or be made by virtue of section 154 in respect of a proportionate part of any contribution towards such expenditure) as is taken into account for the purposes of—
- (a) a grant made under section 32, 34 or 56(1), or a payment made under section 56(2), of the <sup>M1</sup>Transport Act 1968, or
  - (b) a grant made under section 12 of the <sup>M2</sup>London Regional Transport Act 1984, made towards that expenditure, being a grant or payment declared by the Treasury by order to be relevant for the purposes of the withholding of initial allowances.
- (8) If any such grant or payment is made after the making of an initial allowance, that allowance shall to that extent be withdrawn; and where the amount of the grant or payment is repaid in whole or in part by the grantee to the grantor, then to the extent to which it has been so repaid it shall be deemed never to have been made.
- (9) All such assessments or adjustments of assessments to tax shall be made as may be necessary in consequence of subsection (8) above and, notwithstanding any other provision, the time within which such an assessment or adjustment may be made shall not expire before the expiration of three years from the end of the chargeable period in which the grant, payment or repayment in question was made.
- (10) Any expenditure incurred for the purposes of a trade by a person about to carry it on shall, for the purpose only of determining the chargeable period for which an allowance may be made in respect of that expenditure under subsection (1) above, be treated as if it had been incurred by that person on the first day on which he does carry it on, and, except for that purpose, expenditure shall not be treated as having been incurred after the date on which it was in fact incurred by virtue of section 10(1).

#### Textual Amendments

**F1** Words inserted by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), s. 88, [Sch. 13 para. 1\(1\)\(3\)](#)

**F2** Words repealed by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), ss. 103, 132, [Sch. 17 para. 2](#), [Sch. 19 Pt. V](#), Note 6

#### Marginal Citations

**M1** 1968 c. 73.

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M2 1984 c. 32.

## 2 Transitional relief for regional projects.

- (1) In relation to expenditure to which this section applies, section 1 shall have effect subject to the following modifications, that is to say—
- (a) in subsection (1), paragraph (b) shall be omitted and for the reference to 100 per cent. there shall be substituted a reference to 75 per cent;<sup>F3</sup> . . .
  - [<sup>F4</sup>(aa) in subsection (1A)—
    - (i) for the words “paragraphs (a) and (b)” there shall be substituted the words “paragraph (a)”; and
    - (ii) paragraph (b) shall be omitted; and]
    - (b) subsection (2) shall be omitted.
- (2) This section applies to so much of any expenditure as is certified by the Secretary of State for the purposes of this section to be expenditure which, in his opinion, qualifies for a regional development grant or a grant under Part IV of the relevant Order and consists of the payment of sums on a project—
- (a) either in an area which on 13th March 1984 was a development area, within the meaning of the<sup>M3</sup> Industrial Development Act 1982, or in Northern Ireland; and
  - (b) in respect of which a written offer of financial assistance under section 7 or 8 of that Act was made on behalf of the Secretary of State in the period beginning on 1st April 1980 and ending on 13th March 1984 or in respect of which a written offer of financial assistance was made in that period by the Highlands and Islands Development Board.
- (3) This section also applies to so much of any expenditure as is certified by the Department of Economic Development in Northern Ireland for the purposes of this section to be expenditure which, in the opinion of that Department, qualifies for a grant under Part IV of the relevant Order and consists of the payment of sums on a project—
- (a) in Northern Ireland; and
  - (b) in respect of which a written offer of financial assistance under Article 7 or 8 of the relevant Order was made on behalf of a Department of the Government of Northern Ireland, in the period beginning on 1st April 1980 and ending on 13th March 1984 or in respect of which a written offer of financial assistance was made in that period by the Local Enterprise Development Unit.
- [<sup>F5</sup>(3A) This section also applies to any additional VAT liability incurred in respect of expenditure certified under subsection (2) or (3) above.]
- (4) In this section—
- “regional development grant” means a grant under Part II of the Industrial Development Act 1982;
- “the relevant Order” means the<sup>M4</sup> Industrial Development (Northern Ireland) Order 1982;
- and any reference to a particular provision of that Act or Order includes a reference to the corresponding provision of any Act or Order which was in force before and repealed by the Industrial Development Act 1982 or the Industrial Development (Northern Ireland) Order 1982.

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### Textual Amendments

- F3** Word at end of s. 2(1)(a) repealed (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31\)](#), s. 123, [Sch. 19 Pt. V](#) Note 11.
- F4** S. 2(1)(aa) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31\)](#), s. 59, [Sch. 14 Pt. I para. 2\(1\)](#).
- F5** S. 2(3A) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31\)](#), s. 59, [Sch. 14 Pt. I para. 2\(2\)](#).

### Marginal Citations

- M3** 1982 c. 52.
- M4** S.I. 1982/1083 (N.I.15).

VALID FROM 27/07/1993

## [2A] <sup>F6</sup> **Initial allowances: contracts entered into between October 1992 and November 1993.**

- (1) In relation to expenditure to which this section applies, section 1 shall have effect with the following modifications, that is to say—
- (a) so much of that section as relates to the requirement that the site in question is at a material time in an enterprise zone, namely—
    - (i) paragraph (b) of subsection (1) and the reference to that paragraph in subsection (1A);
    - (ii) paragraph (b) of subsection (1A); and
    - (iii) subsection (11),
 shall be omitted;
  - (b) for the reference in subsection (1) to 100 per cent. there shall be substituted a reference to 20 per cent.; and
  - (c) subsection (2) shall have effect with the omission of the words “and to a commercial building or structure”.
- (2) No initial allowance shall be made under this section in respect of any expenditure on the construction of a building or structure unless it is or is to be first used on or before 31st December 1994; and in a case where—
- (a) an initial allowance is granted under this section in respect of any expenditure on the construction of a building or structure; and
  - (b) by the end of that day that building or structure has not come to be used,
- that allowance shall be withdrawn and all such assessments and adjustments of assessments to tax shall be made as may be necessary in consequence of its being withdrawn.
- (3) Subject to subsection (5) below, this section applies to any capital expenditure incurred under a contract which—
- (a) is entered into either—
    - (i) in the period beginning with 1st November 1992 and ending with 31st October 1993; or
    - (ii) for the purpose of securing that obligations under a contract entered into in that period are complied with;

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- but
- (b) is not entered into for the purpose of securing that obligations under a contract entered into before the beginning of that period are complied with.
- (4) Subject to subsection (5) below, this section also applies to any additional VAT liability incurred in respect of expenditure falling within subsection (3) above.
- (5) This section does not apply to—
- (a) any expenditure incurred, or incurred under a contract entered into, at a time when the site of the building or structure is in an enterprise zone, being a time not more than 10 years after the site was first included in the zone;
  - (b) expenditure falling in relation to expenditure so incurred within section 1(1A); or
  - (c) expenditure to which section 2 applies.
- (6) Subsection (5) above shall have effect subject to sections 10C and 17A.]

#### Textual Amendments

- F6** S. 2A inserted (27.7.1993 with effect as mentioned in s. 113(7) of the amending Act) by 1993 c. 34, s. 113(1)(7)

## CHAPTER II

### WRITING-DOWN ALLOWANCES, BALANCING ALLOWANCES AND BALANCING CHARGES

#### 3 Writing-down allowances.

- (1) Subject to the provisions of this Act, where—
- (a) any person is, at the end of a chargeable period or its basis period, entitled to an interest in a building or structure, and
  - (b) at the end of that chargeable period or its basis period, the building or structure is an industrial building or structure, and
  - (c) that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure,
- an allowance (“a writing-down allowance”) shall be made to him for that chargeable period.

- (2) The writing-down allowance shall be equal to one-twentyfifth or, where the expenditure was incurred before 6th November 1962, one-fiftieth of the expenditure mentioned in subsection (1)(c) above, except that for a chargeable period of less than a year that fraction of one-twentyfifth or one-fiftieth shall be proportionately reduced.

[<sup>F7</sup>(2A) Where the person entitled to the relevant interest in relation to any capital expenditure incurred on the construction of a building or structure incurs an additional VAT liability in respect of any of that capital expenditure, then—

- (a) that liability shall be regarded for the purposes of this Act as capital expenditure incurred by him on the construction of the building or structure, and

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- (b) the residue (as defined in section 8(1)) of the expenditure incurred on the construction of the building shall accordingly be deemed for the purposes of this Part to be increased as at the time at which the liability is incurred by an amount equal to the liability.
- (2B) Where an additional VAT liability is incurred as mentioned in subsection (2A) above, then (subject to any further adjustment under this subsection on any later such event or under subsection (2C) or (3) below) the writing-down allowance for any chargeable period, if that chargeable period or its basis period ends after the time at which the liability is incurred, shall be the residue of the capital expenditure immediately after the incurring of the liability, reduced in the proportion (if it is less than one) which the length of the chargeable period bears to the part unexpired, at the date of the incurring of the liability, of the period of 25 years beginning with the time when the building or structure was first used.
- (2C) In any case where—
- (a) an additional VAT rebate in respect of any capital expenditure incurred on the construction of a building or structure is made to the person entitled to the relevant interest in relation to that expenditure, and
  - (b) the residue of that expenditure immediately before the making of the rebate is not less than the amount of the rebate,
- then (subject to any further adjustment under this subsection on any later such event or under subsection (2B) above or (3) below) the writing-down allowance for any chargeable period, if that chargeable period or its basis period ends after the time at which the rebate is made, shall be the residue of that expenditure immediately after the making of the rebate, reduced in the proportion (if it is less than one) which the length of the chargeable period bears to the part unexpired, at the date of the making of the rebate, of the period of 25 years beginning with the time when the building or structure was first used.]
- (3) Where the interest in a building or structure which is the relevant interest in relation to any expenditure is sold and the sale is an event to which section 4(1) applies, then (subject to any further adjustment under this subsection on a later sale [<sup>F8</sup> or under subsection (2B) or (2C) above]) the writing-down allowance for any chargeable period, if that chargeable period or its basis period ends after the time of the sale, shall be the residue <sup>F9</sup> . . . of that expenditure immediately after the sale, reduced in the proportion (if it is less than one) which the length of the chargeable period bears to the part unexpired at the date of the sale of the period of 25 years or, where the expenditure was incurred before 6th November 1962, 50 years beginning with the time when the building or structure was first used.
- (4) Notwithstanding anything in subsections (1) to (3) above, in no case shall the amount of a writing-down allowance made to a person for any chargeable period in respect of any expenditure exceed what, apart from the writing off falling to be made by reason of the making of that allowance, would be the residue of that expenditure at the end of that chargeable period or its basis period.
- [<sup>F10</sup>(5) For the purposes of this section, a person entitled to charge tolls in respect of a road shall be treated as having an interest in the road.]

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#### Textual Amendments

- F7** S. 3(2A)-(2C) inserted (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31), s. 59, **Sch. 14 Pt. I para. 3(1)**.
- F8** Words in s. 3(3) inserted (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31), s. 59, **Sch. 14 Pt. I para. 3(2)**.
- F9** Words in s. 3(3) repealed (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31), s. 123, **Sch. 19 Pt.V** Note 11.
- F10** S. 3(5) inserted (for any chargeable period or its basis period ending on or after 06.04.1991) by Finance Act 1991 (c. 31), s. **60(3)(10)**.

#### 4 Balancing allowances and balancing charges.

(1) Subject to section 5, where any capital expenditure has been incurred on the construction of a building or structure, and any of the following events occurs while the building is an industrial building or structure or after it has ceased to be one, that is to say—

- (a) the relevant interest in the building or structure is sold, or
- (b) that interest, being an interest depending on the duration of a foreign concession, comes to an end on the coming to an end of that concession, or
- (c) that interest, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon, or
- (d) the building or structure is demolished or destroyed or, without being demolished or destroyed, ceases altogether to be used, [<sup>F11</sup>or
- (e) an additional VAT rebate in respect of any of the capital expenditure is made to the person entitled to the relevant interest,]

an allowance or charge (“a balancing allowance” or “a balancing charge”) shall, in the circumstances mentioned in this section and subject to subsection (2) below, be made to, or, as the case may be, on, the person entitled to the relevant interest immediately before that event occurs, for the chargeable period related to that event.

(2) No balancing allowance or balancing charge shall be made by reason of any event occurring more than 25 years (or, where the expenditure was incurred before 6th November 1962, 50 years) after the building or structure was first used and where two or more events [<sup>F12</sup>falling within paragraphs (a) to (d) of subsection (1) above] occur during a period when the building or structure is not an industrial building or structure no balancing allowance or balancing charge shall be made on the occurrence of any of those events except the first.

[<sup>F13</sup>(2A) No balancing allowance shall be made by reason of an event falling within paragraph (e) of subsection (1) above; and no balancing charge shall be made by reason of such an event unless—

- (a) the amount of the additional VAT rebate exceeds the residue of expenditure immediately before the making of that rebate, or
- (b) there is no such residue,

and in any such case a balancing charge shall be made on an amount equal to that by which the rebate exceeds the residue of expenditure immediately before the making of the rebate or, where there is no such residue, to the amount of the rebate.]

(3) Where there are no sale, insurance, salvage or compensation moneys, or where the residue of the expenditure immediately before the event exceeds those moneys, a

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balancing allowance shall be made the amount of which shall be the amount of that residue or, as the case may be, of the excess of the residue over those moneys.

- (4) If the sale, insurance, salvage or compensation moneys exceed the residue, if any, of the expenditure immediately before the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the residue is nil, to those moneys.
- (5) If for any part of the relevant period the building or structure was neither an industrial building or structure nor used for scientific research, subsections (6) to (9) below shall have effect instead of subsections (3) and (4) above.
- (6) Subject to subsection (8) below, where the sale, insurance, salvage or compensation moneys are not less than the capital expenditure, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the allowances given.
- (7) Subject to subsection (8) below, where there are no sale, insurance, salvage or compensation moneys or where those moneys are less than the capital expenditure, then—
  - (a) if the adjusted net cost of the building or structure exceeds the allowances given, a balancing allowance shall be made the amount of which shall be an amount equal to the excess;
  - (b) if the adjusted net cost of the building or structure is less than the allowances given, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the shortfall.
- (8) No balancing charge or allowance shall be made under subsection (6) or (7) above on the occasion of a sale if by virtue of section 158 the building or structure is treated as having been sold for a sum equal to the residue of the expenditure on its construction immediately before the sale.
- (9) In subsections (5) to (7) above and this subsection—
 

“the relevant period” means the period beginning at the time when the building or structure was first used for any purpose and ending with the event giving rise to the balancing allowance or balancing charge except that where there has been a sale of the building or structure after that time and before that event the relevant period shall begin on the day following that sale or, if there has been more than one such sale, the last such sale;

“the capital expenditure” means—

  - (a) where paragraph (b) of this definition does not apply, the capital expenditure incurred (or by virtue of section 10(1) deemed to have been occurred) on the construction of the building or structure [<sup>F14</sup>reduced by an amount equal to that of any balancing charge made in relation to that expenditure on the occurrence of an event falling within subsection (1)(e) above;]
  - (b) where the person to or on whom the balancing allowance or charge falls to be made is not the person who incurred (or is deemed to have incurred) that expenditure, the residue of that expenditure at the beginning of the relevant period,

together (in either case) with any amount to be added to the residue of that expenditure by virtue of section 8(12);

“the allowances given” means the allowances referred to in subsection (10) below;

“the adjusted net cost” means—



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- (a) where there are no sale, insurance, salvage or compensation moneys, the capital expenditure;
- (b) where those moneys are less than that expenditure, the amount by which they are less,

reduced (in either case) in the proportion that the part, or the aggregate of the parts, of the relevant period for which the building or structure was an industrial building or structure or used for scientific research bears to the whole of that period;

“scientific research” has the same meaning as in Part VII.

(10) Notwithstanding anything in subsections (1) to (9) above, in no case shall the amount on which a balancing charge is made on a person in respect of any expenditure on the construction of a building or structure exceed the amount of the initial allowance, if any, made to him in respect of that expenditure together with the amount of any writing-down allowances or scientific research allowances in respect of that expenditure, and any relevant mills, factories or exceptional depreciation allowances in respect of that building or structure, made to him for chargeable periods which end on or before the date of the event giving rise to the charge or of which the basis periods end on or before that date [<sup>F15</sup>reduced by the amounts (if any) on which balancing charges in respect of the expenditure have been made on him for any such chargeable periods].

(11) Where—

- (a) before 6th April 1990, a woman was entitled to the relevant interest in relation to expenditure incurred on the construction of a building or structure (whether she was entitled to it when the expenditure was incurred or acquired it afterwards);
- (b) for a chargeable period ending before that date, an allowance such as is mentioned in subsection (10) above was made to the woman’s husband in respect of her relevant interest; and
- (c) on or after that date there occurs an event such as is mentioned in subsection (1) above in respect of which the woman is entitled to all or part of any sale, insurance, salvage or compensation moneys,

the allowance shall be treated for the purposes of subsection (10) above as having been made to the woman.

(12) In subsection (10) above “relevant mills, factories or exceptional depreciation allowances”, in relation to any building or structure, means —

- (a) any allowance granted for a year of assessment under section 15 of the <sup>M5</sup>Finance Act 1937 in respect of it or premises of which it forms part, including any amount which under that section was to be allowed as a deduction in computing profits or gains for that year of assessment, (but where such an allowance was granted in respect of premises which include several buildings or structures, the whole amount of that allowance shall be apportioned between all the buildings and structures and only that part of the allowance which is apportioned to the building or structure in question shall be taken into account), and
- (b) any allowance made under section 19 of the <sup>M6</sup>Finance Act 1941 in respect of that building or so much of any such allowance granted in respect of any building of which it forms part as is properly attributable to it.

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#### Textual Amendments

- F11** S. 4(1)(e) and word preceding it inserted(*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 59 [Sch. 14 Pt. I para. 4\(1\)](#).
- F12** Words in s. 4(2) inserted(*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 59, [Sch. 14 Pt. I para. 4\(2\)](#).
- F13** S. 4(2A) inserted(*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 59, [Sch. 14 Pt. I para. 4\(3\)](#).
- F14** Words in s. 4(9) added(*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 59, [Sch. 14 Pt. I para. 4\(4\)](#).
- F15** Words in s. 4(10) added(*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 59, [Sch. 14 Pt. I para. 4\(5\)](#).

#### Marginal Citations

- M5** 1937 c. 54.  
**M6** 1941 c. 30.

## 5 Restriction of balancing allowances on sale of industrial buildings or structures.

- (1) This section has effect where—
- (a) the relevant interest in a building or structure is sold subject to a subordinate interest; and
  - (b) a balancing allowance would, apart from this section, fall to be made to the person who is entitled to the relevant interest immediately before the sale (“the relevant person”) under section 4 by virtue of the sale; and
  - (c) either—
    - (i) the relevant person, the person to whom the relevant interest is sold and the grantee of the subordinate interest, or any two of them, are connected with each other within the terms of section 839 of the principal Act, or
    - (ii) it appears with respect to the sale or the grant of the subordinate interest, or with respect to transactions including the sale or grant, that the sole or main benefit which, but for this section, might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part.
- (2) For the purposes of section 4 the net proceeds to the relevant person of the sale—
- (a) shall be taken to be increased by an amount equal to any premium receivable by him for the grant of the subordinate interest; and
  - (b) where no rent, or no commercial rent, is payable in respect of the subordinate interest, shall be taken to be what those proceeds would have been if a commercial rent had been payable and the relevant interest had been sold in the open market (increased by any amount to be added under paragraph (a) above),
- but the net proceeds of sale shall not by virtue of this subsection be taken to be greater than such amount as will secure that no balancing allowance falls to be made.
- (3) Where subsection (2) above operates in relation to a sale to deny or reduce a balancing allowance in respect of any expenditure, the residue of that expenditure immediately after the sale shall be calculated for the purposes of this Part as if that balancing allowance had been made or, as the case may be, had not been reduced.

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(4) In this section—

“subordinate interest” means any interest in or right over the building or structure in question (whether granted by the relevant person or by somebody else);

“premium” includes any capital consideration except so much of any sum as corresponds to any amount of rent or profits falling to be computed by reference to that sum under section 34 of the principal Act (premium treated as rent or Schedule D profits);

“capital consideration” means consideration which consists of a capital sum or would be a capital sum if it had taken the form of a money payment;

“rent” includes any consideration which is not capital consideration;

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

- (5) Where the terms on which a subordinate interest is granted are varied before the sale of the relevant interest any capital consideration for the variation shall be treated for the purposes of this section as a premium for the grant of the interest, and the question whether any and, if so, what rent is payable in respect of the interest shall be determined by reference to the terms as in force immediately before the sale.

## **6 Buildings and structures (including hotels) in enterprise zones.**

(1) This Chapter and Chapter III—

- (a) shall apply with the modifications specified below in relation to capital expenditure on the construction of an industrial building or structure; and
- (b) shall, as so modified, apply also in relation to capital expenditure on the construction of a qualifying hotel or of a commercial building or structure as if it were an industrial building or structure,

in any case where the expenditure is incurred, or is incurred under a contract entered into, at a time when the site of the industrial building or structure, the qualifying hotel or the commercial building or structure is in an enterprise zone, being a time not more than 10 years after the site was first included in the zone.

- (2) Section 3(2) shall have effect with the substitution for the references to one-twentyfifth of references to one-quarter.
- (3) Section 7 shall not apply to expenditure to which this Chapter applies by virtue of this section.
- (4) For the purposes of sections 3(1)(b), 4(1), 8(3), (4) and (7) and 15(1) and (2) a building or structure of any description (including a qualifying hotel) in relation to which this Chapter has effect in accordance with subsection (1) above shall be regarded as continuing to be, or to be used as, a building or structure of that description notwithstanding that it has become a building or structure of another such description.
- (5) For the purposes of subsection (1) above, expenditure shall not by reason only of section 10(1) be treated as having been incurred after the date on which it was in fact incurred.

*Status: Point in time view as at 01/07/1992. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)*

## 7 Other hotels.

- (1) Subject to the following provisions of this section, [<sup>F16</sup>this Chapter and Chapter III as it applies for the purposes of this Chapter] shall apply in relation to a qualifying hotel as if it were an industrial building or structure, with the following modifications—
- (a) where, after a building has ceased to be a qualifying hotel otherwise than on the occurrence of an event to which section 4(1) applies, a period of two years elapses in which it is not a qualifying hotel and without the occurrence of any such event, this Chapter and Chapter III shall have effect as if—
    - (i) the relevant interest in the building had been sold at the end of that period; and
    - (ii) the net proceeds of the sale were equal to the price which that interest would then have fetched if sold in the open market;
  - (b) references in this Chapter and Chapter III to expenditure on the construction of a building or structure shall not include references to expenditure incurred in taking any such steps as are mentioned in section 69.
- (2) Subsection (1)(a) above has effect subject to section 15(1); but a building shall not by virtue of that section be deemed to continue to be a qualifying hotel for more than two years after the end of the chargeable period or its basis period in which it falls temporarily out of use.
- (3) Subsection (1)(b) above shall not have effect in relation to any chargeable period or its basis period ending after 26th July 1989.

### Textual Amendments

**F16** Words substituted by [Finance Act 1990 \(c. 29\)](#), s. 88, [Sch. 13 para. 1\(2\)\(3\)](#)

## CHAPTER III

### PROVISIONS SUPPLEMENTARY TO CHAPTERS I AND II

## 8 Writing off of expenditure and meaning of “residue of expenditure”.

- (1) Any expenditure incurred on the construction of any building or structure shall be treated for the purposes of this Part as written off to the extent and as at the times specified below in this section, and references in this Part to the residue of any such expenditure shall be construed accordingly.
- [<sup>F17</sup>(2) Where an initial allowance is made in respect of any of the expenditure, then—
- (a) if that allowance is made in respect of an additional VAT liability incurred after the building or structure is first used, the amount of that allowance shall be treated as written off as at the time at which the liability is incurred; and
  - (b) in any other case, the amount of the allowance shall be treated as written off as at the time when the building or structure is first used.]
- (3) Subject to subsection (4) below, where, by reason of the building or structure being at any time an industrial building or structure, a writing-down allowance is made for any chargeable period in respect of the expenditure, the amount of that allowance shall be treated as written off as at the end of that period or its basis period.

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**Status:** Point in time view as at 01/07/1992. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

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- (4) Where, at the time referred to in subsection (3) above, an event occurs which gives rise or may give rise to a balancing allowance or balancing charge, the amount directed to be treated as written off by that subsection as at that time shall be taken into account in computing the residue of that expenditure immediately before that event for the purpose of determining whether any and if so what balancing allowance or balancing charge is to be made.
- (5) Subject to subsection (6) below, where a scientific research allowance is made for any chargeable period in respect of the expenditure, the amount of that allowance shall be treated as written off—
  - (a) in the case of an allowance under section 137, as at the end of the chargeable period or, if it is a year of assessment, as at the end of the basis year (as defined in section 137(6)) for that year of assessment, and
  - (b) in the case of an allowance under section 138, as at the time when the asset [<sup>F18</sup>ceases to belong to the person in question].
- (6) Where, at the time as at which an amount falls to be treated as written off under subsection (5) above, an event occurs which gives rise or may give rise to a balancing allowance or balancing charge, the amount directed to be treated as written off by that subsection as at that time shall be taken into account in computing the residue of the expenditure immediately before that event for the purpose of determining whether any and if so what balancing allowance or balancing charge is to be made.
- (7) If, for any period or periods between the time when the building or structure was first used for any purpose and the time at which the residue of the expenditure falls to be ascertained, the building or structure has not been in use as an industrial building or structure, then there shall in ascertaining that residue be treated as having been previously written off in respect of that period or those periods amounts equal to writing-down allowances made for chargeable periods of a total length equal thereto at such rate or rates as would have been appropriate having regard to any sale on which section 3(3) operated.
- (8) For the purposes of subsection (7) above a building or structure shall not be treated—
  - (a) by virtue of section 18(1)(c) as having been an industrial building or structure before the year 1952-53,
  - (b) by virtue of section 18(1)(j) or (10) as having been an industrial building or structure before the year 1953-54.
- (9) Where, on the occasion of a sale, a balancing allowance is made in respect of the expenditure, there shall be treated as written off as at the time of the sale the amount by which the expenditure before the sale exceeds the net proceeds of the sale.
- (10) Where, on the occasion of a sale, a balancing charge is made in respect of the expenditure, the residue of the expenditure shall be deemed for the purposes of this Part to be increased as at the time of the sale by the amount on which the charge is made.
- (11) Where, on the occasion of a sale, a balancing charge is made under section 4(7)
  - (b) in respect of the expenditure and, apart from this subsection, the residue of the expenditure immediately after the sale would by virtue of subsection (10) above be deemed to be greater than the net proceeds of the sale, the residue immediately after the sale shall be deemed for the purposes of this Part to be equal to the net proceeds.

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- (12) Where a building or structure is demolished, and the demolition gives rise, or might give rise, to a balancing allowance or charge under this Part to or on the person incurring the cost of demolition, the net cost to him of the demolition (that is to say, the excess, if any, of the cost of the demolition over any moneys received for the remains of the property) shall be added for the purposes of this Part to the residue, immediately before the demolition, of the expenditure incurred on the construction of the property; and if this subsection applies to the net cost to a person of the demolition of any property, the cost or net cost shall not be treated for the purposes of this Act (other than Part III) as expenditure incurred in respect of any other property by which that property is replaced.
- [<sup>F19</sup>(12A) Where an additional VAT rebate is made in respect of any of the expenditure, there shall be treated as written off as at the time at which the rebate is made an amount equal to the rebate.]
- (13) Where the Crown is at any time entitled to the relevant interest in a building or structure, subsections (1) to [<sup>F20</sup>(12A)] above shall have effect as if all such writing-down allowances, balancing allowances and balancing charges had been made as could have been made if—
- (a) a person other than the Crown and other than a company had been entitled to the relevant interest, and
  - (b) all things which, while the Crown is entitled to the relevant interest, have been done in relation to the building or structure by or to the Crown or by or to any person using the building or structure under the authority of the Crown, had been done by or to that other person, for the purposes of and in the course of a trade carried on by him, and
  - (c) any sale or other disposition by or on behalf of the Crown of the relevant interest in the building or structure had been made in connection with the termination of that trade, and
  - (d) the basis periods of that other person in respect of that trade had, in the case of each year of assessment, ended immediately before the beginning of the year of assessment.
- (14) In relation to sales occurring after the passing of the <sup>M7</sup>Finance Act 1988 (29th July 1988), references in subsection (13) above to the Crown shall include references to any person who is not within the charge to tax in the United Kingdom.

#### Textual Amendments

- F17** S. 8(2) substituted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31\), s. 59, Sch. 14 Pt. I para. 5\(1\)](#).
- F18** Words in s. 8(5)(b) substituted by [Finance Act 1990 \(c. 29\), s. 88, Sch. 13 para. 2\(1\)\(2\)](#)
- F19** S. 8(12A) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31\), s. 59, Sch. 14 Pt. I para. 5\(2\)](#).
- F20** Words in s. 8(13) substituted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 59, Sch. 14 Pt. I para. 5\(3\)](#).

#### Marginal Citations

- M7** 1988 c. 39.

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*Status:* Point in time view as at 01/07/1992. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

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## **9 Manner of making allowances and charges.**

- (1) Except in the cases mentioned in subsections (2) to (7) below, any allowance or charge made to or on a person under the preceding provisions of this Part shall be made to or on him in taxing his trade.
- (2) An initial allowance shall be made to a person by way of discharge or repayment of tax if his interest in the building or structure is subject to any lease when the expenditure is incurred or becomes subject to any lease before the building or structure is first used for any purpose.
- (3) A writing-down allowance shall be made to a person for a chargeable period by way of discharge or repayment of tax if his interest is subject to any lease at the end of that chargeable period or its basis period.
- (4) A balancing allowance shall be made to a person by way of discharge or repayment of tax if his interest is subject to any lease immediately before the event giving rise to the allowance.
- (5) Any allowance which, under subsections (2) to (4) above, is to be made by way of discharge or repayment of tax shall be available primarily against the following income, that is to say—
  - (a) income taxed under Schedule A in respect of any premises which at any time in the chargeable period consist of or include an industrial building or structure, or
  - (b) income which is the subject of a balancing charge under this Part.
- (6) Effect shall be given to a balancing charge to be made on a person where his interest is subject to any lease immediately before the event giving rise to the charge—
  - (a) if it is a charge to income tax, by making the charge under Case VI of Schedule D;
  - (b) if it is a charge to corporation tax, by treating the amount on which the charge is due to be made as income of the description in subsection (5)(a) above.
- (7) Where a balancing allowance or balancing charge falls to be made in the case of a building or structure which has ceased to be an industrial building or structure and the circumstances are such as are mentioned in section 15(2)(a) and (b), the allowance or charge shall be made as provided in that subsection.
- (8) This section shall also apply where the building or structure in question is used by a licensee of the person entitled to the relevant interest as if that interest were subject to a lease.

## **10 Purchases of buildings and structures.**

- (1) Where expenditure is incurred on the construction of a building or structure and, before that building or structure is used, the relevant interest in it is sold—
  - (a) the expenditure actually incurred on the construction of the building or structure shall be left out of account for the purposes of sections 1 to 8, but
  - (b) subject to subsection (2) below, the person who buys that interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, expenditure on the construction of the building or structure equal to that actual expenditure or to the net price paid by him for that interest, whichever is the less.

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- (2) Where the relevant interest in the building or structure is sold more than once before the building or structure is used, paragraph (b) of subsection (1) above shall have effect only in relation to the last of those sales.
- (3) Where the expenditure incurred on the construction of a building or structure was incurred by a person carrying on a trade which consists, in whole or in part, in the construction of buildings or structures with a view to their sale, and, before the building or structure is used, he sells the relevant interest in it in the course of that trade, or, as the case may be, of that part of that trade, paragraph (b) of subsection (1) above shall have effect subject to the following modifications, that is to say—
  - (a) if that sale is the only sale of the relevant interest before the building or structure is used, paragraph (b) shall have effect as if the words “that actual expenditure or to” and “whichever is the less” were omitted; and
  - (b) in any other case, paragraph (b) shall have effect as if the reference to the expenditure actually incurred on the construction of the building or structure were a reference to the price paid on that sale.
- (4) Subsection (5) below applies where—
  - (a) expenditure is incurred on the construction of a building or structure by a person carrying on a trade which consists, in whole or in part, in the construction of buildings or structures with a view to their sale, and
  - (b) after the building or structure has been used, he sells the relevant interest in it in the course of that trade or, as the case may be, of that part of that trade, and
  - (c) the purchase price payable on the sale becomes payable on or after 27th July 1989.
- (5) Where this subsection applies, this Part shall have effect in relation to the person who buys the interest as if—
  - (a) the original expenditure had been capital expenditure,
  - (b) all appropriate writing-down allowances had been made to the person incurring it, and
  - (c) all appropriate balancing allowances or charges had been made on the occasion of the sale.

VALID FROM 16/07/1992

**[<sup>F21</sup>10A Purchases of buildings and structures: special provision for enterprise zones.**

- (1) This section shall apply where—
  - (a) expenditure is incurred on the construction of a building or structure (actual expenditure);
  - (b) some or all of that expenditure is incurred, or is incurred under a contract entered into, at a time when the site of the building or structure is in an enterprise zone, being a time not more than 10 years after the site was first included in the zone; and
  - (c) before the building or structure is used, the relevant interest in it is sold.
- (2) Where this section applies—
  - (a) the actual expenditure shall be left out of account for the purposes of sections 1 to 8, but



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- (b) subject to subsection (8) below, the person who buys the relevant interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, expenditure on the construction of the building or structure (deemed expenditure) equal to the actual expenditure or to the net price paid by him for that interest, whichever is the less.
- (3) The deemed expenditure shall be regarded as comprising an enterprise zone element and a non-enterprise zone element.
- (4) The enterprise zone element of the deemed expenditure shall be calculated in accordance with the formula—

$$A \times \frac{B}{C}$$

- (5) In subsection (4) above—  
A is the deemed expenditure;  
B is the expenditure falling within subsection (1)(b) above; and  
C is the actual expenditure.
- (6) The non-enterprise zone element of the deemed expenditure shall be so much (if any) of the deemed expenditure as does not comprise the enterprise zone element.
- (7) Notwithstanding the provisions of subsection (2)(b) above—  
(a) the enterprise zone element of the deemed expenditure shall be treated for the purpose only of determining entitlement to allowances as incurred at a time when the site of the building or structure is in an enterprise zone, being a time not more than 10 years after the site was first included in the zone; and  
(b) the non-enterprise zone element of the deemed expenditure shall be treated for that purpose as not incurred, and not incurred under a contract entered into, at such a time.
- (8) Where the relevant interest in the building or structure is sold more than once before the building or structure is used, subsection (2)(b) above shall have effect only in relation to the last of those sales.
- (9) Where the actual expenditure was incurred by a person carrying on a trade which consists, in whole or in part, in the construction of buildings or structures with a view to their sale and, before the building or structure is used, he sells the relevant interest in it in the course of that trade or, as the case may be, of that part of that trade, then—  
(a) if that sale is the only sale of the relevant interest before the building or structure is used, paragraph (b) of subsection (2) above shall have effect as if the words “the actual expenditure or to” and “whichever is the less” were omitted; and  
(b) in any other case, that paragraph shall have effect as if the reference to the actual expenditure were a reference to the price paid on that sale.
- (10) This section shall have effect subject to section 17A.]

#### Textual Amendments

**F21** S. 10A inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 70, Sch. 13 paras.2, 14.

**Status:** Point in time view as at 01/07/1992. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

VALID FROM 16/07/1992

**[<sup>F22</sup>10B Purchases of buildings and structures in enterprise zones within two years of use.**

- (1) Without prejudice to section 10A, this section shall apply where—
  - (a) expenditure is incurred on the construction of a building or structure (actual expenditure);
  - (b) some or all of that expenditure is incurred, or is incurred under a contract entered into, at a time when the site of the building or structure is in an enterprise zone, being a time not more than 10 years after the site was first included in the zone;
  - (c) whether or not there were any sales of the relevant interest in the building or structure before it was used, that interest is sold after the building or structure has been used but before the expiry of the period of two years beginning with the date on which the building or structure was first used; and
  - (d) that sale is the first such sale in that period.
- (2) Where this section applies—
  - (a) any balancing allowance or charge which falls to be made on the occasion of the sale shall be so made;
  - (b) the residue of expenditure immediately after the sale (if any) shall be left out of account for the purposes of this Part;
  - (c) the person who buys the relevant interest (the purchaser) shall be deemed for the purposes of sections 1 to 8 to have incurred, on the date when the purchase price becomes payable, expenditure on the construction of the building or structure (deemed expenditure) of an amount determined in accordance with the following provisions of this section; and
  - (d) in relation to the deemed expenditure, the building or structure shall be treated for the purposes of sections 1 to 8 as not having been used before the date of the sale.
- (3) The deemed expenditure shall be regarded as comprising an enterprise zone element and a non-enterprise zone element and the amount of the deemed expenditure shall accordingly be the sum of the enterprise zone element and the non-enterprise zone element.
- (4) The enterprise zone element of the deemed expenditure shall be calculated in accordance with the formula—

$$A \times \frac{B}{C}$$

- (5) In subsection (4) above—
 

A is the actual expenditure or the net price paid by the purchaser for the relevant interest, whichever is the less;

B is the expenditure falling within subsection (1)(b) above; and

C is the actual expenditure.
- (6) The non-enterprise zone element of the deemed expenditure shall be calculated in accordance with the formula—

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**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

### A – $A \times bc$

- (7) In subsection (6) above—
- A is the actual expenditure or the net price paid by the purchaser for the relevant interest, whichever is the less;
  - B is the expenditure falling within subsection (1)(b) above; and
  - C is the actual expenditure.
- (8) Where the actual expenditure was incurred by a person carrying on a trade which consists, in whole or in part, in the construction of buildings or structures with a view to their sale and he sells the relevant interest in the building or structure in the course of that trade or, as the case may be, of that part of that trade, then—
- (a) if that sale is the sale falling within subsection (1)(c) above—
    - (i) section 10(4) and (5) shall not apply; and
    - (ii) subsection (5) above shall have effect as if for the definition of A there were substituted—
  - (") A is the net price paid by the purchaser for the relevant interest;"
  - (b) if that sale is a sale which occurs before the sale falling within subsection (1)(c) above, subsections (5) and (7) above shall have effect as if the reference in the definition of A in each of those subsections to the actual expenditure were a reference to the price paid on that sale.
- (9) Notwithstanding the provisions of subsection (2)(c) above—
- (a) the enterprise zone element of the deemed expenditure shall be treated for the purpose only of determining entitlement to allowances as incurred at a time when the site of the building or structure is in an enterprise zone, being a time not more than 10 years after the site was first included in the zone; and
  - (b) the non-enterprise zone element of the deemed expenditure shall be treated for that purpose as not incurred, and not incurred under a contract entered into, at such a time.
- (10) This section shall have effect subject to section 17A.]

#### Textual Amendments

**F22** S. 10B inserted (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), s. 70, Sch. 13 paras.8, 14.

VALID FROM 27/07/1993

#### **[10C** <sup>F23</sup> **Purchases of buildings and structures: allowances under section 2A.**

- (1) This section shall apply (subject to subsection (2) below) where—
- (a) expenditure is incurred on the construction of a building or structure (“actual expenditure”);
  - (b) some or all of that expenditure is expenditure to which section 2A applies or would be such expenditure if it were capital expenditure; and
  - (c) before the building or structure is used, the relevant interest in it is sold.

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**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

- (2) In relation to any case in which the relevant interest is sold in pursuance of a contract entered into in the period beginning with 1st November 1992 and ending with 31st October 1993 by a person who—
- (a) carries on a trade which consists, in whole or in part, in the construction of buildings or structures with a view to their sale; and
  - (b) has been entitled to that interest since before 1st November 1992,
- section 2A(3) above shall have effect for the purposes of subsection (1)(b) above and subsections (6) and (11) below as if for the words from “capital expenditure” onwards there were substituted “capital expenditure incurred under a contract entered into either before 1st November 1993 or for the purpose of securing that obligations under a contract entered into before that date are complied with.”
- (3) Where this section applies—
- (a) the actual expenditure shall be left out of account for the purposes of sections 1 to 8; but
  - (b) subject to subsections (9) to (11) below, the person who buys the relevant interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, expenditure on the construction of the building or structure (“deemed expenditure”) equal to the actual expenditure or to the net price paid by him for that interest, whichever is the less.
- (4) The deemed expenditure shall be regarded as comprising a section 2A element and a residual element.
- (5) The section 2A element of the deemed expenditure shall be calculated in accordance with the formula—
- $$A \times \frac{B}{C}$$
- (6) In subsection (5) above—
- A is the deemed expenditure;
- B is so much of the actual expenditure as is expenditure to which section 2A applies or expenditure that would be such expenditure if it were capital expenditure; and
- C is the actual expenditure.
- (7) The residual element of the deemed expenditure shall be so much (if any) of the deemed expenditure as does not comprise the section 2A element.
- (8) Notwithstanding the provisions of subsection (3)(b) above—
- (a) the section 2A element of the deemed expenditure shall be treated for the purpose only of determining entitlement to allowances as expenditure to which that section applies; and
  - (b) the residual element of the deemed expenditure shall be treated for that purpose as expenditure which is not expenditure to which that section applies.
- (9) Where the relevant interest in the building or structure is sold more than once before the building or structure is used, subsections (2) and (3)(b) above shall have effect only in relation to the last of those sales.

**Status:** Point in time view as at 01/07/1992. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

- (10) Where the actual expenditure was incurred by a person carrying on a trade which consists, in whole or in part, in the construction of buildings or structures with a view to their sale and, before the building or structure is used, he sells the relevant interest in it in the course of that trade or, as the case may be, of that part of that trade, then—
- (a) if that sale is the only sale of the relevant interest before the building or structure is used, paragraph (b) of subsection (3) above shall have effect as if the words “the actual expenditure or to” and “whichever is the less” were omitted; and
  - (b) in any other case, that paragraph shall have effect as if the reference to the actual expenditure were a reference to the price paid on that sale.
- (11) Where some of the actual expenditure is expenditure falling within subsection (1)(b) of section 10A and some or all of the remainder is expenditure to which section 2A applies or to which section 2A would apply if it were capital expenditure, section 10A and this section shall both have effect but as if—
- (a) subsections (3), (9) and (10) of this section were omitted;
  - (b) references in this section to the deemed expenditure were references to the expenditure which, in accordance with subsections (2), (8) and (9) of section 10A, is the deemed expenditure for the purposes of that section; and
  - (c) the section 2A element of the deemed expenditure were comprised in the non-enterprise zone element of that expenditure.]

#### Textual Amendments

- F23** S. 10C inserted (27.7.1993 with effect as mentioned in s. 113(7) of the amending Act) by 1993 c. 34, s. 113(4)(7)

## 11 Long leases.

- (1) Subject to the provisions of this section, where expenditure has been incurred on the construction of a building or structure and a long lease of that building or structure is granted out of an interest therein which is the relevant interest in relation to that expenditure, this Part shall, if the lessor and the lessee so elect, have effect as if—
- (a) the grant of the lease were a sale of the relevant interest by the lessor to the lessee at the time when the lease takes effect;
  - (b) any capital sum paid by the lessee in consideration for the grant of the lease were the purchase price on the sale; and
  - (c) the interest out of which the lease is granted had at that time ceased to be, and the interest granted by the lease had at that time become, the relevant interest in relation to that expenditure.
- (2) Any election under this section shall have effect in relation to all the expenditure in relation to which the interest out of which the lease is granted is the relevant interest and which relates to the building or structure or (if more than one) the buildings or structures which are the subject of the lease.
- (3) Any election under this section shall be by notice to the inspector given within two years after the date on which the lease takes effect; and all such adjustments shall be made, whether by discharge or repayment of tax or by further assessments, as may be required for giving effect to the election.

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**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

- (4) In this section “long lease” means a lease the duration of which (ascertained according to subsections (1) to (4) and (6) of section 38 of the principal Act) exceeds 50 years; and any question whether a lease is a long lease shall be determined without regard to section 16(5).
- (5) Section 20(3) shall have effect subject to subsection (1)(c) above.
- (6) This section does not apply where—
- (a) the lessor and lessee are connected with each other within the terms of section 839 of the principal Act; or
  - (b) it appears that the sole or main benefit which may be expected to accrue to the lessor from the grant of the lease and the making of an election is the obtaining of a balancing allowance under section 4;
- but paragraph (a) above shall not prevent the application of this section where the lessor is a body discharging statutory functions and the lessee a company of which it has control.

**Modifications etc. (not altering text)**

- C1** S. 11 modified (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), s. 77, Sch. 17 paras. 5(4), 6(1), 7.
- C2** S. 11(3) modified (for the year of assessment 1988-1989) by [S.I. 1991/851](#), regs. 1, 9, [Sch. 2](#)
- C3** S. 11(3) modified (for the year of assessment 1989-1990) by [S.I. 1992/511](#), regs. 1, 9, [Sch.2](#).
- C4** S. 11(3) applied (with modifications) (for the year of assessment 1990–91) by [The Lloyd’s Underwriters \(Tax\) \(1990–91\) Regulations 1993 \(S.I. 1993/415\)](#), reg. 9, [Sch.2](#)

**12 Expenditure on repair of buildings.**

This Part shall have effect in relation to capital expenditure incurred by a person on repairs to any part of a building or structure as if it were capital expenditure incurred by him in the construction for the first time of that part of the building or structure, and for the purposes of this section any expenditure incurred for the purposes of a trade on repairs to a building or structure shall be deemed to be capital expenditure if it is not expenditure which would be allowed to be deducted in computing, for the purposes of tax, the profits or gains of the trade.

**13 Expenditure on sites for machinery and plant.**

Where capital expenditure is or has been incurred on preparing, cutting, tunnelling or levelling land for the purposes of preparing the land as a site for the installation of machinery or plant, and apart from this section no allowance could be made in respect of that expenditure under this Part, or under Part II, then as regards that expenditure—

- (a) the machinery or plant shall be treated for the purposes of this Part as a building or structure (whether or not it would be so treated apart from this section), and
- (b) section 148(1) shall apply with the omission of the reference to Part II.

**14 Sports pavilions.**

Where a building or structure which is not an industrial building or structure is occupied by the person carrying on a trade and used as a sports pavilion for the welfare

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of all or any of the workers employed in that trade, this Part shall apply in relation to that building or structure as if it were an industrial building or structure.

## **15 Temporary disuse of industrial buildings or structures.**

- (1) For the purposes of this Part, a building or structure shall not be deemed to cease altogether to be used by reason only that it falls temporarily out of use, and where, immediately before any period of temporary disuse, a building or structure is an industrial building or structure, it shall be deemed to be an industrial building or structure during the period of temporary disuse.
- (2) Where by reason of the provisions of subsection (1) above a building or structure is deemed to continue to be an industrial building or structure while temporarily out of use, then if—
  - (a) upon the last occasion upon which the building or structure was in use as an industrial building or structure, it was in use for the purposes of a trade which has since been permanently discontinued, or
  - (b) upon the last occasion upon which the building or structure was in use as an industrial building or structure, the relevant interest therein was subject to a lease which has since come to an end,

any writing-down allowance or balancing allowance falling to be made to any person in respect of the building or structure during any period for which the temporary disuse continues after the discontinuance of the trade or the coming to an end of the lease shall be made by way of discharge or repayment of tax, and shall be available primarily against income of the descriptions in section 9(5)(a) and (b), and effect shall be given to any balancing charge falling to be made on any person in respect of the building or structure during the period—

- (i) if it is a charge to income tax, by making the charge under Case VI of Schedule D;
  - (ii) if it is a charge to corporation tax, by treating the amount on which the charge is to be made as income of the description in section 9(5)(a).
- (3) The reference in this section to the permanent discontinuance of a trade does not include a reference to the happening of any event which, by virtue of section 113 or 337(1) of the principal Act (changes in persons carrying on a trade, and special rules for corporation tax), is to be treated as equivalent to the discontinuance of the trade.

## **16 Requisitioned land, holding over of leased land and other special cases.**

- (1) Subject to subsection (2) below, the provisions of this Part shall have effect in relation to any period of requisition of any land by the Crown as if the Crown had been in possession of that land for that period by virtue of a lease, and—
  - (a) any reference in this Part to the surrender of a lease or the extinguishment thereof on the person entitled thereto acquiring the interest which is reversionary thereon, or to the merger of a leasehold interest, shall be construed accordingly, and
  - (b) any sum paid to the Crown in respect of any building or structure constructed on any land during any period of requisition of that land, being a sum paid, whether by virtue of any enactment or otherwise, by the person who, subject to the rights of the Crown, is entitled to possession of the land, shall be deemed for the purposes of this Part to be a sum paid in consideration of the surrender of that lease.



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- (2) Where a person carrying on a trade is authorised by the Crown to occupy the land or any part thereof for the whole or any part of the period of requisition (“the occupier”)—
  - (a) the provisions of this Part shall have effect as if the Crown had granted a sub-lease of that land or, as the case may be, that part thereof, to the occupier for the period of requisition or, as the case may be, for that part of the period for which that occupier occupies the land, and
  - (b) subsection (1) above shall have effect in relation to that sub-lease as it has effect in relation to the lease therein mentioned, subject however to the modification that for the reference to any sum paid to the Crown there shall be substituted a reference to any sum paid to the occupier.
- (3) In subsections (1) and (2) above “period of requisition” means a period in respect of which compensation is, or, but for any agreement to the contrary, would be, payable under section 2(1)(a) of the <sup>M8</sup>Compensation (Defence) Act 1939 by reference to the rent which might reasonably be expected to be payable under a lease granted immediately before the beginning of that period.
- (4) Where, with the consent of the lessor, a lessee of any building or structure remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Part to continue so long as he remains in possession as aforesaid.
- (5) Where, on the termination of a lease, a new lease is granted to the lessee in pursuance of an option available to him under the terms of the first lease, the provisions of this Part shall have effect as if the second lease were a continuation of the first lease.
- (6) Where, on the termination of a lease, the lessor pays any sum to the lessee in respect of a building or structure comprised in the lease, the provisions of this Part shall have effect as if the lease had come to an end by reason of the surrender thereof in consideration of the payment.
- (7) Where, on the termination of a lease, another lease is granted to a different lessee and, in connection with the transaction, that lessee pays a sum to the person who was the lessee under the first lease, the provisions of this Part shall have effect as if both leases were the same lease and there had been an assignment thereof by the lessee under the first lease to the lessee under the second lease in consideration of the payment.

#### **Marginal Citations**

**M8** 1939 c. 75.

### **17 Mining structures etc: balancing allowances carried back to earlier chargeable periods.**

- (1) If, in the case of a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits—
  - (a) a balancing allowance falls to be made under this Part for the last chargeable period in which the trade is carried on, and
  - (b) the event giving rise to the allowance is the mine, oil well or other source ceasing to be worked or the coming to an end of a foreign concession, and



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- (c) the allowance is in respect of expenditure on a building or structure which was constructed for occupation by, or for the welfare of, persons employed at, or in connection with the working of, the mine, oil well or other source, and
- (d) full effect cannot be given to the allowance because of an insufficiency of profits or gains for that chargeable period,

the person entitled to the allowance may claim that the balance of the allowance shall be given for the last preceding chargeable period, and so on for other preceding chargeable periods, so however that allowances shall not be given by virtue of this subsection for periods together amounting to more than five years (inclusive of any period for which an allowance might be made but cannot be given effect for want of profits or gains) otherwise than by giving a proportionately reduced allowance for a chargeable period of which part is required to make up the five years.

- (2) In the case of a company no allowance shall be given by virtue of this section so as to create or augment a loss in any accounting period; and, where on a company ceasing to carry on a trade a claim is made both under this section and under [F24 section 393A(1) of the principal Act (relief for company trading losses)] the allowance for which the claim is made shall be disregarded for the purposes of the claim under that section, but effect shall be given to the claim under that section in priority to the claim under this section.
- (3) Section 42 of the M9 Taxes Management Act 1970 shall apply to any claim under this section.

#### Textual Amendments

**F24** Words in s. 17(2) substituted (*retrospectively in relation to losses incurred in accounting periods ending on or after 01.04.1991*) by Finance Act 1991 (c. 31), s. 73(3)-(5), Sch. 15 para.28.

#### Marginal Citations

**M9** 1970 c. 9.

VALID FROM 16/07/1992

#### [F25] 17A Enterprise zones: exclusion of expenditure.

References in sections 1(1)(b), 6(1), 10A(1)(b) and 10B(1)(b) to expenditure incurred under a contract entered into at a time when the site of a building or structure is in an enterprise zone do not include any expenditure incurred under the contract if the expenditure is incurred more than 20 years after the site in question was first included in the enterprise zone.]

#### Textual Amendments

**F25** S. 17A inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 70, Sch. 13 paras.10, 16.

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## 18 Definition of “industrial building or structure”.

- (1) Subject to the provisions of this section, in this Part “industrial building or structure” means a building or structure in use—
- (a) for the purposes of a trade carried on in a mill, factory or other similar premises; or
  - (b) for the purposes of a transport, dock, inland navigation, water, sewerage, electricity or hydraulic power undertaking; or
  - (c) subject to subsection (11) below, for the purposes of a tunnel undertaking; or
  - (d) subject to subsection (12) below, for the purposes of a bridge undertaking; or
  - [<sup>F26</sup>(da) for the purposes of a toll road undertaking; or]
  - (e) for the purposes of a trade which consists in the manufacture of goods or materials or the subjection of goods or materials to any process; or
  - (f) for the purposes of a trade which consists in the storage—
    - (i) of goods or materials which are to be used in the manufacture of other goods or materials; or
    - (ii) of goods or materials which are to be subjected, in course of a trade, to any process; or
    - (iii) of goods or materials which, having been manufactured or produced or subjected, in the course of a trade, to any process, have not yet been delivered to any purchaser; or
    - (iv) of goods or materials on their arrival [<sup>F27</sup>in any part of the United Kingdom from a place outside] the United Kingdom; or
  - (g) for the purposes of a trade which consists in the working of any mine, oil well or other source of mineral deposits, or of a foreign plantation; or
  - (h) for the purposes of a trade consisting in all or any of the following activities, that is to say, ploughing or cultivating land (other than land in the occupation of the person carrying on the trade) or doing any other agricultural operation on such land, or threshing the crops of another person; or
  - (j) for the purposes of a trade which consists in the catching or taking of fish or shellfish;

and, in particular, the expression “industrial building or structure” includes any building or structure provided by the person carrying on such a trade or undertaking for the welfare of workers employed in that trade or undertaking and in use for that purpose.

- (2) The provisions of subsection (1) above shall apply in relation to a part of a trade or undertaking as they apply in relation to a trade or undertaking except that where part only of a trade or undertaking complies with the conditions set out in subsection (1), a building or structure shall not by virtue of this subsection be an industrial building or structure unless it is in use for the purposes of that part of that trade or undertaking.
- (3) The reference in paragraph (e) of subsection (1) above to the subjection of goods or materials to any process shall include a reference to the maintaining or repairing of any goods or materials but, notwithstanding subsection (2) above, paragraph (e) shall not apply to the maintenance or repair by any person of any goods or materials employed by that person in any trade or undertaking unless that trade or undertaking itself falls within any of the paragraphs of subsection (1) (including paragraph (e)).
- (4) Notwithstanding anything in subsections (1) to (3) above, but subject to subsections (5) and (7) below, “industrial building or structure” does not include any building or structure in use as, or as part of, a dwelling-house, retail shop, showroom, hotel or

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office or for any purpose ancillary to the purposes of a dwelling-house, retail shop, showroom, hotel or office.

(5) Subsection (4) above shall not apply to, or to part of, a building or structure which was constructed—

- (a) for occupation by, or for the welfare of, persons employed at, or in connection with the working of, a mine, oil well or other source of mineral deposits, or
- (b) for occupation by, or for the welfare of, persons employed on, or in connection with the growing or harvesting of crops on, a foreign plantation,

if the building or structure is likely to have little or no value to the person carrying on the trade when the mine, oil well or other source, or the plantation, is no longer worked, or will cease to belong to such person on the coming to an end of a foreign concession under which the mine, oil well or other source, or the plantation, is worked.

(6) Where a building or structure is used by more than one licensee of the same person, that building or structure shall not be an industrial building or structure unless each of the licensees uses the building or structure or that part of it to which his licence relates for the purposes of a trade which falls within subsection (1) above.

This subsection does not apply in any case where the licence in question was granted before 10th March 1982.

(7) Where part of the whole of a building or structure is, and part of it is not, an industrial building or structure, and the capital expenditure which has been incurred on the construction of the second mentioned part is not more than one-quarter of the total capital expenditure which has been incurred on the whole building or structure, the whole building or structure and every part of it shall be treated as an industrial building or structure.

In relation to capital expenditure which, disregarding section 1(10), was incurred before 16th March 1983, other than expenditure which by virtue of section 10(1) was deemed to have been incurred after that date, this subsection shall have effect with the substitution of “one-tenth” for “one-quarter”.

(8) A road on an industrial estate shall be treated as used for the purposes of a trade which falls within subsection (1) above if the buildings and structures on the estate are used wholly or mainly for such purposes.

This subsection shall have effect in relation to any chargeable period or its basis period ending on or after 27th July 1989.

(9) In this section—

“crops” includes any form of vegetable produce and “harvesting” includes the collection thereof, however effected;

“dock” includes any harbour, wharf, pier or jetty or other works in or at which vessels can ship or unship merchandise or passengers, not being a pier or jetty primarily used for recreation, and “dock undertaking” shall be construed accordingly;

“electricity undertaking” means an undertaking for the generation, transformation, conversion, transmission or distribution of electrical energy;

“foreign plantation” means, subject to subsection (10) below, any land outside the United Kingdom used for the growing and harvesting of crops;

“hydraulic power undertaking” means an undertaking for the supply of hydraulic power;

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“retail shop” includes any premises of a similar character where retail trade or business (including repair work) is carried on;

“sewerage undertaking” means an undertaking for the provision of sewerage services within the meaning of [<sup>F28</sup>the Water Industry Act 1991];

“undertaking” does not include an undertaking not carried on by way of trade;

“water undertaking” means an undertaking for the supply of water for public consumption.

- (10) In this section the expression “foreign plantation” shall (without prejudice to the generality of the definition in subsection (9) above) be extended so as to include any land outside the United Kingdom used for husbandry or forestry, and the reference in subsection (5) above to the growing and harvesting of crops shall be correspondingly extended.
- (11) Paragraph (c) of subsection (1) above shall not affect any allowance or charge which would have been made under this Act, disregarding Parts III, IV and VII, if this Act had been enacted without that paragraph and if section 7(1)(c) of the 1968 Act and section 25 of the <sup>M11</sup>Finance Act 1952 (which were the corresponding provisions prior to the passing of this Act) had not been passed, and where by virtue of paragraph (c) a balancing charge is made on a person in respect of any expenditure, the amount on which it is made shall not exceed the amount of the allowances made to him in respect of that expenditure by virtue of that paragraph (and those prior provisions).
- (12) Subsection (1)(d) above shall have effect only in relation to expenditure which is to be treated for the purposes of this Part as incurred after the end of the year 1956-57.
- (13) For the purposes of this Part references to use as an industrial building or structure do not apply, in the case of a building or structure outside the United Kingdom, to use for the purposes of a trade at a time when the profits or gains of the trade are not assessable in accordance with the rules applicable to Case I of Schedule D.
- (14) Subsection (13) shall apply in relation to qualifying hotels to which this Part applies by virtue of section 7, and subsection (7) shall apply in relation to any qualifying hotel and also in relation to commercial buildings and structures but, subject to that, none of the provisions of this section shall apply in relation to any qualifying hotel or commercial building or structure.

#### Textual Amendments

**F26** S. 18(1)(da) inserted (*for any chargeable period or its basis period ending on or after 6.4.1991*) by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 60\(4\)\(10\)](#)

**F27** Words in s. 18(1)(f)(iv) substituted (retrospectively) by [Finance Act 1995 \(c. 4\), s. 101](#)

**F28** Words in s. 18(9) substituted (E.W.) (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60\), ss. 2\(1\), 4\(2\), Sch. 1 para. 53](#)

#### Marginal Citations

**M10** 1989 c. 15.

**M11** 1952 c. 33.

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## 19 Meaning of “qualifying hotel”.

- (1) For the purposes of this Part, a qualifying hotel is an hotel the accommodation in which is in a building or buildings of a permanent nature and which complies with the following requirements—
  - (a) that it is open for at least four months in the season; and
  - (b) that during the time when it is open in the season—
    - (i) it has at least 10 letting bedrooms;
    - (ii) the sleeping accommodation offered at the hotel consists wholly or mainly of letting bedrooms; and
    - (iii) the services provided for guests normally include the provision of breakfast and an evening meal, the making of beds and the cleaning of rooms.
- (2) In subsection (1) above “the season” means April, May, June, July, August, September and October; and for the purposes of that subsection a letting bedroom is a private bedroom available for letting to the public generally and not normally in the same occupation for more than one month.
- (3) Subject to subsection (4) below, any question whether an hotel complies with the requirements in subsection (1)(a) and (b) above at any time in a person’s chargeable period or its basis period shall be determined—
  - (a) if the hotel has been in use for the purposes of the trade carried on by that person or by such a lessee as is mentioned in section 1(3) throughout the 12 months ending with the last day of that chargeable period or its basis period, by reference to those 12 months;
  - (b) if the hotel was first so used on a date after the beginning of those 12 months by reference to the 12 months beginning with that date;but an hotel shall not by virtue of this subsection be treated as complying with those requirements at any time in a chargeable period or its basis period after it has ceased altogether to be used.
- (4) Where, during the 12 months mentioned in subsection (3)(a) above, an hotel had fewer than 10 letting bedrooms until a date too late for it to qualify by reference to those 12 months, it may instead qualify under subsection (3)(b) by reference to the 12 months beginning with that date as if it had then first been used.
- (5) For the purposes of this section—
  - (a) there shall be treated as included in a qualifying hotel any building (whether or not on the same site as any other part of the hotel) which is provided by the person carrying on the hotel for the welfare of workers employed in the hotel and is in use for that purpose; and
  - (b) where a qualifying hotel is carried on by an individual, whether alone or in partnership, there shall be treated as excluded from the hotel any accommodation which, during the time when the hotel is open in the season, is normally used as a dwelling by that person or by any member of his family or household.
- (6) Subsections (1) to (5) above do not apply in any case where the expenditure in question was incurred before 12th April 1978, and expenditure shall not be treated for the purposes of this subsection as having been incurred after the date on which it was in fact incurred by reason only of section 10(1).

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## 20 Meaning of “the relevant interest”.

- (1) Subject to the provisions of this section, in this Part, “the relevant interest” means, in relation to any expenditure incurred on the construction of a building or structure, the interest in that building or structure to which the person who incurred the expenditure was entitled when he incurred it.
- (2) Where, when he incurs expenditure on the construction of a building or structure, a person is entitled to two or more interests in the building or structure, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Part.
- (3) An interest shall not cease to be the relevant interest for the purposes of this Part by reason of the creation of any lease or other interest to which that interest is subject, and where the relevant interest is a leasehold interest and is extinguished by reason of the surrender thereof or on the person entitled thereto acquiring the interest which is reversionary thereon, the interest into which that leasehold interest merges shall thereupon become the relevant interest.
- (4) An interest which by virtue of section 11(4) of the 1968 Act was immediately before the commencement of this section treated as the relevant interest shall continue to be so treated for the purposes of the provisions of this Part in so far as they relate to writing-down allowances, balancing allowances and balancing charges.
- [<sup>F29</sup>(5) For the purposes of subsections (1) and (2) above, in their application to expenditure incurred on the construction of a toll road, the right to charge tolls in respect of the road shall not be treated as an interest in the road.
- (6) Where, in the case of expenditure incurred on the construction of a toll road, the person who incurred the expenditure—
  - (a) was not for the purposes of subsections (1) and (2) above entitled to an interest in the road when he incurred the expenditure, but
  - (b) was at that time entitled to charge tolls in respect of the road,
 “the relevant interest” means, in relation to that expenditure, the right to charge tolls in respect of the road.]

### Textual Amendments

- F29** S. 20(5)(6) inserted (*for any chargeable period or its basis period ending on or after 06.04.1991*) by Finance Act 1991 (c. 31), s. 60(5)(10).

## 21 Other interpretation of Part I.

- (1) References in this Part to expenditure incurred on the construction of a building or structure do not include any expenditure incurred on the acquisition of, or of rights in or over, any land.
- (2) A person who has incurred expenditure on the construction of a building or structure shall be deemed, for the purposes of any provision of this Part referring to his interest therein at the time when the expenditure was incurred, to have had the same interest therein as he would have had if the construction thereof had been completed at that time.

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- (3) Without prejudice to any of the other provisions of this Part or Part VIII relating to the apportionment of sale, insurance, salvage or compensation moneys, the sum paid on the sale of the relevant interest in a building or structure, or any other sale, insurance, salvage or compensation moneys payable in respect of any building or structure, shall, for the purposes of this Part, be deemed to be reduced by an amount equal to so much thereof as, on a just apportionment, is attributable to assets representing expenditure other than expenditure in respect of which an allowance can be made under this Part.
- (4) In this Part “enterprise zone” means an area designated as such by an order made by the Secretary of State under powers in that behalf conferred by Schedule 32 to the <sup>M12</sup>Local Government, Planning and Land Act 1980 or, in Northern Ireland, by an order made by the Department of the Environment for Northern Ireland under Article 7 of the <sup>M13</sup>Enterprise Zones (Northern Ireland) Order 1981.
- (5) In this Part “commercial building or structure” means a building or structure, other than an industrial building or structure or a qualifying hotel, which is used for the purposes of a trade, profession or vocation or, whether or not for such a purpose, as an office or offices but does not include any building or structure in use as, or as part of, a dwelling-house.
- [<sup>F30</sup>(5A) For the purposes of this Part, the carrying on of a toll road undertaking shall be treated as the carrying on of an undertaking by way of trade; and accordingly, references in this Part (except sections 17 and 18) to a trade shall be treated as including references to an undertaking treated by virtue of this subsection as carried on by way of trade.
- (5B) For the purposes of this Part, a person carrying on a toll road undertaking shall be treated as occupying for the purposes of the undertaking any toll road comprised in it.]
- (6) For the purposes of this Part, and the other provisions of this Act which are relevant to this Part, any transfer of the relevant interest in a building or structure otherwise than by way of sale shall be treated as a sale of the interest for a price other than that which it would have fetched if sold on the open market.
- (7) If sections 157 and 158 would not apart from this subsection have effect in relation to a transfer treated as a sale by virtue of subsection (6) above, those sections shall have effect in relation to it as if it were a sale falling within section 157(1)(a).
- (8) Without prejudice to section 148(1), any reference in this Part to the incurring of expenditure on the construction of a building or structure does not include expenditure on the provision of machinery or plant or on any asset which has been treated for any chargeable period as machinery or plant.  
  
This subsection shall not have effect in relation to any chargeable period or its basis period ending after 26th July 1989.
- (9) Where section 16(4) of the 1968 Act (expenditure on preparatory work before the appointed day) applied immediately before the commencement of this Part in relation to any expenditure so that Chapter I of Part I of that Act (apart from section 1) applied to part of the expenditure separately from the remainder of the expenditure, then the provisions of this Part (apart from section 1) shall similarly apply to that part of the expenditure separately from the remainder.
- (10) Any reference in this Part to any allowance or charge is, except where the context otherwise requires, a reference to such an allowance or charge under this Part, and a reference to an allowance made or postponed under this Part includes, where the

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context permits, a reference to an allowance relating to expenditure in respect of an industrial building or structure (or any building or structure treated as an industrial building or structure) made or postponed under any enactment repealed by this Act or by any Act repealed by this Act, notwithstanding that the repealed enactment is not re-enacted in this Act.

#### Textual Amendments

**F30** S. 21(5A)(5B) inserted (*for any chargeable period or its basis period ending on or after 06.04.1991*) by Finance Act 1991 (c. 31), s. 60(6)(10).

#### Marginal Citations

**M12** 1980 c. 65.

**M13** S.I. 1981/607 (N.I.15).

## PART II

### MACHINERY AND PLANT

#### Modifications etc. (not altering text)

**C5** Pt. II (ss. 22–83) modified by Finance Act 1990 (c. 29, SIF 63:1), s. 87(3)(4)

## CHAPTER I

### ALLOWANCES AND CHARGES: GENERAL PROVISIONS

#### Modifications etc. (not altering text)

**C6** Pt. II Chapter I (ss. 22–29) modified (31.5.1991) by Environmental Protection Act 1990 (c.43), s. 32(6), Sch. 2 para. 9(2)

## 22 First-year allowances: transitional relief for regional projects.

(1) Subject to the provisions of this Part, where—

- (a) a person carrying on a trade incurs capital expenditure to which this section applies on the provision of machinery or plant wholly and exclusively for the purposes of the trade, and
- (b) in consequence of his incurring the expenditure, the machinery or plant belongs to him at some time during the chargeable period related to the incurring of the expenditure,

there shall be made to him for that period an allowance (“a first-year allowance”) which shall be of an amount equal to the whole of that expenditure.

[<sup>F31</sup>(1A) Subsection (1B) below applies in any case where a person—

- (a) has at any time incurred, as mentioned in paragraphs (a) and (b) of subsection (1) above, capital expenditure to which this section applies, and



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- (b) subsequently incurs an additional VAT liability in respect of that capital expenditure at a time when the machinery or plant is provided wholly and exclusively for the purposes of the trade.
- (1B) Where this subsection applies, then, for the purposes of this Act—
- (a) the additional VAT liability shall be regarded as capital expenditure incurred by the person on the provision of the machinery or plant wholly and exclusively for the purposes of the trade, and
  - (b) that capital expenditure shall be regarded as expenditure in consequence of the incurring of which the machinery or plant belongs, or has belonged, to him at some time during the chargeable period related to the incurring of the capital expenditure,
- and, subject to the following provisions of this Act, a first-year allowance shall accordingly be made to him under subsection (1) above for the chargeable period related to the incurring of that liability.]
- (2) This section applies to so much of any expenditure as is certified by the Secretary of State for the purposes of this section to be expenditure which, in his opinion, qualifies for a regional development grant or a grant under Part IV of the relevant Order and consists of the payment of sums on a project—
- (a) either in an area which on 13th March 1984 was a development area, within the meaning of the <sup>M14</sup>Industrial Development Act 1982, or in Northern Ireland; and
  - (b) in respect of which a written offer of financial assistance under section 7 or 8 of that Act was made on behalf of the Secretary of State in the period beginning on 1st April 1980 and ending on 13th March 1984 or in respect of which a written offer of financial assistance was made in that period by the Highlands and Islands Development Board.
- (3) This section applies to so much of any expenditure as is certified by the Department of Economic Development in Northern Ireland for the purposes of this section to be expenditure which, in the opinion of that Department, qualifies for a grant under Part IV of the relevant Order and consists of the payment of sums on a project—
- (a) in Northern Ireland; and
  - (b) in respect of which a written offer of financial assistance under Article 7 or 8 of the relevant Order was made on behalf of a Department of the Government of Northern Ireland in the period beginning on 1st April 1980 and ending on 13th March 1984 or in respect of which a written offer of financial assistance was made in that period by the Local Enterprise Development Unit.
- [<sup>F32</sup>(3A) This section also applies to any additional VAT liability incurred in respect of expenditure certified under subsection (2) or (3) above.]
- (4) Subject to the following provisions of this section, no first-year allowance shall be made in respect of any expenditure—
- (a) if the chargeable period related to the incurring of the expenditure is also the chargeable period related to the permanent discontinuance of the trade; or
  - (b) incurred on the provision of a motor car; or
  - (c) subject to subsections (5), (6) and (11) below, on the provision of machinery or plant for leasing, whether in the course of a trade or otherwise, unless it appears that the machinery or plant will be used for a qualifying purpose in the requisite period and will not at any time in that period be used for any other purpose;

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and section 50 shall apply for the interpretation of paragraph (c) above as it applies for the interpretation of Chapter V of this Part.

- (5) Paragraph (c) of subsection (4) above does not apply to expenditure incurred at any time on the provision of machinery or plant which is to be an integral part of a building or structure if section 1 would apply to expenditure incurred at that time on the construction of that building or structure.
- (6) Nothing in paragraph (c) of subsection (4) above affects expenditure on the provision of vehicles if they are provided wholly or mainly for the use of persons in receipt of—
- (a) [<sup>F33</sup>a disability living allowance under the [<sup>F34</sup>Social Security Contributions and Benefits Act 1992][<sup>F35</sup>or the [<sup>F36</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992]] by virtue of entitlement to the mobility component]. . . ; or
  - (b) a mobility supplement under a scheme made under the <sup>M15</sup>Personal Injuries (Emergency Provisions) Act 1939; or
  - (c) a mobility supplement under an Order in Council made under section 12 of the <sup>M16</sup>Social Security (Miscellaneous Provisions) Act 1977; or
  - (d) any payment appearing to the Treasury to be of a similar kind and specified by them by order.
- [<sup>F37</sup>(7) A claim for one or more first-year allowances to be made for any chargeable period may require that the amount of the allowance, or aggregate amount of the allowances, be reduced to an amount specified in that behalf in the claim.]
- (8) No <sup>F38</sup> claim under subsection (7) above may be made in respect of any ship.
- (9)
- <sup>F39</sup>(10) In this section—
- “regional development grant” means a grant under Part II of the <sup>M17</sup>Industrial Development Act 1982;
- “the relevant Order” means the <sup>M18</sup>Industrial Development (Northern Ireland) Order 1982;
- and any reference to a particular provision of that Act or Order includes a reference to the corresponding provision of any Act or Order which was in force before and repealed by the Industrial Development Act 1982 or the Industrial Development (Northern Ireland) Order 1982.
- (11) Where expenditure is incurred on the provision of machinery or plant which is fixed to a building or land of which the person who incurs the expenditure is the lessor and the circumstances are such that a transfer of his interest in the building or land would operate to transfer his interest in the machinery or plant, then subsection (4)(c) above shall not preclude the making of a first-year allowance in respect of such expenditure.

#### Textual Amendments

- F31** S. 22(1A)(1B) inserted(*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 59, **Sch. 14 Pt. II para. 6(1)**.
- F32** S. 22(3A) inserted(*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 59, **Sch. 14 Pt. II para. 6(2)**.
- F33** Words in s. 22(6)(a) substituted (6.4.1992) by [Disability Living Allowance and Disability Working Allowance Act 1991 \(c. 21, SIF 113:1\)](#), s. 4, **Sch. 2**, para. 20; S.I. 1991/2617, **art. 2(f)**

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- F34** Words in s. 22(6)(a) substituted (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 4, 7(2), **Sch. 2 para. 109(a)**
- F35** Words in s. 22(6)(a) inserted (6.4.1992) by S.I.1991/2874, **art. 6(2)(a)**; S.R. 1992/94, **art. 2**.
- F36** Words in s. 22(6)(a) substituted (1.7.1992) by Social Security (Consequential Provisions)(Northern Ireland) Act 1992 (c. 9), ss. 4, 7(2), Sch. 2 para. 38(a).
- F37** S. 22(7) substituted by Finance Act 1990 (c. 29, SIF 63:1), s. 103, **Sch. 17 para. 3(2)**
- F38** Words in s. 22(8) repealed by Finance Act 1990 (c. 29, SIF 63:1), ss. 103(1)(2), 132, Sch. 17 para. 3(3), **Sch. 19 Pt. V**, Note 6
- F39** S. 22(9) repealed by Finance Act 1990 (c. 29, SIF 63:1), ss. 103(1)(2), 132, Sch. 17 para. 3(4), **Sch. 19 Pt. V**, Note 6

#### Marginal Citations

- M14** 1982 c. 52.  
**M15** 1939 c. 82.  
**M16** 1977 c. 5.  
**M17** 1982 c. 52.  
**M18** S.I. 1982/1083 (N.I.15).

## 23 Information relating to first-year allowances.

- (1) A claim <sup>F40</sup> for a first-year allowance in respect of expenditure to which section 22(4)(c) applies <sup>F40</sup> shall be accompanied by a certificate—
- stating that the machinery or plant in question will be used for a qualifying purpose in the requisite period, will not be used for any other purpose and has not been used for any other purpose in any part of that period which has already elapsed; and
  - containing a description of the machinery or plant in question or, if the claim <sup>F41</sup> relates to more than one item of machinery or plant and those items are of different kinds, a description of the different kinds and the amount claimed or deducted in respect of each of them; and
  - where the claim <sup>F41</sup> relates to a first-year allowance which by virtue of section 45(2) is in respect of part only of any expenditure, containing a statement of the extent to which the profits or gains referred to in section 45(2) will be chargeable to tax as there mentioned.
- (2) Where a person <sup>F42</sup> has claimed a first-year allowance in respect of any expenditure <sup>F42</sup> and the machinery or plant in question is at any time in the requisite period used otherwise than for a qualifying purpose, the person to whom it then belongs shall give notice of that fact to the inspector, specifying the use to which the machinery or plant has been put; and, subject to subsection (3) below, any such notice shall—
- be given within three months after the end of the chargeable period or its basis period in which the machinery or plant is first used otherwise than for a qualifying purpose; and
  - relate to all the items of machinery or plant (if more than one) in respect of which that person is required to give notice under this subsection in respect of that period.

In this subsection the reference to machinery or plant being used otherwise than for a qualifying purpose shall include a reference to machinery or plant being treated as so used by virtue of section 45(4).

- (3) If, at the end of the three months mentioned in subsection (2)(a) above, the person concerned does not know and cannot reasonably be expected to know that any item

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of machinery or plant in respect of which he is required to give a notice under that subsection has been used otherwise than for a qualifying purpose, he shall in respect of that item give the notice within 30 days of his coming to know that it has been so used.

- (4) Where a first-year allowance has been made in respect of any expenditure, the inspector may by notice require—
- (a) any person to whom the machinery or plant belongs or has belonged, or who is or has been in possession of it under a lease, during the requisite period; and
  - (b) the personal representatives of any such person,
- to furnish him, within such period (not being less than 30 days) as may be specified in the notice, with such information as he may require and the person to whom the notice is addressed has or can reasonably obtain about the leasing of the machinery or plant or the use to which it is being or has been put.
- (5) The obligation to give notice by virtue of subsection (2) or (3) above where the machinery or plant becomes used otherwise than for a qualifying purpose shall arise a second time when the machinery or plant becomes used—
- (a) otherwise than for a qualifying purpose, and
  - (b) for the purpose of being leased to such a person as is referred to in section 42(1)(a) and (b),
- (if it were not so used before).
- (6) Section 50 shall apply for the interpretation of this section as it applies for the interpretation of Chapter V of this Part.

#### Textual Amendments

- F40** Words repealed by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), ss. 103(1)(2), 132, [Sch. 17 para. 4\(2\)](#), [Sch. 19 Pt. V](#), Note 6
- F41** Words repealed by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), ss. 103(1)(2), 132, [Sch. 17 para. 4\(2\)](#), [Sch. 19 Pt. V](#), Note 6
- F42** Words repealed by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), ss. 103(1)(2), 132, [Sch. 17 para. 4\(3\)](#), [Sch. 19 Pt. V](#), Note 6

## 24 Writing-down allowances and balancing adjustments.

- (1) Subject to the provisions of this Part, where—
- (a) a person carrying on a trade has incurred capital expenditure on the provision of machinery or plant wholly and exclusively for the purposes of the trade, and
  - (b) in consequence of his incurring that expenditure, the machinery or plant belongs or has belonged to him,

allowances and charges shall be made to and on him in accordance with the following provisions of this section.

- [<sup>F43</sup>(1A) If, in a case where the circumstances are as mentioned in paragraphs (a) and (b) of subsection (1) above, the person there mentioned incurs an additional VAT liability in respect of the capital expenditure at a time when the machinery or plant is provided wholly and exclusively for the purposes of the trade, then, for the purposes of this Act—

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- (a) that liability shall be regarded as capital expenditure incurred by him on the provision of the machinery or plant wholly and exclusively for the purposes of the trade, and
  - (b) that capital expenditure shall be regarded as expenditure in consequence of the incurring of which the machinery or plant belongs, or has belonged, to him, and, subject to the following provisions of this Act, subsection (1) above shall have effect accordingly in relation to the capital expenditure constituted by that liability.]
- (2) Subject to subsection (3) below, for any chargeable period for which a person within subsection (1) above has qualifying expenditure which exceeds any disposal value to be brought into account in accordance with subsection (6) below, there shall be made to him —
- (a) unless the period is the chargeable period related to the permanent discontinuance of the trade, an allowance (“a writing-down allowance”) equal to—
    - (i) 25 per cent. of the excess, or
    - (ii) a proportionately reduced percentage of the excess if the period is part only of a year, or if the period is a year of assessment but the trade has been carried on for part only of that year;
  - (b) if the period is the chargeable period related to the permanent discontinuance of the trade, an allowance (“a balancing allowance”) equal to the whole of the excess.
- (3) A claim for a writing-down allowance to be made for any chargeable period <sup>F44</sup> may require that the amount of the allowance be reduced to an amount specified in that behalf in the claim.
- (4)
- <sup>F45</sup>(5) For any chargeable period for which a person’s qualifying expenditure is less than the disposal value which he is to bring into account, there shall be made on him a charge (“a balancing charge”), and the amount on which the charge is made shall be an amount equal to the difference.
- (6) [<sup>F46</sup>Subject to subsection (7) below,]the disposal value to be brought into account by a person for any chargeable period is the disposal value of all machinery or plant—
- (a) on the provision of which for the purposes of the trade he has incurred capital expenditure; and
  - (b) which belongs to him at some time in the chargeable period or its basis period; and
  - (c) in respect of which, in the chargeable period or its basis period, one of the following events occurs, namely—
    - (i) the machinery or plant ceases to belong to him;
    - (ii) he loses possession of the machinery or plant in circumstances where it is reasonable to assume that the loss is permanent or, in the case of machinery or plant which was in use for mineral exploration and access, he abandons the machinery or plant at the site where it was in use for that purpose;
    - (iii) the machinery or plant ceases to exist as such (as a result of destruction, dismantling or otherwise);
    - (iv) the machinery or plant begins to be used wholly or partly for purposes which are other than those of the trade;

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(v) the trade is permanently discontinued (or is treated by virtue of any provision of the Tax Acts as permanently discontinued);

and that is the first such event to occur;

but this subsection shall not require a person to bring into account the disposal value of any machinery or plant which he disposes of by way of gift in such circumstances that there is a charge to tax under Schedule E.

[<sup>F47</sup>(7) This subsection applies to all machinery and plant—

- (a) on the provision of which for the purposes of the trade a person has incurred capital expenditure;
- (b) which belongs to him at some time in a chargeable period or its basis period; and
- (c) in respect of which the following event occurs, namely, the making of an additional VAT rebate to him in that chargeable period or its basis period in respect of the capital expenditure incurred by him on the provision of the machinery or plant;

and where this subsection applies to any machinery or plant the amount that is to be brought into account by virtue of subsection (6) above by that person for the chargeable period related to the making of the rebate shall be increased by the addition of (or, if there would not otherwise be a disposal value for that chargeable period, shall be) the disposal value of the machinery or plant in respect of which that rebate is made.

- (8) Except in subsection (7) above, any reference in this Act to subsection (6) above (but not a reference to any specific provision of it) shall be taken to include a reference to subsection (7) above.]

#### Textual Amendments

- F43** S. 24(1A) inserted(*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), S. 59, **Sch. 14 Pt. II para. 7(1)**.
- F44** Words in s. 24(3) repealed by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), ss. 103(1)(2), 132, [Sch. 17 para. 5\(2\)](#), **Sch. 19 Pt. V**, Note 6
- F45** S. 24(4) repealed by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), ss. 103(1)(2), 132, [Sch. 17 para. 5\(3\)](#), **Sch. 19 Pt. V**, Note 6
- F46** Words in s. 24(6) inserted(*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 59, **Sch. 14 Pt. II para. 7(2)**.
- F47** S. 24(7)(8) inserted(*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 59, **Sch. 14 Pt. II para. 7(2)**.

## 25 Qualifying expenditure.

(1) Subject to subsections (2) to (9) below, for the purposes of section 24, a person's qualifying expenditure for a chargeable period is the aggregate of the following amounts—

- (a) the balance remaining after deducting any first-year allowances made in respect thereof of any capital expenditure incurred by him on the provision for the purposes of the trade of machinery or plant being expenditure incurred in the chargeable period in question or its basis period or at any previous time, and not being—
  - (i) expenditure which, or any part of which, has formed part of his qualifying expenditure for any previous chargeable period, or

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- (ii) expenditure in respect of which a first-year allowance is or could (assuming a claim therefor <sup>F48</sup>) be made for the chargeable period in question; and
  - (b) if for the chargeable period immediately preceding the chargeable period in question there was an excess of qualifying expenditure over disposal value, the balance of that excess after deducting any writing-down allowance made by reference thereto.
- (2)
- <sup>F49</sup>(3) In any case where—
  - (a) a person carrying on a trade <sup>F50</sup> incurs capital expenditure on the provision of machinery or plant for the purposes of the trade, and
  - (b) if a claim were made in that behalf, a first-year allowance would fall to be made in respect of that expenditure for the chargeable period related to the incurring of it, and
  - (c) no claim is made but by notice given to the inspector not later than two years after the end of that chargeable period, the person concerned elects that this subsection shall apply,then, for the purposes of section 24, that expenditure shall not, by virtue of subsection (1)(a)(ii) above, be excluded from the capital expenditure referred to in subsection (1)(a) above.
- (4) In any case where—
  - (a) a person <sup>F51</sup> carrying on a trade has incurred capital expenditure on the provision of machinery or plant for the purposes of the trade, and
  - (b) a first-year allowance falls to be made to that person in respect of that expenditure (and <sup>F52</sup> a claim is made for that allowance), and
  - (c) for the chargeable period related to the incurring of that expenditure, the amount of that first-year allowance or, as the case may be, the aggregate amount of that and other first-year allowances which fall to be made to that person is required to be reduced by virtue of section 22(7) or, in the case of ships, 30(1)(b),then, for the purposes of section 24, an amount equal to the relevant portion of the expenditure giving rise to the first-year allowance or allowances referred to in paragraph (c) above shall be treated as expenditure in respect of which no first-year allowance is or could be made for the chargeable period in question.
- (5) Subject to subsection (6) below, where—
  - (a) a first-year allowance is made in respect of capital expenditure on the provision of machinery or plant, and
  - (b) in the chargeable period related to the incurring of that expenditure, the disposal value of that machinery or plant falls to be brought into account in accordance with section 24(6),that expenditure shall not be virtue of subsection (1)(a)(ii) above be excluded from the capital expenditure referred to in subsection (1)(a) above.
- (6) Where the event by reason of which disposal value falls to be brought into account as mentioned in subsection (5) above is the assignment of the benefit of a contract, subsection (1) above, as modified by subsection (5) above, shall have effect as if any reference in paragraph (a) to capital expenditure incurred were a reference to the total

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capital expenditure which the person in question would have incurred in respect of the machinery or plant if he had wholly performed the contract.

- (7) Where an allowance is or has been made under any provision of Part V except section 122 in respect of any capital expenditure, none of that expenditure shall be taken into account in determining qualifying expenditure for the purpose of any allowance or charge under section 24.

This subsection shall not have effect in relation to any chargeable period or its basis period ending after 26th July 1989.

- (8) All such assessments and adjustments of assessments shall be made as may be necessary to give effect to subsections (5) and (6) above.
- (9) In subsection (4) above “the relevant portion” of expenditure giving rise to a first-year allowance or allowances is that which bears to the whole of that expenditure the same proportion as the amount of the reduction mentioned in subsection (4)(c) above bears to what the amount of the allowance or allowances would have been apart from that reduction.

#### Textual Amendments

- F48** Words in s. 25(1)(a) repealed by [Finance Act 1990 \(c. 29\)](#), ss. 103(1)(2), 132, Sch. 17 para. 6(2), [Sch. 19 Pt. V](#), Note 6
- F49** S. 25(2) repealed by [Finance Act 1990 \(c. 29\)](#), ss. 103(1)(2), 132, Sch. 17 para. 6(3), [Sch. 19 Pt. V](#), Note 6
- F50** Words in s. 25(3)(a) repealed by [Finance Act 1990 \(c. 29\)](#), ss. 103(1)(2), 132, Sch. 17 para. 6(4), [Sch. 19 Pt. V](#), Note 6
- F51** Words in s. 25(4)(a) repealed by [Finance Act 1990 \(c. 29\)](#), s. 103(1)(2), 132, Sch. 17 para. 6(5)(a), [Sch. 19 Pt. V](#), Note 6
- F52** Words in s. 25(4)(b) repealed by [Finance Act 1990 \(c. 29\)](#), ss. 103(1)(2), 132, Sch. 17 para. 6(5)(b), [Sch. 19 Pt. V](#), Note 6

#### Modifications etc. (not altering text)

- C7** S. 25(3) modified (for the year of assessment 1988-1989) by [S.I. 1991/851](#), regs. 1, 9, [Sch. 2](#)
- C8** S. 25(3) modified (for the year of assessment 1989-1990) by [S.I. 1992/511](#), regs. 1, 9, [Sch. 2](#).
- C9** S. 25(3) applied (with modifications) (for the year of assessment 1990–91) by [S.I. 1993/415](#), reg. 9, [Sch. 2](#)

## 26 The disposal value.

- (1) Subject to subsection (2) below, for the purposes of section 24 the disposal value of any machinery or plant depends upon the event by reason of which it falls to be taken into account and—
- (a) unless paragraph (b) below applies, if that event is the sale of the machinery or plant, equals the net proceeds to the person in question of the sale, together with any insurance moneys received by him in respect of the machinery or plant by reason of any event affecting the price obtainable on the sale, and, so far as it consists of capital sums, any other compensation of any description so received,
- (b) if that event is the sale of the machinery or plant at a price lower than that which it would have fetched if sold in the open market, and otherwise than in circumstances such that—



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- (i) the buyer's expenditure on the acquisition of the machinery or plant can be taken into account in making allowances to him under this Part or under Part VII and the buyer is not a dual resident investing company which is connected with the seller within the terms of section 839 of the principal Act, or
    - (ii) there is a charge to tax under Schedule E,  
equals the price which the machinery or plant would have fetched if sold in the open market,
  - (c) if that event is the demolition or destruction of the machinery or plant, equals the net amount received by the person in question for the remains of the machinery or plant, together with any insurance moneys received by him in respect of the demolition or destruction and, so far as it consists of capital sums, any other compensation of any description so received,
  - (d) if that event is the permanent loss of the machinery or plant otherwise than in consequence of its demolition or destruction, equals any insurance moneys received by him in respect of the loss, and, so far as it consists of capital sums, any other compensation of any description so received,
  - (e) if that event is the permanent discontinuance of the trade before the occurrence of an event within paragraph (a), (b), (c) or (d) above, is the same as the disposal value specified for the last-mentioned event,<sup>F53</sup> . . .
  - [<sup>F54</sup>(ee) if that event is the making of an additional VAT rebate in respect of capital expenditure incurred on the provision of the machinery or plant, equals the amount of that rebate; and]
  - (f) in the case of any other event, equals the price which the machinery or plant would have fetched if sold in the open market at the time of the event.
- (2) The disposal value of any machinery or plant shall in no case exceed the capital expenditure incurred by the person in question on the provision of the machinery or plant for the purposes of the trade
- [<sup>F55</sup>reduced by the aggregate amount of any additional VAT rebates made to him in respect of any of that capital expenditure.
- <sup>F56</sup>(2A) If the event by reason of which a disposal value is to be brought into account is the making of an additional VAT rebate to a person, subsection (2) above shall have effect as if the capital expenditure referred to in that subsection were reduced (or further reduced) by the amount of any disposal value brought into account by that person in respect of the machinery or plant by reason of any earlier event (other than the making of an additional VAT rebate).]
- (3) Where the person mentioned in subsection (2) above has acquired the machinery or plant as a result of a transaction which was, or a series of transactions each of which was, between connected persons within the terms of section 839 of the principal Act, that subsection shall have effect as if it referred to the capital expenditure on the provision of the machinery or plant incurred by whichever party to that transaction, or to any of those transactions, incurred the greatest such expenditure.
- [<sup>F57</sup>(4) Where an additional VAT rebate has been made to any of the persons mentioned in subsection (3) above in respect of the capital expenditure incurred by him as there mentioned, that capital expenditure shall, in his case, be treated as reduced by the amount of the rebate, but no further reduction shall be made under subsection (2) above.]

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**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

### Textual Amendments

- F53** Word at end of s. 26(1)(e) repealed (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31, SIF 63:1), s. 123, Sch. 19 Pt. V Note 11.
- F54** S. 26(1)(ee) inserted (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31, SIF 63:1), s. 59, Sch. 14 Pt. II para. 8(1).
- F55** Words at end of s. 26(2) added (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31, SIF 63:1), s. 59, Sch. 14 Pt. II para. 8(2).
- F56** S. 26(2A) added (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31, SIF 63:1), s. 59, Sch. 14 Pt. II para. 8(2).
- F57** S. 26(4) added (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31, SIF 63:1), s. 59, Sch. 14 Pt. II para. 8(3).

## 27 Professions, employments, vocations etc.

(1) Except as otherwise provided and subject in particular to subsections (2) [<sup>F58</sup>to (3)] below, the provisions of this Part shall, with any necessary adaptations, apply in relation to—

- (a) professions, employments, vocations and offices, and
- (b) the occupation of woodlands where the profits or gains thereof are assessable under Schedule D,

as they apply in relation to trades.

(2) The provisions of this Part in their application in accordance with this section to an office or employment—

- (a) shall apply only to machinery or plant which is necessarily provided for use in the performance of the duties thereof, and
- (b) shall have effect subject to section 198(2) of the principal Act (offices and employments with duties abroad).

[<sup>F59</sup>(2A) In the case of machinery to which this subsection applies, subsection (2)(a) above shall have effect with the omission of the word “necessarily”.

(2B) Subsection (2A) above applies to machinery if—

- (a) it consists of a mechanically propelled road vehicle, and
- (b) capital expenditure incurred on its provision is incurred partly for the purposes of the office or employment and partly for other purposes.

(2C) Section 24 in its application in accordance with this section to an office or employment shall have effect, where a person’s qualifying expenditure consists of expenditure incurred on the provision of machinery to which subsection (2A) above applies, with the modifications set out in subsections (2D) and (2E) below.

(2D) In subsection (2)(b) for the word “whole” there shall be substituted the words “appropriate fraction”.

(2E) The following subsection shall be inserted after subsection (2)—

“(2A) For the purposes of subsection (2)(b) above the appropriate fraction is—

$$\frac{A}{B}$$

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where—

A is the number of chargeable periods in the case of which—

- (a) the person has carried on the trade,
  - (b) the machinery or plant has belonged to him, and
  - (c) he has claimed an allowance falling to be made to him under this section by reference to expenditure incurred on the provision of the machinery or plant; and
- B is the number of chargeable periods in the case of which—

- (a) the person has carried on the trade,
- (b) the machinery or plant has belonged to him, and
- (c) an allowance falls to be made to him under this section by reference to expenditure incurred on the provision of the machinery or plant.””]

- (3) This section shall have effect from 6th April 1993 with the omission of subsection (1) (b).

#### Textual Amendments

**F58** Words substituted by [Finance Act 1990 \(c. 29\), s. 87\(1\)\(4\)](#)

**F59** S. 27(2A)–(2E) inserted by [Finance Act 1990 \(c. 29\), s. 87\(2\)\(4\)](#)

## 28 Investment companies and life assurance companies.

- (1) Subject to subsections (2) to (6) below, this Part and such other provisions of the Corporation Tax Acts as relate to allowances or charges under this Part shall apply with any necessary adaptations in relation to machinery and plant provided for use or used for the purposes of the management of the business—

- (a) of an investment company (as defined in section 130 of the principal Act), or
- (b) of a company carrying on the business of life assurance,

as they apply in relation to machinery or plant provided for use or used for the purposes of a trade; and, except as provided by subsection (2) [<sup>F60</sup>or (2A)] below, in relation to any allowances and balancing charges which fall to be made by virtue of this section, the Corporation Tax Acts shall apply as if they were to be made in taxing a trade.

- (2) [<sup>F61</sup>Subject to subsection (2A) below,] as respects allowances or charges falling to be made by virtue of this section in relation to any business—

- (a) allowances for any accounting period shall, as far as may be, be given effect by deducting the amount of the allowance from any income for the period of the business, and in so far as effect cannot be so given, section 75(4) of the principal Act shall apply; and
- (b) effect shall be given to any charge by treating the amount on which the charge is to be made as income of the business;

and sections 73, 144 and 145 shall not apply.

- [<sup>F62</sup>(2A) Where a company carrying on the business of life assurance is charged to tax under section 441 of the principal Act in respect of the profits of the overseas life assurance business for an accounting period—

- (a) any allowance in respect of expenditure on the provision of machinery or plant for use for the management of the overseas life assurance business which falls

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- to be made for the period by virtue of this section shall be given effect by treating it as an expense of that business for that period, and
- (b) any charge in respect of such expenditure which falls to be so made shall be given effect by treating it as a receipt of that business for that period;
- and sections 73, 144 and 145, and section 75(4) of the principal Act, shall not apply.]
- (3) No allowance and no balancing charge shall be made by virtue of this section for any accounting period in respect of expenditure incurred by any person on machinery or plant, except in pursuance of an election made by him for that accounting period; but an election for any chargeable period shall have effect as an election for that and all subsequent chargeable periods.
- (4) An election under subsection (3) above shall be made by notice to the inspector either for all machinery or plant provided for use or used for the purposes of the management of the relevant business, or for any class of machinery or plant so provided or used; but an election for machinery or plant of any class shall not be made for any accounting period after an assessment in respect of the business for that or a subsequent accounting period has been finally determined without such an election.
- (5) Corresponding allowances or charges in the case of the same machinery or plant shall not be made under this Part both under subsection (2) [<sup>F63</sup>or (2A)] above and in some other way; and, on any assessment to tax, expenditure to which an election under this section applies shall not be taken into account otherwise than under this Part and except as provided by section 75(4) of the principal Act.
- (6) In this section references to the purposes of the management of a business are to be taken as referring to those purposes expenditure on which would, apart from this section, be treated as expenses of management within the meaning of section 75 of the principal Act.

#### Textual Amendments

- F60** Words inserted by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), s. 42, Sch. 7 paras. 9(a), **10**
- F61** Words inserted by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), s. 42, Sch. 7 paras. 9(b), **10**
- F62** S. 28(2A) inserted by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), s. 42, Sch. 7 paras. 9(c), **10**
- F63** Words inserted by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), s. 42, Sch. 7 paras. 9(d), **10**

## 29 Furnished holiday lettings.

- (1) For the purposes of this Part—
- (a) the commercial letting of furnished holiday accommodation in the United Kingdom in respect of which the profits or gains are chargeable under Case VI of Schedule D shall be treated as a trade; and
- (b) all such lettings made by a particular person or partnership or body of persons shall be treated as one trade.
- (2) Subsection (1) above shall be construed as one with section 503 of the principal Act and, accordingly, section 504 of that Act shall also apply for the purposes of this section.
- (3) Where there is a letting of accommodation only part of which is holiday accommodation, such apportionments shall be made for the purposes of this section as appear to the inspector, or on appeal the Commissioners, to be just and reasonable.

## CHAPTER II

### SHIPS

#### 30 First-year allowances.

- (1) Where for any chargeable period a first-year allowance falls to be made to a person carrying on a trade in respect of expenditure incurred by him on the provision of a ship, that person may, by notice given to the inspector not later than two years after the end of the period—
  - (a) require the postponement of the whole allowance <sup>F64</sup>, or
  - (b) require that the amount of the allowance be reduced to an amount specified in the notice, or
  - (c) require the postponement of so much of the allowance as is so specified,and a notice which contains a requirement under paragraph (b) above may also contain a requirement under paragraph (c) above with respect to the reduced amount of the allowance.
- (2) Where a notice has been given under subsection (1) above requiring the postponement of the whole or part of any first-year allowance—
  - (a) the allowance shall, as the case may require, be withheld or withdrawn, or partially withheld or withdrawn, and
  - (b) so much of the expenditure as is equal to the whole allowance shall be disregarded for all the purposes of sections 24, 25 and 26 except for the purposes of sections 24(6) and 26(1) and (2), and
  - (c) subject to section 47(7)(a), the person giving the notice may claim the amount withheld or withdrawn as a first-year allowance for any subsequent chargeable period in which he carries on the trade, or may claim first-year allowances not exceeding that amount in the aggregate for any two or more such periods.
- (3) All such assessments and adjustments of assessments shall be made as may be necessary to give effect to the provisions of this section.
- (4) An allowance which is postponed by virtue of this section shall not by reason only of the postponement fall within the references to allowances or amounts carried forward from an earlier year or period in sections 383(5)(d), 388(7) and 403(3) of the principal Act (loss relief and group relief).
- (5) In any case where a notice under subsection (1) above contains requirements under both paragraphs (b) and (c) of that subsection, any reference in subsections (2) to (4) above to the first-year allowance is a reference to the reduced amount of that allowance as specified in the notice.

#### Textual Amendments

**F64** Words repealed by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), s. 103(1)(2), 132, [Sch. 17 para. 7](#), [Sch. 19 Pt. V](#), Note 6

#### 31 Writing-down allowances.

- (1) This section and sections 32 and 33 apply in any case where—

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- (a) a person (“the shipowner”) carrying on a trade incurs expenditure on the provision of a ship for the purposes of that trade (the “actual trade”);
  - (b) the ship is not provided for leasing or letting on charter otherwise than by way of lease, or is so provided but it appears that the ship will be used for a qualifying purpose in the requisite period and will not at any time in that period be used for any other purpose, and the expenditure does not fall within section 42(1); and
  - (c) the actual trade is not a separate trade which the shipowner is treated as carrying on by virtue of section 61(1).
- (2) Subject to sections 32 and 33, it shall be assumed for the purposes of sections 24, 25 and 26 and subsections (3) to (10) below—
- (a) that the shipowner incurred the expenditure on the provision of the ship wholly and exclusively for the purposes of a trade (“a single ship trade”) carried on by him separately from his actual trade and from any other trade which he may in fact carry on or is assumed for any purpose to carry on; and
  - (b) that, without prejudice to section 24(6)(c)(i) to (iii), the single ship trade is permanently discontinued when the ship begins to be used wholly or partly for purposes other than those of the actual trade or, if it is earlier, at a time within the requisite period when the ship begins to be used otherwise than for a qualifying purpose;
- and subject to subsections (3) to (10) below, any allowance or charge which, on those assumptions, would fall to be made for any chargeable period in the case of the single ship trade shall be made for that period in the case of the actual trade.
- (3) The shipowner may, by notice given to the inspector not later than two years after the end of a chargeable period for which he has qualifying expenditure in respect of his single ship trade, require the postponement of the whole of the writing-down allowance to be made to him for that period or of so much of it as is specified in the notice.
- (4) Where notice has been given under subsection (3) above in respect of a chargeable period—
- (a) the writing-down allowance which would otherwise have been made to the shipowner for that period in respect of his single ship trade shall not be made or, as the case may be, shall be made only to the extent that the notice does not require it to be postponed; and
  - (b) the amount of any writing-down allowance falling to be made to the shipowner for any subsequent chargeable period of his single ship trade shall be determined as if the writing-down allowance referred to in paragraph (a) above had been made (or, as the case may be, had been made in full) for the chargeable period concerned; and
  - (c) on a claim made by the shipowner, the whole or part of the amount of that allowance or, as the case may be, of so much of it as was not made to him shall be treated as a writing-down allowance to be made to him for any subsequent chargeable period in which his actual trade is carried on (whether or not his single ship trade is treated as carried on in that period),
- and, where a claim under paragraph (c) above relates to only part of the amount postponed, a further claim or claims may be made under that paragraph in relation to the balance or any part thereof until the aggregate of the amounts claimed equals the amount postponed.

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- (5) A claim under subsection (4)(c) above shall not affect any right of the shipowner to (or the determination of the amount of) any writing-down allowance to which, apart from the claim, he is entitled for the chargeable period to which the claim relates.
- [<sup>F65</sup>(6) For any chargeable period of the single ship trade for which the amount of a writing-down allowance is reduced by virtue of a requirement in a claim made by virtue of section 24(3), any reference in subsections (3) to (5) above to the writing-down allowance is a reference to the reduced amount of the allowance, as specified in the claim.]
- (7) For any chargeable period of the single ship trade for which the disposal value of the ship falls to be brought into account in accordance with sections 24, 25 and 26, no balancing allowance or balancing charge shall be made to or on the shipowner in respect of that trade but, in such a case—
- if, apart from this subsection, a balancing allowance would have fallen to be made to the shipowner, an amount equal to that allowance shall for the purposes of sections 24, 25 and 26 be added to the shipowner’s qualifying expenditure for that period in respect of his actual trade; and
  - if, apart from this subsection, a balancing charge would have fallen to be made on the shipowner, an amount equal to that on which the charge would have been made shall be brought into account for that chargeable period as an item of disposal value referable to machinery or plant which, in respect of that chargeable period, falls within section 24(6).
- (8) In relation to old expenditure, in any case where subsection (7) above applies by reason of the ship beginning to be used otherwise than for a qualifying purpose—
- any reference in that subsection to sections 24, 25 and 26 shall be construed as a reference to those sections as they have effect in accordance with section 41; and
  - any reference in that subsection to the shipowner’s actual trade shall be construed as a reference to the separate trade referred to in section 41(2).
- (9) All such assessments and adjustments of assessments shall be made as may be necessary to give effect to the provisions of this section and sections 32 and 33.
- (10) An allowance which is postponed by virtue of this section shall not by reason of the postponement fall within the references to allowances or amounts carried forward from an earlier year or period in sections 383(5)(d), 388(7) and 403(3) of the principal Act (loss relief and group relief).
- (11) In this section “requisite period”, “qualifying purpose” and “old expenditure” have the same meanings as they have for the purposes of Chapter V of this Part.
- (12) In relation to expenditure incurred before 27th July 1989, subsection (1) shall have effect with the substitution for paragraph (b) of the following paragraph—
- “the expenditure is not such that section 22(4)(c) precludes the making of a first-year allowance in respect of it and is not expenditure falling within section 42(1);”.

#### Textual Amendments

**F65** S. 31(6) substituted by [Finance Act 1990 \(c. 29\)](#), s. 103(1)(2), [Sch. 17 para. 8](#)



**Status:** Point in time view as at 01/07/1992. This version of this Act contains provisions that are not valid for this point in time.

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#### **Modifications etc. (not altering text)**

- C10** S. 31(3) modified (for the year of assessment 1988-1989) by S.I. 1991/851, regs. 1, 9, **Sch.2**
- C11** S. 31(3) modified (for the year of assessment 1989-1990) by S.I. 1992/511, regs. 1, 9, **Sch.2**.
- C12** S. 31(3) applied (with modifications) (for the year of assessment 1990–91) by S.I. 1993/415, reg. 9, **Sch.2**

### **32 Ships not used in the actual trade.**

- (1) If the ship ceases to belong to the shipowner without having in fact been brought into use for the purposes of his actual trade, then—
- (a) on that event, the single ship trade shall be treated as permanently discontinued but section 25(5) and (6) shall not apply,
  - (b) any writing-down allowances which, by virtue of section 31, have previously been made to the shipowner or have been postponed by him shall be withdrawn; and
  - (c) without prejudice to the operation of section 31(7), an amount equal to any writing-down allowances withdrawn by virtue of paragraph (b) above shall be added to the shipowner's qualifying expenditure in respect of his actual trade for the chargeable period related to that event.
- (2) In this section “the shipowner”, “actual trade” and “single ship trade” have the same meanings as in section 31.

### **33 Exclusion of section 31.**

- (1) The shipowner may by notice given to the inspector not later than two years after the end of a chargeable period of a single ship trade, not being the chargeable period relating to the permanent discontinuance of that trade, require that, with effect from the beginning of that chargeable period, section 31 shall not, or as the case may be, shall no longer apply.
- (2) Where a notice under subsection (1) above is given before any writing-down allowance has been made to the shipowner in respect of the expenditure referred to in section 31(1), the provisions of that section shall be deemed never to have applied with respect to that expenditure.
- (3) If a notice under subsection (1) above is given after any writing-down allowance has been so made, then, for the purposes of sections 24, 25, 26 and 31—
- (a) the single ship trade shall be treated as permanently discontinued in the chargeable period to which the notice relates or, as the case may be, in its basis period, but no balancing allowance or charge shall be made to or on the shipowner by reason thereof; and
  - (b) the amount which, apart from this section, would be the shipowner's qualifying expenditure for that chargeable period in respect of the single ship trade shall be added to his qualifying expenditure for that period in respect of his actual trade.
- (4) The shipowner may by notice given to the inspector not later than two years after the end of a chargeable period of a single ship trade, require that an amount of expenditure specified in the notice, being less than the amount which, apart from this subsection, would be his qualifying expenditure for that period in respect of the single ship trade, shall be attributed to his actual trade.



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- (5) If a notice is given under subsection (4) above, then, for the purposes of sections 24, 25, 26 and 31—
- (a) the shipowner's qualifying expenditure for that period in respect of the single ship trade shall be reduced by deducting therefrom the amount specified in the notice; and
  - (b) the amount specified in the notice shall be added to his qualifying expenditure for that period in respect of his actual trade.
- (6) In this section “the shipowner”, “actual trade” and “single ship trade” have the same meanings as in section 31.

**Modifications etc. (not altering text)**

**C13** S. 33(1) modified (for the year of assessment 1988-1989) by [S.I. 1991/851](#), [regs. 1, 9](#), [Sch.2](#).

**C14** S. 33(1) modified (for the year of assessment 1989-1990) by [S.I. 1992/511](#), [regs. 1, 9](#), [Sch.2](#).

**C15** S. 33(1) applied (with modifications) (for the year of assessment 1990–91) by [S.I. 1993/415](#), [reg. 9](#), [Sch.2](#).

## CHAPTER III

### EXPENSIVE MOTOR CARS

#### 34 Writing-down allowances etc.

- (1) The following provisions of this section shall have effect where capital expenditure exceeding £8,000 is incurred, or is treated under subsection (4)(b) below or section 81 as incurred, on the provision of a motor car for the purposes of a trade.
- (2) It shall be assumed for the purposes of sections 24, 25 and 26—
- (a) that the person carrying on the trade (“the actual trade”) incurred the expenditure on the provision of the motor car wholly and exclusively for the purposes of a trade carried on by him separately from the actual trade and any other trade he may carry on, and
  - (b) that without prejudice to section 24(6)(c)(i) to (iii), the separate trade is permanently discontinued when the motor car begins to be used wholly or partly for purposes other than those of the actual trade;
- and, subject to subsections (3) to (5) below, the allowance or charge under section 24 which, on these assumptions, would fall to be made for any chargeable period in the case of the separate trade shall be made for that period in the case of the actual trade.
- (3) If, on the assumptions in subsection (2) above, a writing-down allowance would fall to be made for any chargeable period in the case of the separate trade, the amount thereof shall be treated as not exceeding—
- (a) except in a case falling within paragraph (b) below, £2,000 or, if the period is part only of a year, a proportionate part of £2,000,
  - (b) if, by virtue of section 153, the person carrying on the trade is regarded as having incurred a part only of the expenditure actually incurred on the provision of the motor car, a proportionate part of £2,000 or, if the period is part only of a year, that proportionate part proportionately reduced.

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- (4) Where the disposal value of the motor car falls to be taken into account by reason of an event falling within section 24(6)(c)(i) and that event is such a sale or the performance of such a contract as is referred to in section 75—
- (a) the disposal value to be brought into account under sections 24, 25 and 26 in the case of the separate trade shall be an amount equal to the price which the motor car would have fetched on a sale at the same time in the open market or, if less, the capital expenditure incurred, or treated as incurred, on the provision of the motor car by the person disposing of it, and
  - (b) the person acquiring the motor car shall be treated for the purposes of this Part as having incurred on its provision capital expenditure equal to that disposal value.
- (5) If either of the following events occurs in relation to the motor car—
- (a) it is used partly for the purposes of the actual trade and partly for other purposes, or
  - (b) while it is in use for the purposes of the actual trade, there is paid to the person carrying on the trade any sum which is in respect of, or takes account of, part of the wear and tear to it occasioned by that use,

neither section 79 nor section 80 shall apply, but for the chargeable period related to the event and any subsequent period, instead of there being made in the case of the actual trade the allowance or charge which under subsections (1) to (4) above would fall to be made for that period in the case of the separate trade, there shall be made so much of that allowance or charge as, in accordance with section 79 or 80, would be just and reasonable if it were one falling to be made for that period in the case of the notional trade referred to in that section.

### **35 Contributions to expenditure, and hiring of cars.**

- (1) Where capital expenditure exceeding £8,000 is incurred on the provision of a motor car and, by virtue of section 154, writing-down allowances may be made to a person as if a contribution made by him to the expenditure had been expenditure on the provision of a motor car for the purposes of a trade, the amount of the allowance to be made for any chargeable period—
- (a) shall be determined as if the contribution had been expenditure on the provision of the motor car for the purposes of a trade carried on by that person separately from any other trade carried on by him, and
  - (b) shall not exceed an amount bearing to £2,000 the same proportion as that borne by the contribution to the capital expenditure actually incurred on the provision of the motor car or, if the chargeable period is part only of a year, that amount proportionately reduced.
- (2) Where, apart from this subsection, the amount of any expenditure on the hiring of a motor car the retail price of which when new exceeds £8,000 would be allowed to be deducted in computing for the purposes of tax the profits or gains of any trade, that amount shall be reduced in the proportion which £8,000, together with one half of the excess, bears to that retail price <sup>[F66]</sup>; but this subsection shall have effect subject to subsection (3) below.]
- <sup>[F67]</sup>(3) Subsection (2) above shall not apply where the hiring is under a hire-purchase agreement under which there is an option to purchase exercisable on the payment of a sum equal to not more than 1 per cent. of the retail price of the motor car when new.

**Status:** Point in time view as at 01/07/1992. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

- (4) In subsection (3) above “hire-purchase agreement” has the meaning given by section 784(6) of the principal Act.]

#### Textual Amendments

- F66** Words in s. 35(2) inserted (for any chargeable period or its basis period ending on or after 25.07.1991) by Finance Act 1991 (c. 31, SIF 63:1), s. 61(2)(4).
- F67** S. 35(3)(4) inserted (for any chargeable period or its basis period ending on or after 25.07.1991) by Finance Act 1991 (c. 31, SIF 63:1), s. 61(3)(4).

### 36 Definition of “motor car”, etc.

- (1) In this Part “motor car” means any mechanically propelled road vehicle other than—
- (a) a vehicle of a construction primarily suited for the conveyance of goods or burden of any description, or
  - (b) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used, or
  - (c) subject to subsections (2) and (4) below, a vehicle provided wholly or mainly for hire to, or for the carriage of, members of the public in the ordinary course of a trade.
- (2) Subsection (1)(c) applies to a vehicle only if—
- (a) the following conditions are satisfied—
    - (i) the number of consecutive days for which it is on hire to, or used for the carriage of, the same person will normally be less than 30; and
    - (ii) the total number of days for which it is on hire to, or used for the carriage of, the same person in any period of 12 months will normally be less than 90; or
  - (b) it is provided for hire to a person who will himself use it wholly or mainly for hire to, or the carriage of, members of the public in the ordinary course of a trade and in a manner complying with the conditions specified in paragraph (a) above.
- (3) For the purposes of subsection (2) above persons who are connected with each other within the meaning of section 839 of the principal Act shall be treated as the same person.
- (4) Subsection (2) above does not affect vehicles provided wholly or mainly for the use of persons in receipt of—
- (a) [<sup>F68</sup>a disability living allowance under the [<sup>F69</sup>Social Security Contributions and Benefits Act 1992][<sup>F70</sup>or the [<sup>F71</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992]] by virtue of entitlement to the mobility component]. . . ;
  - (b) a mobility supplement under a scheme made under the <sup>M19</sup>Personal Injuries (Emergency Provisions) Act 1939;
  - (c) a mobility supplement under an Order in Council made under section 12 of the <sup>M20</sup>Social Security (Miscellaneous Provisions) Act 1977; or
  - (d) any payment appearing to the Treasury to be of a similar kind and specified by them by order.

*Status:* Point in time view as at 01/07/1992. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

- (5) The Treasury may by order increase or further increase the sums of money specified in sections 34 and 35.

#### Textual Amendments

- F68** Words in s. 36(4)(a) substituted (6.4.1992) by Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21), s. 4, **Sch. 2**, para. 21; S.I. 1991/2617, **art. 2(f)**
- F69** Words in s. 36(4)(a) substituted (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 4, 7(2), **Sch. 2 para. 109(b)**.
- F70** Words in s. 36(4)(a) inserted (6.4.1992) by S.I. 1991/2874, **art. 6(3)(a)**; S.R. 1992/94, **art. 2**.
- F71** Words in s. 36(4)(a) substituted (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 4, 7(2), **Sch. 2 para. 38(b)**.

#### Marginal Citations

- M19** 1939 c. 82.  
**M20** 1977 c. 5.

## CHAPTER IV

### SHORT-LIFE ASSETS

#### 37 Election for certain machinery or plant to be treated as short-life assets.

(1) This section applies where—

- (a) a person carrying on a trade (“the trader”) incurs capital expenditure on the provision of machinery or plant wholly and exclusively for the purposes of the trade; and
- (b) the machinery or plant is not of a description specified in section 38; and
- (c) the trader makes an election under this section requiring the machinery or plant to be treated as a short-life asset;

and any machinery or plant to which an election under this section applies is in the following provisions of this section referred to as a short-life asset.

(2) An election under this section—

- (a) shall be made in writing to the inspector;
- (b) shall specify the short-life asset, the capital expenditure concerned and the date on which it was incurred;
- (c) may not be made more than two years after the end of the chargeable period or its basis period in which the capital expenditure was incurred; and
- (d) shall be irrevocable;

and if different parts of the capital expenditure are incurred at different times, only that part of the expenditure which is first incurred shall be taken into account for the purposes of paragraph (c) above.

(3) Where an election is made under this section, it shall be assumed for the purposes of sections 24, 25 and 26—

- (a) that the trader incurred the expenditure on the provision of the short-life asset wholly and exclusively for the purposes of a trade (“the notional trade”) carried on by him separately from the trade referred to in subsection (1) above

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**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

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- (“the actual trade”) and from any other trade which he in fact carries on or is assumed for any other purpose to carry on; and
- (b) that, without prejudice to section 24(6)(c)(i) to (iii), the notional trade is permanently discontinued when the short-life asset begins to be used wholly or partly for purposes other than those of the actual trade.
- (4) Any allowance or charge which, on the assumptions in subsection (3) above, would fall to be made for any chargeable period in the case of the notional trade shall be made for that period in the case of the actual trade; and all such assessments and adjustments of assessments shall be made as may be necessary to give effect to an election under this section.

[<sup>F72</sup>(4A) In any case where—

- (a) a balancing allowance that would, on the assumptions in subsection (3) above, fall to be made to the trader for a chargeable period in the case of the notional trade has, by virtue of subsection (4) above, been made to him for a chargeable period in the case of the actual trade,
- (b) after the chargeable period of the notional trade related to its permanent discontinuance for the purposes of sections 24, 25 and 26, he incurs an additional VAT liability in respect of the capital expenditure incurred on the provision of the machinery or plant, and
- (c) that liability was not brought into account in determining the amount of the balancing allowance,

a further balancing allowance, of an amount equal to the liability, shall be made to him for the chargeable period of the actual trade related to the incurring of the liability (and the liability shall not be brought into account for any chargeable period in the case of the notional trade).]

- (5) If [<sup>F73</sup>disregarding [<sup>F74</sup>section 24(6A) and (7)]] the disposal value of a short-life asset does not fall to be brought into account in accordance with sections 24, 25 and 26 for any of the chargeable periods ending on or before the fourth anniversary of the end of the chargeable period related to the incurring of the capital expenditure concerned or, as the case may be, the first part of that expenditure, then—
- (a) in the first chargeable period ending after that fourth anniversary or, as the case may be, in its basis period, the notional trade shall be treated as permanently discontinued but no balancing allowance or charge shall be made to or on the trader by reason thereof; and
- (b) the amount which, apart from this subsection, would be the trader’s qualifying expenditure for the chargeable period referred to in paragraph (a) above in respect of the notional trade shall be added to his qualifying expenditure for that period in respect of his actual trade.
- (6) If, at a time before the notional trade would otherwise be permanently discontinued for the purposes of sections 24, 25 and 26, a short-life asset provided for leasing begins to be used otherwise than for a qualifying purpose, within the meaning of section 39 and the occasion of its being so used falls within the requisite period, within the meaning of section 40, then at that time—
- (a) the notional trade shall be treated as permanently discontinued but no balancing allowance or charge shall be made to or on the trader by reason thereof; and
- (b) the amount which, apart from this subsection, would be the trader’s qualifying expenditure in respect of the notional trade for the chargeable period in which, or in the basis period for which, the asset began to be so used shall for

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the purposes of sections 24, 25 and 26 be added to the trader's qualifying expenditure for that chargeable period in respect of his actual trade.

- (7) Subsection (6)(b) above shall have effect—
- (a) in relation to any short-life asset which is a motor car, with the substitution for the words from “be added” to the end of the words “as they have effect in accordance with section 41 be, or be added to, the trader's qualifying expenditure for that chargeable period.”; and
  - (a) in relation to any short-life asset the expenditure on the provision of which is old expenditure (within the meaning of section 50)—
    - (i) with the omission of the words “in respect of the notional trade”, and
    - (ii) with the addition after the words “sections 24, 25 and 26” of the words “as they have effect in accordance with section 41”.
- (8) Subject to subsection (9) below, if, at a time before the notional trade is permanently discontinued for the purposes of sections 24, 25 and 26, the trader disposes of a short-life asset to a person with whom he is connected within the terms of section 839 of the principal Act—
- (a) the disposal shall be treated for the purposes of sections 24, 25 and 26 (in its application both to the trader and to the connected person) as a sale of the short-life asset at a price equal to the amount of the trader's qualifying expenditure in respect of the notional trade for the chargeable period related to the disposal;
  - (b) nothing in section 75 shall apply in relation to the disposal;
  - (c) immediately after his acquisition of the short-life asset, the connected person shall be taken to have made an election under this section (so that, in his hands, the machinery or plant concerned is also a short-life asset for the purposes of this section); and
  - (d) in relation to the connected person, subsection (5) above shall have effect as if any reference to the fourth anniversary of the end of the chargeable period related to the incurring of the capital expenditure concerned were a reference to the date which was (or which, by virtue of the previous operation of this paragraph, had effect as) that fourth anniversary in relation to the trader.
- (9) Paragraphs (a) and (b) of subsection (8) above do not apply in relation to a disposal unless, by notice given to the inspector not more than two years after the end of the chargeable period or its basis period in which the disposal occurred, the trader and the connected person so elect.
- (10) In the application of subsection (1) of section 26 where a short-life asset is disposed of at a price lower than that which it would have fetched if sold in the open market, paragraph (b)(i) of that subsection shall not apply unless an election is made under subsection (9) above.

#### Textual Amendments

**F72** S. 37(4A) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by Finance Act 1991 (c. 31), s. 59, **Sch. 14 Pt. II para. 9(1)**.

**F73** Words in s. 37(5) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by Finance Act 1991 (c. 31), s. 59, **Sch. 14 Pt. II para. 9(2)**.

**F74** Words in s. 37(5) substituted (*retrosp. to 10.3.1992*) by Finance (No. 2) Act 1992 (c. 48), s. 68(7)(10)

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**Modifications etc. (not altering text)**

- C16** S. 37(2) modified (for the year of assessment 1988-1989) by S.I. 1991/851, regs. 1, 9, Sch. 2  
**C17** S. 37(2) modified (for the year of assessment 1989-1990) by S.I. 1992/511, regs. 1, 9, Sch.2.  
**C18** S. 37(2) applied (with modifications) (for the year of assessment 1990–91) by S.I. 1993/415, reg. 9, Sch. 2

**38 Assets which cannot be treated as short-life assets.**

The machinery and plant which by virtue of section 37(1)(b) cannot be treated as short-life assets are the following, that is to say—

- (a) ships;
- (b) motor cars;
- (c) machinery or plant to which section 61 applies;
- (d) machinery or plant falling within section 79(2);
- (e) machinery or plant where the capital expenditure on its provision is expenditure to which section 80 applies;
- (f) machinery or plant falling within section 81(1)(a) or (b);
- (g) machinery or plant which is used in such a way that section 22(4)(c) precludes the making of a first-year allowance in respect of expenditure incurred on the provision of it for leasing;
- (h) machinery or plant provided for leasing, except—
  - (i) machinery or plant which it appears will be used in the requisite period (within the meaning of section 40) for a qualifying purpose (within the meaning of section 39) and will not at any time in that period be used for any other purpose;
  - (ii) vehicles of the kind mentioned in section 36(4);
- (j) machinery or plant which is leased to two or more persons jointly in such circumstances that section 43 applies;
- (k) machinery or plant which is leased to two or more persons jointly in such circumstances that section 45 precludes the making of a first-year allowance in respect of the whole or part of the capital expenditure incurred on its provision;
- (l) machinery or plant in respect of expenditure on which section 42 provides only a 10 per cent. writing-down allowance;
- (m) machinery or plant in respect of which a first-year allowance continues to be available by virtue of section 22.

Paragraphs (g) and (k) above shall not have effect in relation to expenditure incurred after 26th July 1989 and paragraphs (h) and (j) shall not have effect in relation to expenditure incurred before 27th July 1989.

**CHAPTER V**

**LEASED ASSETS AND INEXPENSIVE CARS**

**39 Meaning of “qualifying purpose”.**

- (1) Machinery or plant on the provision of which a person (“the buyer”) has incurred expenditure is used for a qualifying purpose at any time if at that time any of the conditions specified in subsections (2) to (5) below are satisfied.

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- (2) The machinery or plant is leased to a lessee who uses it for the purposes of a trade, otherwise than for leasing, and either—
- (a) the buyer's expenditure was old expenditure and, disregarding the words "to which this section applies" in subsection (1) of section 22 and subsections (2) and (3) of that section, a first-year allowance could have been made to the lessee if he had bought the machinery or plant at that time and had incurred capital expenditure in doing so, or
  - (b) the buyer's expenditure was new expenditure and, had the lessee bought the machinery or plant at that time and had incurred new expenditure in doing so, that expenditure would have fallen to be included, in whole or in part, in the lessee's qualifying expenditure for any chargeable period for the purposes of section 24(2) to (5).

For the purposes of paragraph (a) above, section 148(5) and (6) shall be disregarded.

- (3) The buyer uses the machinery or plant for short-term leasing.
- (4) The machinery or plant is leased to a lessee who uses it for short-term leasing and either is resident in the United Kingdom or so uses it in the course of a trade carried on by him there.
- (5) The buyer uses the machinery or plant for the purposes of a trade otherwise than for leasing.
- (6) Without prejudice to subsections (1) to (5) above but subject to subsection (8) below, a ship is also used for a qualifying purpose at any time when it is let on charter in the course of a trade which consists of or includes operating ships if—
- (a) the person carrying on the trade is resident in the United Kingdom or carries on the trade there, and
  - (b) that person is responsible as principal (or appoints another person to be responsible in his stead) for navigating and managing the ship throughout the period of the charter and for defraying all expenses in connection with the ship throughout that period or substantially all such expenses other than those directly incidental to a particular voyage or to the employment of the ship during that period.
- (7) Subsection (6) above shall with the necessary modifications apply also in relation to aircraft.
- (8) Subsection (6) above does not apply if the main object, or one of the main objects, of the letting of the ship or aircraft on charter, or of a series of transactions of which the letting on charter was one, or of any of the transactions in such a series was to obtain—
- (a) if the expenditure in question is old expenditure, a first-year allowance, or
  - (b) if the expenditure in question is new expenditure, a writing-down allowance of an amount determined without regard to section 42(2),
- in respect of expenditure incurred on the provision of the ship or aircraft whether that expenditure was incurred by the person referred to in subsection (6)(a) above or some other person.
- (9) Without prejudice to subsections (1) to (5) above, a transport container is also used for a qualifying purpose at any time when it is leased in the course of a trade which is carried on by a person who is resident in the United Kingdom or who carries on the trade there if—



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- (a) the trade consists of or includes the operation of ships or aircraft and the container is at other times used by that person in connection with the operation of ships or aircraft, or
  - (b) the container is leased under a succession of leases to different persons who, or most of whom, are not connected with each other.
- (10) For any part of the requisite period for which the machinery or plant belongs to a person falling within section 40(5)(a) or (b), that person shall be treated for the purposes of subsections (3) and (5) above as the buyer.

#### **40 Meaning of “short-term leasing” and “the requisite period”.**

- (1) In this Chapter “short-term leasing”, in relation to any machinery or plant, means leasing the machinery or plant in such a manner—
- (a) that—
    - (i) the number of consecutive days for which it is leased to the same person will normally be less than 30, and
    - (ii) the total number of days for which it is leased to the same person in any period of 12 months will normally be less than 90, or
  - (b) that—
    - (i) the number of consecutive days for which it is leased to the same person will not normally exceed 365, and
    - (ii) subject to subsection (2) below, the aggregate of the periods for which it is leased in the requisite period to lessees in circumstances not falling within section 39(2) will not exceed two years.
- (2) In a case where the requisite period exceeds four years the reference in subsection (1)(b)(ii) above to that period shall be construed as a reference to any period of four consecutive years which falls within the requisite period.
- (3) For the purposes of subsection (1) above, persons who are connected with each other shall be treated as the same person and where any machinery or plant is leased as one of a number of items which form part of a pool of items of the same or a similar description and are not separately identifiable, all the items in the pool may be treated as used for short-term leasing within the meaning of that subsection if substantially the whole of the items in the pool are so used.
- (4) For the purposes of this Chapter the requisite period is—
- (a) in the case of expenditure not falling within paragraph (b) below, the period of four years beginning with the date on which the machinery or plant is first brought into use by the person who incurred the expenditure, or
  - (b) in the case of—
    - (i) new expenditure, or
    - (ii) old expenditure as respects which section 70(3) of the <sup>M21</sup>Finance Act 1982 had effect,the period of ten years beginning with the date on which the machinery or plant is first brought into use by the person who incurred the expenditure;
- except that where the machinery or plant ceases to belong to that person at any time before the end of those four years or ten years (as the case may be), the requisite period shall end at that time.

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If the circumstances are such that machinery or plant is used for a qualifying purpose, this subsection shall have effect with the substitution for each reference to ten years of a reference to four years.

- (5) For the purposes of subsection (4) above, machinery or plant shall be treated as continuing to belong to the person who incurred the expenditure so long as it belongs to—
- (a) a person who is connected with him, or
  - (b) a person who acquired it from him as a result of one or more disposals on the occasion of which, or each of which, the trade carried on by the person making the disposal was treated as continuing by virtue of section 113(2) or 114(1) of the principal Act.

**Marginal Citations**

M21 1982 c. 39.

**41 Writing-down allowances etc. for leased assets and inexpensive cars.**

- (1) Where—
- (a) section 42 applies to expenditure on the provision of machinery or plant for leasing in the course of a trade, or
  - (b) section 22(4)(c) precludes, or would but for section 75 preclude, the making of a first-year allowance in respect of expenditure incurred by a person on the provision of machinery or plant for leasing in the course of a trade, or
  - (c) paragraph (a) above does not apply and expenditure is incurred on the provision for the purposes of a trade of a motor car to which section 34 does not apply,

then, subject to the following provisions of this Chapter, subsections (2) to (6) below shall have effect with respect to the allowances and charges to be made in the case of the trade ("the actual trade") under section 24.

- (2) It shall be assumed for the purposes of sections 24, 25 and 26—
- (a) that the person carrying on the trade incurred the expenditure on the provision of the machinery or plant wholly and exclusively for the purposes of a trade carried on by him separately from the actual trade and any other trade carried on by him; and
  - (b) that without prejudice to section 24(6)(c)(i) to (iii), the separate trade is permanently discontinued when the machinery or plant begins to be used wholly or partly for purposes other than those of the actual trade;

and the allowance or charge under section 24 which, on those assumptions and having regard to subsections (3) and (4) below, would fall to be made for any chargeable period in the case of the separate trade shall be made for that period in the case of the actual trade.

- (3) If an allowance under section 24 falling by virtue of this section to be made for any chargeable period in the case of the actual trade is not claimed<sup>F75</sup>, or is reduced in amount in accordance with a requirement under subsection (3)<sup>F75</sup> of that section, then in determining the allowance or charge under that section which would fall to be made for any subsequent chargeable period in the case of the separate trade, any

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allowance falling to be made in the case of that trade for the first-mentioned chargeable period shall be treated as not claimed<sup>F75</sup> or, as the case may require, as proportionately reduced.

- (4) Where in the case of any person sections 24, 25 and 26 apply in accordance with this section to different items of machinery or plant—
- (a) those sections shall apply separately in relation to expenditure falling within paragraph (a) of subsection (1) above and to expenditure falling within paragraph (b) or (c) of that subsection; and
  - (b) if there is more than one item of machinery or plant falling within subsection (1)(a) above or within subsection (1)(b) or (c) or one item of machinery or plant falling within subsection (1)(b) and one falling within subsection (1)(c), those sections shall apply as if the separate trade for which each such item is treated as used were the same trade, and accordingly that trade shall not by virtue of subsection (2)(b) above be treated as permanently discontinued until all the items falling within subsection (1)(a) or subsection (1)(b) and (c) begin to be used wholly or partly for purposes other than those of the actual trade.
- (5) Where sections 24, 25 and 26 have effect in accordance with this section in respect of expenditure incurred by a person providing machinery or plant for the purposes of a trade, then, if the machinery or plant is disposed of by him to a person who is connected with him and the disposal is not on an occasion on which the trade is treated as continuing by virtue of section 113(2), 114(1) or 343(2) of the principal Act or section 77(1) of this Act—
- (a) the disposal value to be brought into account under sections 24, 25 and 26 in the case of the separate trade shall be of an amount equal to the price which the machinery or plant would have fetched on a sale at the same time in the open market or, if less, the capital expenditure incurred or treated as incurred on the provision of the machinery or plant by the person disposing of it; and
  - (b) the person acquiring it shall be treated for the purposes of this Part as having incurred on its provision expenditure equal to that disposal value.
- (6) This section does not apply to machinery or plant in relation to which sections 24, 25 and 26 apply in accordance with section 34, 79 or 80.

#### Textual Amendments

**F75** Words repealed by [Finance Act 1990 \(c. 29\)](#), ss. 103(1)(2), 132, [Sch. 17 para. 9](#), [Sch. 19 Pt. V](#), Note 6

## 42 Assets leased outside the United Kingdom.

- (1) This section has effect with respect to expenditure on the provision of machinery or plant for leasing where the machinery or plant is at any time in the requisite period used for the purpose of being leased to a person who—
- (a) is not resident in the United Kingdom, and
  - (b) does not use the machinery or plant for the purposes of a trade carried on there or for earning profits or gains chargeable to tax by virtue of section 830(4) of the principal Act,
- and where the leasing is neither short-term leasing nor the leasing of a ship, aircraft or transport container which is used for a qualifying purpose by virtue of section 39(6) to (9).

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- (2) In their application to expenditure falling within subsection (1) above, sections 24, 25 and 26 as they have effect—
- (a) in accordance with section 41, or
  - (b) in accordance with section 80, or
  - (c) in accordance with section 34, or
  - (d) with respect to any motor car to which section 35(1) applies, or
  - (e) with respect to machinery or plant to which section 61 applies,
- shall have effect, subject to subsection (3) below, as if the reference in section 24(2) to 25 per cent. were a reference to 10 per cent.
- (3) No balancing allowances or writing-down allowances shall be available in respect of expenditure falling within subsection (1) above if the circumstances are such that the machinery or plant in question is used otherwise than for a qualifying purpose and—
- (a) there is a period of more than one year between the dates on which any two consecutive payments become due under the lease; or
  - (b) any payments other than periodical payments are due under the lease or under any agreement which might reasonably be construed as being collateral to the lease; or
  - (c) disregarding variations made under the terms of the lease which are attributable to—
    - (i) changes in the rate of corporation tax or income tax, or
    - (ii) changes in the rate of capital allowances, or
    - (iii) changes in any rate of interest where the changes are linked to changes in the rate of interest applicable to inter-bank loans, or
    - (iv) changes in the premiums charged for insurance of any description by a person who is not connected with the lessor or the lessee,
 any of the payments due under the lease or under any such agreement as is referred to in paragraph (b) above, expressed as monthly amounts over the period for which that payment is due, is not the same as any other such payment expressed in the same way; or
  - (d) either the lease is expressed to be for a period which exceeds 13 years or there is, in the lease or in a separate agreement, provision for extending or renewing the lease or for the grant of a new lease so that, by virtue of that provision, the machinery or plant could be leased for a period which exceeds 13 years; or
  - (e) at any time the lessor or a person connected with him will, or may in certain circumstances, become entitled to receive from the lessee or any other person a payment, other than a payment of insurance moneys, which is of an amount determined before the expiry of the lease and which is referable to a value of the machinery or plant at or after that expiry (whether or not the payment relates to a disposal of the machinery or plant).
- (4) Where a balancing allowance or a writing-down allowance has been made in respect of expenditure incurred in providing machinery or plant and, at any time in the requisite period, an event occurs such that, by virtue of subsection (3) above, there is no right to that allowance, an amount equal to any such allowance which has previously been given (less any excess reliefs previously recovered by the operation of section 46) shall, in relation to the person to whom the machinery or plant belongs immediately before the occurrence of that event, be treated as if it were a balancing charge to be made on him for the chargeable period in which, or in the basis period for which, the machinery or plant is used at the time that event occurs.

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- (5) For the purposes of subsection (4) above, the allowances that have been made in respect of expenditure on any item of machinery or plant shall be determined as if that item were the only item of machinery or plant in respect of which sections 24, 25 and 26 had effect.
- (6) Subsection (7) below applies where—
- (a) by virtue of subsection (4) above any amount falls to be treated as if it were a balancing charge, and
  - (b) the person on whom the balancing charge is, by virtue of subsection (4), to be made acquired the machinery or plant in question as a result of a transaction which was, or a series of transactions each of which was, between connected persons, and
  - (c) a first-year allowance, a balancing allowance or a writing-down allowance in respect of expenditure on the provision of that machinery or plant has been made to any of those persons;
- except that it does not apply where section 113(2), 114(1) or 343(2) of the principal Act or section 77(1)(a) or (b) of this Act applied on the occasion of the transaction or transactions referred to in paragraph (b) above.
- (7) Where this subsection applies—
- (a) subsection (4) above shall have effect as if it referred to the allowances specified in subsection (6)(c) above; and
  - (b) for the purposes of subsection (4) any consideration paid or received on a disposal of the machinery or plant between connected persons shall be disregarded; and
  - (c) if a balancing allowance or balancing charge is made in respect of the machinery or plant, there shall be made such adjustments of the relief falling to be taken into account by virtue of paragraph (a) above as are just and reasonable in the circumstances.
- (8) For the purposes of the application of this section to old expenditure, this section shall have effect subject to the following modifications—
- (a) in subsection (1) for the words from “neither” to the end there shall be substituted the words “not short-term leasing”;
  - (b) subsection (4) above shall have effect as if—
    - (i) it included a reference to a first-year allowance made in respect of old expenditure, and, for this purpose, subsection (3) above shall be deemed to include a reference to first-year allowances; and
    - (ii) for the reference to section 46 there were substituted a reference to section 47; and
  - (c) subsection (5) shall be omitted.

#### **43 Joint lessees: new expenditure.**

- (1) This section shall have effect in any case where machinery or plant is leased to two or more persons jointly and—
- (a) at least one of them is a person falling within section 42(1)(a) and (b); and
  - (b) the leasing is not permitted leasing; and
  - (c) the expenditure in question is new expenditure.

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- (2) If at any time when the machinery or plant is leased as mentioned in subsection (1) above the lessees use the machinery or plant for the purposes of a trade or trades, otherwise than for leasing, the expenditure on the provision of the machinery or plant shall be treated as not falling within section 42(1) if and to the extent to which it appears that the profits or gains of the trade or trades arising throughout the requisite period (or the period of the lease, if shorter) will be chargeable to income tax or corporation tax.
- (3) Where, by virtue of subsection (2) above, part only of the expenditure on the provision of any machinery or plant is treated as not falling within section 42(1), then, whether or not the machinery or plant continues to be leased as mentioned in subsection (1) above, sections 24, 25, 26, 41 and 42 shall have effect as if—
- (a) that part were expenditure on the provision of a separate item of machinery or plant; and
  - (b) the remainder were expenditure (falling within section 42(1)) on the provision of another item of machinery or plant used otherwise than for a qualifying purpose;
- and there shall be made all such apportionments as are necessary in consequence of this subsection.

#### **44 Further provisions relating to joint lessees in cases involving new expenditure.**

- (1) Without prejudice to the operation of section 46, this section shall have effect where new expenditure is incurred on the provision of machinery or plant which is leased as mentioned in section 43(1).
- (2) Where, by virtue of section 43(2), the whole or part of the new expenditure has qualified for a normal writing-down allowance and, at any time in the requisite period while it is leased as mentioned in that subsection—
- (a) no lessee uses the machinery or plant for the purposes of a trade or trades the profits or gains of which are chargeable to income tax or corporation tax, and
  - (b) section 42(4) does not apply at that time and has not applied at any earlier time,
- sections 46 and 48(2) shall have effect as if the separate item of machinery or plant referred to in section 43(3)(a) had at that time begun to be used for the purpose of being leased to a non-resident, otherwise than by permitted leasing.
- (3) Where the whole or part of any new expenditure has qualified for a normal writing-down allowance and the machinery or plant is subsequently leased in the requisite period as mentioned in section 43(1), subsection (2) above shall apply as if the whole of the expenditure had qualified for a normal writing-down allowance by virtue only of section 43(2).
- (4) Where, by virtue of section 43(2), the whole or part of the new expenditure has qualified for a normal writing-down allowance and, at the end of the requisite period, the machinery or plant in question is leased as mentioned in section 43(1) but subsection (2) above has not had effect, then, if it appears that the extent to which the machinery or plant has been used for the purposes of such a trade or trades as are referred to in subsection (2) above is less than that which was taken into account in determining the amount of the new expenditure which qualified for a normal writing-down allowance—
- (a) section 46 shall have effect as if a part of the expenditure corresponding to the reduction in the extent of such use were expenditure on the provision of a

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separate item of machinery or plant used for the purpose of leasing to a non-resident, otherwise than by permitted leasing, on the last day of the requisite period; and

- (b) any disposal value subsequently brought into account in respect of the machinery or plant under section 24 shall, instead of being apportioned in accordance with section 43(3), be apportioned by reference to the extent of such use as determined at the end of that period.

#### **45 Joint lessees: old expenditure.**

- (1) Sections 22(4)(c), 23, 39, 40, 41 and 47 shall have effect in accordance with this section where the expenditure in question is not new expenditure and the machinery or plant is leased to two or more persons jointly.
- (2) Section 39(2)(a) shall not apply at any time when the machinery or plant is leased to two or more persons jointly but if the lessees use the machinery or plant for the purposes of a trade or trades, otherwise than for leasing, it shall be regarded as used for a qualifying purpose if and to the extent to which it appears that the profits or gains of the trade or trades arising throughout the requisite period (or the period of the lease, if shorter) will be chargeable to income tax or corporation tax.
- (3) Where, by virtue of subsection (2) above, a first-year allowance may be made in respect of part only of the expenditure on the provision of any machinery or plant, then, whether or not the machinery or plant continues to be leased to two or more persons jointly, sections 24, 25, 26, 41 and 47 shall have effect as if—
  - (a) that part were expenditure on the provision of a separate item of machinery or plant; and
  - (b) the remainder were expenditure on the provision of another item of machinery or plant;and there shall be made all such apportionments as are necessary in consequence of this subsection.
- (4) Where by virtue of subsection (2) above a first-year allowance has been made in respect of the whole or part of the expenditure on the provision of any machinery or plant and at any time in the requisite period while it is leased as mentioned in subsection (1) above no lessee uses it for the purpose of a trade or trades the profits or gains of which are chargeable to income tax or corporation tax, section 47 shall have effect as if the machinery or plant or, as the case may be, the separate item referred to in subsection (3)(a) above had at that time been used otherwise than for a qualifying purpose.
- (5) Where by virtue of subsection (2) above a first-year allowance has been made in respect of the whole or part of the expenditure on the provision of any machinery or plant and at the end of the requisite period the machinery or plant is leased as mentioned in subsection (1) above but subsection (4) has not had effect, then, if it appears that the extent to which the machinery or plant has been used for the purposes of a trade or trades the profits or gains of which are chargeable to income tax or corporation tax is less than that by reference to which the amount of the first-year allowance was determined—
  - (a) section 47 shall have effect as if a part of the expenditure corresponding to the reduction in the extent of such use were expenditure on the provision of a separate item of machinery or plant used otherwise than for a qualifying purpose on the last day of that period;

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- (b) any disposal value subsequently brought into account in respect of the machinery or plant under section 24 shall, instead of being apportioned in accordance with subsection (3) above, be apportioned by reference to the extent of such use as determined at the end of that period.
- (6) Where a first-year allowance has been made in respect of expenditure on the provision of machinery or plant otherwise than by virtue of subsection (2) above and the machinery or plant is subsequently leased in the requisite period to two or more persons jointly, subsections (4) and (5) above shall apply as if the first-year allowance had been made by virtue of subsection (2) above and had been so made in respect of the whole expenditure.
- (7) Where the machinery or plant is leased to two or more persons jointly and at least one of the joint lessees is a person falling within section 42(1)(a) and (b) (“a non-resident lessee”)—
  - (a) any reference in subsections (2) to (6) above to the requisite period shall be construed in accordance with section 40(4)(b)(ii) whether or not there is also a joint lessee who is not a non-resident lessee;
  - (b) if the circumstances are such that no first-year allowance has been or may be made in respect of any part of the expenditure on the provision of the machinery or plant in question, section 42 shall apply in relation to that expenditure as if all the joint lessees were non-resident lessees; and
  - (c) if, by virtue of subsections (3), (4) or (5) above, sections 24, 25 and 26 have effect (directly or through the operation of section 47) in relation to the whole or any part of the expenditure on the machinery or plant in question, those sections shall have effect, in accordance with section 42(2), as if that expenditure were expenditure falling within section 42(1).

#### **46 Recovery of excess relief: new expenditure.**

- (1) Where new expenditure incurred by any person in providing machinery or plant has qualified for a normal writing-down allowance and the machinery or plant is at any time in the requisite period used for the purpose of being leased to a non-resident, otherwise than by permitted leasing—
  - (a) an amount equal to the excess relief shall, in relation to the person to whom the machinery or plant then belongs, be treated as if it were a balancing charge to be made on him for the chargeable period in which, or in the basis period for which, the machinery or plant is first so used; and
  - (b) for the purposes of sections 24, 25 and 26 (as they have effect with respect to expenditure which does not fall within section 42(1)), an amount equal to the unused expenditure shall, in relation to that person, be treated as if it were a disposal value to be brought into account for the chargeable period referred to in paragraph (a) above; and
  - (c) sections 24, 25 and 26 (as they have effect as mentioned in paragraphs (a) to (e) of section 42(2)) shall apply as if a sum equal to the aggregate of the amounts in paragraphs (a) and (b) above were qualifying expenditure of that person for the next chargeable period and, for the purpose of subsequently bringing any disposal value into account, as if the machinery or plant had always been used for the purposes of the separate trade.
- (2) The excess relief is the excess, if any, of—



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- (a) any normal writing-down allowances made in respect of the new expenditure for the chargeable period related to the incurring of the expenditure and any subsequent chargeable period up to and including that mentioned in subsection (1)(a) above, over
  - (b) the maximum writing-down allowance or allowances that could have been made in respect of the expenditure for those chargeable periods if no normal writing-down allowance had been or could have been made.
- (3) The unused expenditure is the amount by which the new expenditure incurred in providing the machinery or plant exceeds the allowances referred to in subsection (2) (a) above.
- (4) For the purposes of subsection (2) above, the normal writing-down allowances that were made in respect of new expenditure on any item of machinery or plant shall be determined as if that item were the only item of machinery or plant in relation to which sections 24, 25 and 26 had effect.
- (5) Where the person to whom any machinery or plant belongs at a time when it is first used for the purpose of being leased to a non-resident, otherwise than by permitted leasing, has acquired it as a result of a transaction which was, or a series of transactions each of which was, between connected persons and a normal writing-down allowance in respect of expenditure on the provision of the machinery or plant has been made to any of those persons—
  - (a) subsection (2) above shall have effect as if it referred to that allowance and to the expenditure in respect of which it was made;
  - (b) for the purposes of subsection (2) any consideration paid or received on a disposal of the machinery or plant between connected persons shall be disregarded; and
  - (c) if a balancing allowance or balancing charge is made in respect of the machinery or plant there shall be made such adjustments of the total relief falling to be taken into account under paragraph (a) of that subsection as are just and reasonable in the circumstances;but this subsection does not apply where section 113(2), 114(1) or 343(2) of the principal Act or section 77 of this Act applied on the occasion of the transaction or transactions in question.
- (6) Where the person to whom any machinery or plant belongs at such a time as is mentioned in subsection (5) above acquired it as there mentioned and—
  - (a) new expenditure incurred on the provision of the machinery or plant by any of the connected persons would have qualified for a normal writing-down allowance but such an allowance was not claimed<sup>F76</sup>; and
  - (b) a balancing allowance is made to any of those persons in respect of that expenditure,this section shall with the necessary modifications apply as it applies where a normal writing-down allowance has been made.
- (7) If at any time in the requisite period a ship is used for the purpose of being leased to a non-resident otherwise than by permitted leasing, then, without prejudice to subsections (1) to (6) above—
  - (a) no allowance shall be made in respect of it under section 31(4)(c) for the chargeable period in which it is first so used or for any subsequent chargeable period;

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- (b) nothing in section 31(7) shall affect the operation of subsection (1) above;
- (c) sections 24, 25 and 26 (as they have effect in accordance with section 41) shall apply as if the amount of any allowance in respect of the ship which has been postponed under section 31 and not made were qualifying expenditure for the next chargeable period after that in which the ship is first so used.

#### Textual Amendments

**F76** Words repealed by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), ss. 103(1)(2), 132, Sch. 17 para. 10, [Sch. 19 Pt. V](#), Note 6

#### 47 Recovery of excess relief: old expenditure.

- (1) Where a first-year allowance has been made in respect of expenditure incurred in providing machinery or plant and the machinery or plant is at any time in the requisite period used otherwise than for a qualifying purpose—
  - (a) an amount equal to the excess relief shall, in relation to the person to whom the machinery or plant then belongs, be treated as if it were a balancing charge to be made on him for the chargeable period in which, or in the basis period for which, the machinery or plant is first so used; and
  - (b) sections 24, 25 and 26 (as they have effect in accordance with section 41(1)(b)) shall apply as if that amount were qualifying expenditure of that person for the next chargeable period and, for the purpose of bringing any disposal value into account, as if the machinery or plant had always been used for the purposes of the separate trade.
- (2) The excess relief is the excess, if any, of—
  - (a) the first-year allowance made in respect of the expenditure and any writing-down allowance or allowances made in respect of it for the chargeable period related to the incurring of the expenditure and any subsequent chargeable period up to and including that mentioned in subsection (1)(a) above, over
  - (b) the maximum writing-down allowance or allowances that could have been made in respect of the expenditure for those chargeable periods if the first-year allowance had not and could not have been made.
- (3) Where as a result of a requirement under section 22(7) an aggregate amount of first-year allowances in respect of different items of machinery or plant is reduced, there shall be treated for the purposes of subsection (2) above as having been made in respect of each item a reduction proportionate to the capital expenditure on the provision of that item.
- (4) For the purposes of subsection (2) above, the writing-down allowance or allowances that were made or would have been made in respect of any item of machinery or plant shall be determined as if that item were the only item of machinery or plant in relation to which sections 24, 25 and 26 had effect.
- (5) Where the person to whom any machinery or plant belongs at a time when it is first used otherwise than for a qualifying purpose has acquired it as a result of a transaction which was, or a series of transactions each of which was, between connected persons and a first-year allowance in respect of expenditure on the provision of the machinery or plant has been made to any of those persons—

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- (a) subsection (2) above shall have effect as if it referred to that first-year allowance and to the expenditure in respect of which it was made;
- (b) for the purposes of that subsection any consideration paid or received on a disposal of the machinery or plant between connected persons shall be disregarded; and
- (c) if a balancing allowance or balancing charge is made in respect of the machinery or plant there shall be made such adjustments of the total relief falling to be taken into account under paragraph (a) of that subsection as are just and reasonable in the circumstances;

but this subsection does not apply where section 113(2), 114(1) or 343(2) of the principal Act or section 77 of this Act applied on the occasion of the transaction or transactions in question.

- (6) Where the person to whom any machinery or plant belongs at such a time as is mentioned in subsection (5) above acquired it as there mentioned and—
  - (a) a first-year allowance in respect of expenditure on the provision of the machinery or plant could have been made to any of the connected persons but was not claimed<sup>F77</sup>; and
  - (b) a balancing allowance is made to any of those persons in respect of that expenditure,

this section shall with the necessary modifications apply as it applies where a first-year allowance has been made.

- (7) If at any time in the requisite period a ship is used otherwise than for a qualifying purpose, then, without prejudice to subsections (1) to (6) above—
  - (a) no allowance shall be made in respect of it under section 30(2)(c) for the chargeable period in which it is first so used or for any subsequent chargeable period;
  - (b) sections 24, 25 and 26 (as they have effect in accordance with section 41) shall apply as if the amount of any first-year allowance in respect of the ship which has been postponed under section 30 and not made were qualifying expenditure for the next chargeable period after that in which the ship is first so used.

- (8) In relation to old expenditure in relation to which section 42 has effect in accordance with subsection (8) of that section, this section shall have effect subject to the following modifications, that is to say—
  - (a) any reference to machinery or plant, or to a ship, being used otherwise than for a qualifying purpose shall be construed as a reference to its being used for the purpose of being leased to such a person as is referred to in section 42(1) (a) and (b) and otherwise than for a qualifying purpose;
  - (b) any reference to a first-year allowance shall be construed as including a reference to a normal writing-down allowance;
  - (c) the reference in subsection (1)(b) above to sections 24, 25 and 26 as they have effect in accordance with section 41(1)(b) shall be construed as including a reference to those sections as they have effect as mentioned in section 42(2) (b) to (e);
  - (d) in determining the amount of any excess relief in a case where this section has previously applied, account shall be taken of the relief already recovered;

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and subsections (3) and (4) above shall apply in relation to the allowances mentioned in section 42(4) as they apply in relation to the allowances mentioned in subsection (2) above.

- (9) If section 66(7) of the <sup>M22</sup>Finance Act 1980 or subsection (7) above had already applied in relation to expenditure on a ship before section 70(1) of the <sup>M23</sup>Finance Act 1982 or section 42(1) of this Act applied to that expenditure, then, on the subsequent application of subsection (7) above by virtue of subsection (8)(a) above, subsection (7) (b) shall not again apply.
- (10) Subsections (7) to (9) above shall have effect in any case where the requisite period began before 27th July 1989 with the substitution for each reference to a ship of a reference to a new ship.

#### Textual Amendments

**F77** Words repealed by [Finance Act 1990 \(c. 29\)](#), ss. 103(1)(2), 132, Sch. 17 para. 11, [Sch. 19 Pt. V](#), Note 6

#### Marginal Citations

**M22** [1980 c. 48](#).

**M23** [1982 c. 39](#).

## 48 Information relating to allowances made in respect of new expenditure.

- (1) Where new expenditure is incurred on the provision of machinery or plant and, before the expenditure has qualified for a normal writing-down allowance, it is used for leasing to a non-resident and that leasing is permitted leasing, a claim <sup>F78</sup> for a writing-down allowance which takes account of that expenditure <sup>F78</sup> shall be accompanied by a certificate to that effect, setting out the description of permitted leasing.
- (2) If, after any new expenditure has qualified for a normal writing-down allowance, the machinery or plant in question is at any time in the requisite period used for the purpose of being leased to a non-resident, otherwise than by permitted leasing, the person to whom it belongs at that time shall give notice of that fact to the inspector.
- (3) Subject to subsection (6) below, notice under subsection (2) above shall be given within three months after the end of the chargeable period or its basis period in which the machinery or plant is first used for leasing to a non-resident otherwise than by permitted leasing.
- (4) A certificate or notice given by any person under subsection (1) or (2) above by reference to a chargeable period or its basis period shall specify the non-resident to whom the machinery or plant has been leased and shall specify all the items of machinery or plant (if more than one) in respect of which the person in question is required to give a certificate or notice under this section by reference to that period.
- (5) Subject to subsection (6) below, where new expenditure is incurred on the provision of machinery or plant which is leased as mentioned in section 43(1), the lessor shall, within three months after the end of the chargeable period or its basis period in which the machinery or plant is first so leased, give notice to the inspector specifying—
- (a) the names and addresses of the persons to whom the asset is jointly leased;

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- (b) the portion of the new expenditure which is properly attributable to each of those persons; and
  - (c) so far as it is within his knowledge, which of those persons is resident in the United Kingdom.
- (6) If, at the end of the three months referred to in subsection (3) or (5) above, the person required to give a notice under that subsection does not know and cannot reasonably be expected to know that any item of machinery or plant in respect of which he is required to give such a notice has been used or leased as mentioned in the subsection in question, he shall in respect of that item give the notice within 30 days of his coming to know that it has been so used or leased.

#### Textual Amendments

**F78** Words repealed by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), ss. 103(1)(2), 132, Sch. 17 para. 12, [Sch. 19 Pt. V](#), Note 6

#### 49 Information relating to allowances made in respect of old expenditure.

- (1) This section applies where a writing-down allowance (but no first-year allowance) has been made in respect of expenditure which is not new expenditure, and the amount of that allowance was determined without regard to section 42(2); and references below to an allowance are references to an allowance so determined.
- (2) Where a person <sup>F79</sup> has claimed an allowance in respect of any expenditure <sup>F79</sup> and the machinery or plant in question is at any time in the requisite period used for the purpose of being leased to such a person as is referred to in section 42(1)(a) and (b) otherwise than for a qualifying purpose, the person to whom it then belongs shall give notice of that fact to the inspector, specifying the use to which the machinery or plant has been put; and, subject to subsection (3) below, any such notice shall—
- (a) be given within three months after the end of the chargeable period or its basis period in which the machinery or plant is first so used; and
  - (b) relate to all the items of machinery or plant (if more than one) in respect of which that person is required to give notice under this subsection in respect of that period.
- (3) If at the end of the three months mentioned in subsection (2)(a) above the person concerned does not know and cannot reasonably be expected to know that any item of machinery or plant in respect of which he is required to give such a notice has been used as mentioned in that subsection, he shall in respect of that item give the notice within 30 days of his coming to know that it has been so used.
- (4) Where an allowance has been made in respect of any expenditure, the inspector may by notice require—
- (a) any person to whom the machinery or plant belongs or has belonged, or who is or has been in possession of it under a lease, during the requisite period; and
  - (b) the personal representatives of any such person,
- to furnish him, within such period (not being less than 30 days) as may be specified in the notice, with such information as he may require and the person to whom the notice is addressed has or can reasonably obtain about the leasing of the machinery or plant or the use to which it is being or has been put.

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### Textual Amendments

**F79** Words repealed by [Finance Act 1990 \(c. 29\)](#), ss. 103(1)(2), 132, [Sch. 17 para. 13](#), [Sch. 19 Pt. V](#), Note 6

## 50 Interpretation of Chapter V.

- (1) In this Chapter references to a lease include references to a sub-lease and references to a lessor or lessee shall be construed accordingly.
- (2) For the purposes of this Chapter, letting a ship on charter or any other asset on hire shall be regarded as leasing if, apart from this subsection, it would not be so regarded.
- (3) In this Chapter—
  - “new expenditure” means expenditure incurred after 31st March 1986 except any such expenditure which is old expenditure or which falls within section 41(1)(c);
  - “non-resident” means such a person as is referred to in section 42(1)(a) and (b);
  - “normal writing-down allowance” means a writing-down allowance of an amount determined without regard to section 42(2);
  - “old expenditure” means any of the following expenditure, that is to say,—
    - (i) expenditure falling within section 22,
    - (ii) expenditure incurred before 1st April 1986, and
    - (iii) any other expenditure which by virtue of section 57(2) and (3) of the <sup>M24</sup>Finance Act 1986 was not new expenditure for the purposes of that section;
  - “permitted leasing” means short-term leasing or the leasing of a ship, aircraft or transport container which is used for a qualifying purpose by virtue of section 39(6) to (9);
  - “qualifying purpose” has the meaning given by section 39;
  - “requisite period” has the meaning given by section 40; and
  - “short-term leasing” has the meaning given by section 40.
- (4) Where new expenditure has been incurred by any person, any reference in this Chapter to the new expenditure having qualified for a normal writing-down allowance is a reference to the expenditure having fallen to be included, in whole or in part, in that person’s qualifying expenditure for any chargeable period for the purposes of subsections (2) to (5) of section 24, as that section has effect with respect to expenditure which does not fall within section 42(1).
- (5) Without prejudice to section 27, references in this Chapter to the use of machinery or plant for the purposes of a trade include references to its use for any purpose in connection with which a writing-down allowance can be given by virtue of that section.
- (6) Section 839 of the principal Act shall apply for the purposes of this Chapter.

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### Marginal Citations

M24 1986 c. 41.

## CHAPTER VI

### FIXTURES

#### 51 Application and interpretation of Chapter VI.

(1) [<sup>F80</sup>This Chapter applies to determine entitlement to allowances under this Part in respect of expenditure on the provision of machinery or plant that is, or becomes, a fixture]; and at any time when, by virtue of this Chapter, any machinery or plant is treated as belonging to any person, no other person shall be entitled to such an allowance in respect of it.

(2) In this Chapter—

“equipment lessor”, “equipment lessee” and “equipment lease” have the meanings given by section 53;

[<sup>F81</sup>“fixture”, subject to subsection (2A) below, means machinery or plant that is so installed or otherwise fixed in or to a building or other description of land as to become, in law, part of that building or other land;]

“interest in land” and “lease” shall be construed in accordance with subsection (3) below;

“relevant land”, in relation to a fixture, means the building or other description of land of which the fixture becomes part.

[<sup>F82</sup>(2A) In this Chapter—

“fixture” includes any boiler, or water-filled radiator, installed in a building as part of a space or water heating system; and

“relevant land”, in relation to such a fixture, means the building in which it is so installed.]

(3) In this Chapter “interest in land” means—

- (a) the fee simple estate in the land or an agreement to acquire that estate;
- (b) in Scotland, the estate or interest of the proprietor of the *dominium utile* (or, in the case of property other than feudal property, of the owner) and any agreement to acquire such an estate or interest;
- (c) any leasehold estate in, or in Scotland lease of, the land (whether in the nature of a head-lease, sub-lease or under-lease) and any agreement to acquire such an estate or, in Scotland, lease;
- (d) an easement or servitude or any agreement to acquire an easement or servitude; and
- (e) a licence to occupy land;

and, except in the context of leasing machinery or plant, any reference in the following provisions of this Chapter to a lease is a reference to such a leasehold estate or, in Scotland, lease as is mentioned in paragraph (c) above or to such an agreement as is mentioned in that paragraph (and, in relation to such an agreement, the expression “grant” shall be construed accordingly).



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- (4) If an interest in land is conveyed or assigned by way of security and subject to a right of redemption, then, so long as such a right subsists, the interest held by the creditor shall be treated for the purpose of this Chapter as held by the person having that right.
- (5) Any reference in this Chapter to a person being entitled to an allowance in respect of any capital expenditure incurred on the provision of a fixture is a reference to a case where—
- (a) that person is, for any chargeable period, entitled to a first-year allowance in respect of that expenditure; or
  - (b) that expenditure is taken into account in determining his qualifying expenditure for a chargeable period for the purposes of section 24(2), (3) and (5) (whether or not an allowance is made to him for that period),
- and any reference to a chargeable period for which a person is so entitled is a reference—
- (i) to the chargeable period referred to in paragraph (a) above; or
  - (ii) to the chargeable period referred to in paragraph (b) above; or
  - (iii) to any chargeable period which is subsequent to that referred to in paragraph (b) above but is not later than the chargeable period in which he is required to bring the disposal value of the fixture concerned into account for the purposes mentioned in paragraph (b) above.
- (6) All such assessments and adjustments of assessments shall be made as may be necessary to give effect to the provisions of this Chapter.
- (7) Where any question arises as to whether any machinery or plant has become, in law, part of a building or other land and that question is material with respect to the liability to tax (for whatever period) of two or more persons, that question shall be determined, for the purposes of the tax of all those persons, by the Special Commissioners who shall determine the question in like manner as if it were an appeal, except that, for the purposes of the determination, all those persons shall be entitled to appear and be heard by, or to make representations in writing to, the Special Commissioners.
- [<sup>F83</sup>(8) Nothing in this Chapter affects the entitlement of any person to an allowance by virtue of section 154 (allowances in respect of contributions to capital expenditure).]

#### Textual Amendments

**F80** Words in s. 51(1) substituted (retrospectively) by [Finance Act 2000 \(c. 17\), s. 78\(2\)\(6\)](#)

**F81** Words in s. 51(2) substituted (retrospectively) by [Finance Act 2000 \(c. 17\), s. 78\(3\)\(6\)](#)

**F82** S. 51(2A) inserted (retrospectively) by [Finance Act 2000 \(c. 17\), s. 78\(4\)\(6\)](#)

**F83** S. 51(8) substituted (retrospectively) by [Finance Act 2000 \(c. 17\), s. 78\(5\)\(6\)](#)

## 52 Expenditure incurred by holder of interest in land.

- (1) Subject to subsection (2) below, in any case where—
- (a) a person incurs capital expenditure on the provision of machinery or plant either for the purposes of a trade carried on by him or for leasing otherwise than in the course of a trade, and
  - (b) the machinery or plant becomes a fixture, and
  - (c) at the time the machinery or plant becomes a fixture he has an interest in the relevant land,



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then, subject to sections 53 and 57, on and after that time the fixture shall be treated for the purposes of this Part as belonging to the person concerned in consequence of his incurring the expenditure.

- (2) If, in respect of the same fixture, there are two or more persons with different interests in the relevant land to whom, by virtue of subsection (1) above, the fixture would (apart from this subsection) be treated as belonging for the purposes of this Part, the only interest which shall be taken into account under that subsection is—
- (a) if one of the interests is an interest falling within section 51(3)(d), that interest;
  - (b) if paragraph (a) above does not apply but one of the interests is an interest falling within section 51(3)(e), that interest; and
  - (c) in any other case—
    - (i) except in Scotland, that interest which is not in reversion (at law or in equity and whether directly or indirectly) on any other interest in the relevant land which is held by any of the persons referred to above; and
    - (ii) in Scotland, that of whichever of those persons has, or last had, the right of use of the relevant land.

### **53 Expenditure incurred by equipment lessor.**

- (1) In any case where—
- (a) a person (“the equipment lessor”) incurs capital expenditure on the provision of machinery or plant for leasing, and
  - (b) an agreement is entered into for the lease, directly or indirectly from the equipment lessor, of the machinery or plant (otherwise than as part of the relevant land) to another person (“the equipment lessee”) for the purposes of a trade carried on by the equipment lessee or for leasing otherwise than in the course of a trade, and
  - (c) the machinery or plant becomes a fixture, and
  - (d) if the expenditure referred to in paragraph (a) above had been incurred by the equipment lessee, the fixture would, by virtue of section 52 have been treated for the purposes of this Part as belonging to him in consequence of his incurring the expenditure, and
  - (e) the equipment lessor and the equipment lessee elect that this section should apply,

then, subject to section 57, on and after the time at which the expenditure is incurred the fixture shall be treated for the purposes of this Part as belonging to the equipment lessor in consequence of his incurring the expenditure.

- (2) An election under this section shall be made by notice to the inspector given before the expiry of the period of two years beginning at the end of the chargeable period related to the incurring of the expenditure referred to in subsection (1)(a) above; but no election may be made under this section if the equipment lessor and the equipment lessee are connected with each other within the terms of section 839 of the principal Act.
- (3) Where an election has been made under this section with respect to a fixture, nothing in section 52 shall have the effect of treating the fixture for the purposes of this Part as belonging to the equipment lessee.

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- (4) In this Chapter “equipment lease” means such an agreement as is mentioned in subsection (1)(b) above or a lease entered into pursuant to such an agreement.

**Modifications etc. (not altering text)**

- C19** S. 53(2) modified (for the year of assessment 1988-1989) by [S.I. 1991/851](#), [regs. 1, 9](#), [Sch.2](#).  
**C20** S. 53(2) modified (for the year of assessment 1989-1990) by [S.I. 1992/511](#), [regs. 1, 9](#), [Sch.2](#).  
**C21** S. 53(2) applied (with modifications) (for the year of assessment 1990–91) by [S.I. 1993/415](#), [reg. 9](#), [Sch.2](#).

**54 Expenditure included in consideration for acquisition of existing interest in land.**

- (1) In any case where—

- (a) after any machinery or plant has become a fixture, a person (“the purchaser”) acquires an interest in the relevant land, being an interest which was in existence prior to his acquisition of it, and
- (b) the consideration which the purchaser gives for that interest is or includes a capital sum which, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture, and
- (c) at the time of the purchaser’s acquisition of his interest in the relevant land, either no person has previously become entitled to an allowance in respect of any capital expenditure incurred on the provision of the fixture or, if any person has become so entitled, that person has been or is required to bring the disposal value of the fixture into account under section 24 [<sup>F84</sup>otherwise than by virtue of subsection (7) of that section],

then, subject to section 57, on and after the purchaser’s acquisition of his interest in the relevant land, the fixture shall be treated for the purposes of this Part as belonging to him in consequence of his incurring expenditure as mentioned in paragraph (b) above.

- (2) If, in a case where subsection (1)(a) above applies—

- (a) the machinery or plant was, prior to the purchaser’s acquisition of the interest in the relevant land, let under an equipment lease, and
- (b) in connection with the acquisition of the interest in the relevant land, the purchaser pays a capital sum to discharge the obligations of the equipment lessee under the equipment lease,

subsection (1) above shall apply as if that capital sum were such a capital sum as is referred to in paragraph (b) of that subsection.

**Textual Amendments**

- F84** Words in s. 54(1)(c) inserted (for any chargeable period or its basis period ending on or after 06.04.1990) by [Finance Act 1991 \(c. 31\)](#), s. 59, [Sch. 14 Pt. II para.10](#).

**55 Expenditure incurred by incoming lessee: transfer of allowances.**

- (1) In any case where—

- (a) after any machinery or plant has become a fixture, a person (“the lessor”) who has an interest in the relevant land grants a lease, and

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- (b) apart from section 57, the lessor would be entitled, for the chargeable period related to the grant of the lease, to an allowance in respect of expenditure incurred on the provision of the fixture, and
  - (c) the consideration which the lessee gives for the lease is or includes a capital sum which, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture, and
  - (d) the lessor and the lessee make an election under this section,
- then, subject to section 57, on and after the grant of the lease, the fixture shall be treated for the purposes of this Part as belonging to the lessee in consequence of his incurring expenditure as mentioned in paragraph (c) above.
- (2) In any case where the lessor is not within the charge to tax, it shall be assumed that he is within that charge for the purpose of determining whether the condition in subsection (1)(b) above is fulfilled.
  - (3) An election under this section shall be made by notice to the inspector given within two years after the date on which the lease takes effect.
  - (4) No election may be made under this section if—
    - (a) the lessor and the lessee are connected with each other within the terms of section 839 of the principal Act; or
    - (b) it appears that the sole or main benefit which may be expected to accrue to the lessor from the grant of the lease and the making of an election is the obtaining of an allowance or deduction or a greater allowance or deduction or the avoidance or reduction of a charge under this Part.

#### Modifications etc. (not altering text)

**C22** S. 55(3) modified (for the year of assessment 1988-1989) by [S.I. 1991/851](#), [regs. 1, 9](#), [Sch.2](#).

**C23** S. 55(3) modified (for the year of assessment 1989-1990) by [S.I. 1992/511](#), [regs. 1, 9](#), [Sch.2](#).

**C24** S. 55(3) applied (with modifications) (for the year of assessment 1990–91) by [The Lloyd's Underwriters \(Tax\) \(1990–91\) Regulations 1993](#) (S.I. 1993/415), [reg. 9](#), [Sch.2](#)

**C25** S. 55(4)(a) excluded (16.7.1992) by [Finance \(No. 2\) Act 1992](#) (c. 48), [s. 77](#), [Sch. 17 paras. 5\(5\)\(c\), 7](#)

## 56 Expenditure incurred by incoming lessee: lessor not entitled to allowances.

In any case where—

- (a) after any machinery or plant has become a fixture, a person (“the lessor”) who has an interest in the relevant land grants a lease, but section 55(1)(b) does not apply in his case, and
- (b) the consideration which the lessee gives for the lease is or includes a capital sum which, in whole or in part, falls to be treated for the purposes of this Part as expenditure on the provision of the fixture, and
- (c) at the time of the grant of the lease, no person has previously become entitled to an allowance in respect of any capital expenditure incurred on the provision of the fixture, and
- (d) the fixture has not before that time been used for the purposes of a trade by the lessor or any person connected with him within the terms of section 839 of the principal Act,

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then, subject to section 57, on and after the grant of the lease, the fixture shall be treated for the purposes of this Part as belonging to the lessee in consequence of his incurring expenditure as mentioned in paragraph (b) above.

## **57 Fixtures treated as ceasing to belong to particular persons.**

- (1) The provisions of this section and section 58 are without prejudice to any other circumstances in which the disposal value of a fixture falls to be brought into account in accordance with section 24.
- (2) Subject to subsection (4) below, if at any time the person to whom a fixture is treated for the purposes of this Part as belonging by virtue of any of sections 52, 54, 55 and 56 ceases (whether by reason of the transfer, surrender or expiry of the interest or otherwise) to have the qualifying interest, the fixture shall be treated for those purposes as ceasing to belong to him at that time.
- (3) In this section and section 59 “the qualifying interest” means—
  - (a) where section 52 or 54 applies, the interest in the relevant land referred to in that section; and
  - (b) where section 55 or 56 applies, the lease referred to in that section;
 but if the qualifying interest is an agreement to acquire an interest in land and that interest in land is subsequently transferred or granted to the person referred to in subsection (2) above, the interest so transferred or granted shall be treated as the same interest as the qualifying interest.
- (4) For the purposes of subsection (2) above—
  - (a) if the qualifying interest ceases to exist by reason of its merger in another interest acquired by the person referred to in that subsection, that other interest shall be treated as the same interest as the qualifying interest;
  - (b) if the qualifying interest is a lease and, on its termination, a new lease of the relevant land (with or without other land) is granted to the lessee, the new lease shall be treated as the same interest as the qualifying interest;
  - (c) if the qualifying interest is a licence and, on its termination, a new licence to occupy the relevant land (with or without other land) is granted to the licensee, the new licence shall be treated as the same interest as the qualifying interest;
  - (d) if the qualifying interest is a lease and, with the consent of the lessor, the lessee remains in possession of the relevant land after the termination of the lease but without a new lease being granted to him, the qualifying interest shall be treated as continuing to subsist so long as the lessee remains in possession of the relevant land.
- (5) At the time at which, by virtue of section 55, the fixture concerned begins to be treated for the purposes of this Part as belonging to the lessee, it shall be treated for those purposes as ceasing to belong to the lessor (as defined in that section).
- (6) Where, by virtue of subsection (2) above, on the termination of a lease or licence, a fixture is treated for the purposes of this Part as ceasing to belong to the outgoing lessee or licensee, it shall, on that termination, be treated for those purposes as beginning to belong to the person who, immediately before the termination, was the lessor under the lease or, as the case may be, the licensor under the licence.
- (7) If at any time a fixture is permanently severed from the relevant land (so that it ceases to be a fixture) and, immediately before that time, it was treated for the purposes of

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this Part as belonging to any person by virtue of any provision of sections 51 to 56, subsections (1) to (6) above or section 58(2) or (4), then, unless on its severance the fixture does in fact belong to that person, it shall be treated for those purposes as ceasing to belong to him at that time.

## **58 Equipment lessors: special provisions.**

- (1) If, by virtue of an election under section 53, a fixture is treated for the purposes of this Part as belonging to the equipment lessor and either—
  - (a) the equipment lessor at any time assigns his rights under an equipment lease, or
  - (b) the financial obligations of the equipment lessee under an equipment lease are at any time discharged, on the payment of a capital sum or otherwise,then, at that time (or, as the case may be, the earliest of those times) the fixture shall be treated for the purposes of this Part as ceasing to belong to the equipment lessor by reason of a sale by him of the fixture.
- (2) If subsection (1)(a) above applies, then, on and after the time of the assignment referred to in that paragraph, the fixture to which the agreement in question relates shall be treated for the purposes of this Part as belonging to the assignee and the consideration given by him for the assignment shall be treated for those purposes—
  - (a) as the price received for the sale of the fixture by the assignor; and
  - (b) as expenditure incurred by the assignee on acquiring the fixture.
- (3) On and after an assignment falling within paragraph (a) of subsection (1) above, that subsection shall have effect as if the machinery or plant (as a fixture) were treated for the purposes of this Part as belonging to the assignee by virtue of an election under section 53 and, accordingly, as if the assignee were the equipment lessor, as defined in that section.
- (4) Where a capital sum is paid as mentioned in subsection (1)(b) above, that capital sum shall be treated for the purposes of this Part—
  - (a) as the price received for the sale of the fixture by the equipment lessor; and
  - (b) if that capital sum is paid by the equipment lessee, as expenditure incurred by him on the provision of the fixture;and where paragraph (b) above applies, on and after the time of that payment, the fixture shall be treated for the purposes of this Part as belonging to the equipment lessee.
- (5) Where the financial obligations of the equipment lessee under an equipment lease have become vested in any other person (by assignment, operation of law or otherwise) any reference in subsection (1)(b) or (4) above to the equipment lessee shall be construed as a reference to the person in whom those obligations are for the time being vested when the capital sum is paid.

## **59 Disposal value of fixtures in certain cases.**

- (1) In any case where—
  - (a) by virtue of section 57, a fixture is at any time treated for the purposes of this Part as ceasing to belong to any person (“the former owner”), and

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- (b) the qualifying interest continues in existence after that time (whether in the hands of the former owner or any other person) or would so continue but for its becoming merged in another interest, and
- (c) the occasion of the fixture ceasing to belong to the former owner is not its permanent severance from the relevant land (whether on disposal, demolition, destruction or otherwise),

the fixture shall be treated for the purposes of this Part as sold at that time by the former owner for a price determined in accordance with subsections (2) to (6) below.

- (2) Subject to subsection (6) below, if the occasion of the fixture ceasing to belong to the former owner is the sale of the qualifying interest, the price referred to in subsection (1) above is that portion of the sale price of the qualifying interest which falls (or, if the purchaser were entitled to an allowance, would fall) to be treated for the purposes of this Part as expenditure incurred by the purchaser on the provision of the fixture.
- (3) If the fixture ceases to belong to the former owner by virtue of section 57(5), the price referred to in subsection (1) above is so much of the capital sum referred to in section 55(1)(c) as falls to be treated for the purposes of this Part as expenditure by the lessee on the provision of the fixture.
- (4) If neither subsection (2) nor subsection (3) above applies, the price referred to in subsection (1) above is that portion of the price which, on a sale of the qualifying interest in the open market, would fall to be treated for the purposes of this Part as expenditure by the purchaser on the provision of the fixture.
- (5) The sale referred to in subsection (4) above shall be assumed to take place immediately before the event which causes the fixture to be treated for the purposes of this Part as ceasing to belong to the former owner; but that event shall be disregarded in determining the open market price on that sale.
- (6) If the sale referred to in subsection (2) above is at a price lower than that which the qualifying interest would have fetched if sold in the open market, that subsection shall not apply unless the purchaser's expenditure on the acquisition of the fixture can be taken into account as mentioned in section 26(1)(b)(i).
- (7) If the occasion of the fixture ceasing to belong to the former owner is the expiry of the qualifying interest, then, except in so far as the former owner receives any capital sum, by way of compensation or otherwise, by reference to the fixture, the disposal value of the fixture which falls to be brought into account under section 24 shall be nil.
- (8) In any case where—
  - (a) the disposal value of a fixture falls to be brought into account in accordance with section 24 on the permanent discontinuance of the trade in circumstances where that value falls to be determined under paragraph (e) of subsection (1) of section 26; and
  - (b) before the occurrence of the later event referred to in that paragraph, the fixture is not permanently severed from the relevant land,
 that paragraph shall apply as if the reference therein to paragraphs (a) and (b) of that subsection were omitted; but if the event which follows the discontinuance of the trade is the sale of the qualifying interest, the disposal value of the fixture to be brought into account under those sections shall be that portion of the sale price referred to in subsection (2) above.

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- (9) If the disposal value of the fixture falls to be brought into account in accordance with section 24 on its beginning to be used wholly or partly for purposes which are other than those of the trade, section 26(1)(f) shall apply as if the reference to the price which the machinery or plant would have fetched if sold on the open market were a reference to that portion of the price referred to in subsection (4) above.
- (10) If, on the occasion of the fixture being treated by virtue of section 57 as ceasing to belong to the former owner—
- (a) another person incurs expenditure on the provision of the fixture, and
  - (b) the former owner brings a disposal value into account in accordance with section 24,
- there shall be disregarded for the purposes of this Part so much (if any) of that expenditure as exceeds that disposal value.
- (11) In relation to expenditure incurred before 27th July 1989, subsection (10) above shall have effect with the substitution for the words following “to the former owner” of the words “another person incurs expenditure on the provision of the fixture, there shall be disregarded so much (if any) of that expenditure as exceeds the disposal value which the former owner is required to bring into account in accordance with section 24”.

## CHAPTER VII

### MISCELLANEOUS EXPENDITURE

#### **60 Machinery and plant on hire-purchase etc.**

- (1) Where a person carrying on a trade incurs capital expenditure on the provision of machinery or plant for the purposes thereof under a contract providing that he shall or may become the owner of the machinery or plant on the performance of the contract—
- (a) the machinery or plant shall be treated for the purposes of this Part as belonging to him (and not to any other person) at any time when he is entitled to the benefit of the contract so far as it relates to that machinery or plant, and
  - (b) all capital expenditure in respect of that machinery or plant to be incurred by him under the contract after the time when the machinery or plant is brought into use for the purposes of the trade shall be treated for the purposes of this Part as having been incurred by him at that time.
- (2) Where a person to whom any machinery or plant is treated as belonging by virtue of subsection (1)(a) above ceases to be entitled to the benefit of the contract in question so far as it relates to that machinery or plant without in fact becoming the owner of the machinery or plant—
- (a) the machinery or plant shall be treated for the purposes of this Part as ceasing to belong to him at the time when he ceases to be so entitled, and
  - (b) if he ceases to be so entitled after the machinery or plant has been brought into use for the purposes of the trade, the disposal value of the machinery or plant—
    - (i) shall not exceed the total capital expenditure which he would have incurred in respect of the machinery or plant if he had wholly performed the contract, but

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- (ii) subject to that limitation, shall be taken as an amount equal to any capital sums which he receives, or is entitled to receive, by way of consideration, compensation, damages or insurance moneys in respect of his rights under the contract, or in respect of the machinery or plant, together with so much of that capital expenditure as he has not in fact incurred.
- (3) In relation to capital expenditure incurred under contracts entered into before 27th July 1989, subsection (1)(a) shall have effect with the omission of the words “(and not to any other person)”.

[<sup>F85</sup> **60A Machinery and plant on hire-purchase etc.: fixtures.**

- (1) Section 60 does not—
  - (a) apply to expenditure incurred on machinery or plant that is a fixture, or
  - (b) prevent Chapter VI of this Part (fixtures) applying in relation to expenditure on machinery or plant incurred under such a contract as is mentioned in subsection (1) of that section.
- (2) If machinery or plant that is treated as belonging to a person under section 60 becomes a fixture, then, unless it is treated under Chapter VI of this Part as belonging to that person, it shall be treated for the purposes of this Part as ceasing to belong to him at the time when it becomes a fixture.
- (3) In this section “fixture” has the same meaning as in Chapter VI of this Part.]

**Textual Amendments**

**F85** S. 60A inserted (retrospectively for the purposes of s. 60A(1) and 20.7.2000 otherwise) by [Finance Act 2000 \(c. 17\)](#), [s. 80\(2\)\(3\)\(a\)](#) (with [s. 80\(3\)\(b\)](#))

**61 Machinery and plant on lease.**

- (1) Subject to subsection (2) below, where machinery or plant is first let by any person otherwise than in the course of a trade, then, whether or not it is used for the purposes of a trade carried on by the lessee—
  - (a) the capital expenditure incurred by the lessor in providing the machinery or plant shall be treated for the purposes of this Part as having been incurred in providing it for the purposes of a trade begun to be carried on by him, separately from any other trade which he may carry on, at the commencement of the letting, and
  - (b) at the time when the lessor permanently ceases to let the machinery or plant otherwise than in the course of a trade, the machinery or plant shall be treated for the purposes of this Part as being used wholly for purposes other than those of the trade referred to in paragraph (a) above.
- (2) Subsection (1) above shall not apply to machinery or plant let for use in a dwelling-house.
- (3) Where subsection (1) above applies, the question whether the provision of the machinery or plant is to be treated as being wholly and exclusively or only partly for the purposes of the trade referred to in paragraph (a) of that subsection shall be



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determined according to whether the machinery or plant was in fact provided wholly and exclusively for the purpose of letting otherwise than in the course of a trade or only partly for that purpose.

(4) Where—

- (a) a lessee incurs capital expenditure on the provision for the purposes of a trade carried on by him of machinery or plant which he is required to provide under the terms of the lease, and
- (b) the machinery or plant is not so installed or otherwise fixed in or to a building or any other description of land as to become, in law, part of that building or other land,

then, if the machinery or plant would not otherwise belong to him, the machinery or plant shall be treated for the purposes of this Part as belonging to him for so long as it continues to be used for the purposes of the trade; but, as from the determination of the lease, section 24(6) shall have effect as if the capital expenditure on providing the machinery or plant had been incurred by the lessor and not by the lessee.

In relation to any lease entered into before 12th July 1984, and any lease entered into after 11th July 1984 pursuant to an agreement made before 12th July 1984, this subsection shall have effect with the omission of the words from “and” (where it first occurs) to “belong to him”.

- (5) Where an allowance falling to be made for any chargeable period by virtue of subsection (1) above is in respect of expenditure on the provision of machinery or plant which for the whole or any part of that period or its basis period is not used for the purposes of a trade carried on by the lessee, section 145(3) shall not apply to that allowance or, as the case may require, to a proportionate part thereof.
- (6) Subsection (5) above shall not apply to any allowance in respect of expenditure incurred on the provision of machinery or plant which is fixed to a building or land of which the person who incurs the expenditure is the lessor and the circumstances are such that a transfer of his interest in the building or land would operate to transfer his interest in the machinery or plant.
- (7) Section 403(3) of the principal Act (group relief) shall not apply to an allowance if or to the extent that, by virtue of subsection (5) above, section 145(3) does not apply to it.

This subsection has effect in any case where the accounting period of the surrendering company (within the meaning of Chapter IV of Part X of the principal Act) ends after 26th July 1989.

- (8) In this section “lease” includes an agreement for a lease where the term to be covered by the lease has begun, and any tenancy, but does not include a mortgage, and “lessee” and other cognate expressions shall be construed accordingly.

## 62 Treatment of demolition costs.

- (1) Where any machinery or plant which is in use for the purposes of a trade is demolished, then—
  - (a) if the person carrying on the trade replaces the machinery or plant by other machinery or plant, the net cost to him of the demolition shall be treated for the purposes of this Part as expenditure incurred by him on the provision of that other machinery or plant, and

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- (b) if the person carrying on the trade does not replace the machinery or plant [<sup>F86</sup>then, subject to section 62A], his qualifying expenditure for the chargeable period related to the demolition shall be treated for the purposes of sections 24 and 25 as increased by the net cost to him of the demolition.
- (2) In this section any reference to the net cost of the demolition of any machinery or plant is a reference to the excess, if any, of the cost of the demolition over any moneys received for the remains of the machinery or plant.

#### Textual Amendments

**F86** Words inserted by [Finance Act 1990 \(c. 29\), s. 60](#)

#### [<sup>F87</sup>62A Special allowance for demolition costs related to offshore machinery or plant.

- (1) Subject to subsection (3) below, this section applies to expenditure which, apart from this section, would fall within section 62(1)(b) and which is incurred—
- (a) by any person carrying on a ring fence trade; and
  - (b) for the purposes of or in connection with the closing down of, or of any part of, an oil field, within the meaning of Part I of the Oil Taxation Act 1975; and
  - (c) on the demolition of machinery or plant which has been brought into use for the purposes of that trade and which is or forms part of an offshore installation or a submarine pipe-line;
- and in this section any such expenditure is referred to as “abandonment expenditure”.
- (2) In this section “ring fence trade” means activities which—
- (a) fall within any paragraphs (a) to (c) of subsection (1) of section 492 of the principal Act (treatment of oil extraction activities etc. for tax purposes); and
  - (b) constitute a separate trade (whether by virtue of that subsection or otherwise).
- (3) In subsection (1)(c) above—
- (a) the reference to demolition is a reference to demolition which is carried out, wholly or substantially, in order to comply with an abandonment programme, within the meaning of Part I of the Petroleum Act 1987, or with any condition to which the approval of such a programme is subject; and
  - (b) “offshore installation” and “submarine pipeline” have the same meaning as in that Part.
- (4) If the person incurring any abandonment expenditure so elects,—
- (a) for the chargeable period related to the incurring of that expenditure there shall be made to that person an allowance equal to the excess of the abandonment expenditure to which the election relates over any moneys received for the remains of the machinery or plant concerned; and
  - (b) that excess shall not be taken into account to increase qualifying expenditure as mentioned in section 62(1)(b).
- (5) An election under this section—
- (a) shall specify the abandonment expenditure to which it relates and the amounts of any such moneys received as mentioned in subsection (4)(a) above;

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- (b) shall be made by notice in writing given to the inspector not later than two years after the end of the chargeable period related to the incurring of the abandonment expenditure; and
  - (c) shall be irrevocable.
- (6) This section has effect where the chargeable period related to the incurring of the expenditure or its basis period ends after 30th June 1991.]

#### Textual Amendments

**F87** Ss. 62A, 62B inserted by [Finance Act 1990 \(c. 29\), s. 60](#)

### [<sup>F88</sup> **62B Treatment of post-cessation abandonment expenditure related to offshore machinery or plant.**

- (1) Subsection (2) below applies in any case where—
- (a) a person (in this section referred to as “the former trader”) ceases to carry on a ring fence trade; and
  - (b) after 30th June 1991 and within the period of three years immediately following the last day on which he carried on that trade, the former trader incurs expenditure (in this section referred to as “post-cessation expenditure”) on the demolition of machinery or plant which falls within section 62A(1)(c); and
  - (c) the post-cessation expenditure would have been abandonment expenditure for the purposes of section 62A if the demolition had been carried out and the expenditure incurred before the cessation of the ring fence trade; and
  - (d) apart from this section, the post-cessation expenditure would not be deductible in computing the income of the former trader for any purpose of corporation tax or income tax.
- (2) Where this subsection applies, the qualifying expenditure of the former trader for the chargeable period related to the cessation of his ring fence trade shall be treated for the purposes of sections 24 and 25 as increased by so much of the post-cessation expenditure as exceeds any moneys received in the three year period referred to in paragraph (b) of subsection (1) above for the remains of the machinery or plant referred to in that paragraph.
- (3) Where subsection (2) above applies, any moneys received as mentioned in that subsection shall not constitute income of the former trader for any purpose of income tax or corporation tax.
- (4) All such adjustments shall be made, whether by way of discharge or repayment of tax or otherwise, as may be required in consequence of the provisions of this section.
- (5) In this section “ring fence trade” has the same meaning as in section 62A.]

#### Textual Amendments

**F88** Ss. 62A, 62B inserted by [Finance Act 1990 \(c. 29\), s. 60](#)

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### 63 Mineral extraction.

(1) In any case where—

- (a) expenditure is incurred by any person on the provision of machinery or plant for the purposes of mineral exploration and access, and
- (b) that expenditure is so incurred before the first day on which that person begins to carry on a trade of mineral extraction, and
- (c) on that first day the machinery or plant belongs to him, and does not fall within section 106(1)(d),

that person shall be treated for the purposes of this Part as if he had sold the machinery or plant immediately before that first day and had on that first day incurred capital expenditure on the provision of the machinery or plant wholly and exclusively for the purposes of the trade, being expenditure equal to the expenditure incurred (or, where there has been an actual previous sale and re-acquisition, last incurred) as mentioned in paragraph (a) above.

(2) Subsection (1) above shall not apply where the expenditure was incurred by any person before 1st April 1986 on mineral exploration and access and the mineral exploration and access at the source in question had ceased before that person begins to carry on a trade of mineral extraction.

### 64 Transfers of interests in oil fields.

(1) This section applies where—

- (a) there is, for the purposes of Schedule 17 to the <sup>M25</sup>Finance Act 1980, a transfer by a participator in an oil field of the whole or part of his interest in the field; and
- (b) in pursuance of that transfer, the old participator disposes of, and the new participator acquires, machinery or plant used, or expected to be used, in connection with the field, or a share in such machinery or plant.

(2) In the application of this Part to expenditure incurred by the new participator in the acquisition referred to in subsection (1)(b) above, there shall be disregarded so much, if any, of that expenditure as exceeds the disposal value to be brought into account by the old participator under sections 24, 25 and 26 by reason of the disposal.

(3) In this section “the old participator” and “the new participator” have the same meaning as in Schedule 17 to the Finance Act 1980; and, subject to that and to section 83(4), expressions used in subsection (1) above and in Part I of the <sup>M26</sup>Oil Taxation Act 1975 have the same meanings in this section as they have in that Part.

(4) Nothing in this section affects the operation of section 75.

#### Marginal Citations

**M25** 1980 c. 48.

**M26** 1975 c. 22.

### 65 Partnership using property of a partner.

(1) In taxing a trade carried on in partnership the same allowances, deductions and charges shall be allowed or made under this Part in respect of machinery or plant used for

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the purposes of that trade and belonging to one or more of the partners but not being partnership property as would fall to be allowed or made if the machinery or plant had at all material times belonged to all the partners and been partnership property and everything done by or to any of the partners in relation thereto had been done by or to all the partners.

- (2) Notwithstanding anything in section 24(6), a sale or gift of machinery or plant used for the purposes of a trade carried on in partnership, being a sale or gift by one or more of the partners to one or more of the partners, shall not be treated as an event requiring any disposal value to be brought into account if the machinery or plant continues to be used after the sale or gift for the purposes of that trade.
- (3) References in this section to use for the purposes of a trade do not include references to use in pursuance of a letting by the partner or partners in question to the partnership or to use in consideration of the making to the partner or partners in question of any payment which may be deducted in computing the profits or gains of the trade.

## **66 Building alterations connected with installation of machinery or plant.**

Where a person carrying on a trade incurs capital expenditure on alterations to an existing building incidental to the installation of machinery or plant for the purposes of the trade, the provisions of this Part shall have effect as if that expenditure were expenditure on the provision of that machinery or plant and as if the works representing that expenditure formed part of that machinery or plant.

## **67 Expenditure on thermal insulation.**

- (1) If a person carrying on a trade has incurred expenditure in adding any insulation against loss of heat to any industrial building or structure occupied by him for the purposes of that trade, this Part shall apply as if the expenditure were capital expenditure incurred on the provision of machinery or plant for the purposes of the trade, and as if the machinery or plant had, in consequence of his incurring the expenditure, belonged to him, and as if the disposal value of the machinery or plant were nil.
- (2) If a person has incurred expenditure in adding any insulation against any loss of heat to any industrial building or structure let by him otherwise than in the course of a trade, this Part shall apply as if the expenditure were capital expenditure incurred in providing machinery or plant first let by that person, otherwise than in the course of a trade, at the time when the expenditure was incurred, and as if the property comprised in the lease of the building or structure had as from that time included the machinery or plant, and as if the disposal value of the machinery or plant were nil.
- (3) Any allowance made by virtue of section 61(1) in a case where it applies by virtue of subsection (2) above shall (notwithstanding section 73(2)), be available primarily against the following income, that is to say—
  - (a) income taxed under Schedule A in respect of any premises which at any time in the chargeable period for which the allowance falls to be made consist of or include an industrial building or structure; or
  - (b) income which is the subject of a balancing charge under Part I.
- (4) In this section “industrial building or structure” has the meaning given by section 18.

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- (5) This section applies to expenditure to which section 1 applies in accordance with section 2 but does not apply to any other expenditure to which section 1 applies or to any expenditure to which section 6 applies.
- (6) Subsection (5) above shall not have effect in relation to any chargeable period or its basis period ending after 26th July 1989.

VALID FROM 16/07/1992

[<sup>F89</sup> **67A Computer software.**

- (1) If a person carrying on a trade incurs capital expenditure in acquiring for the purposes of the trade a right to use or otherwise deal with computer software, then, for the purposes of this Part—
- (a) the right and the software to which it relates shall be treated as machinery or plant;
  - (b) that machinery or plant shall be treated as provided for the purposes of the trade; and
  - (c) so long as he is entitled to the right, that machinery or plant shall be treated as belonging to him.
- (2) In any case where—
- (a) a person carrying on a trade incurs capital expenditure on the provision of computer software for the purposes of the trade, and
  - (b) in consequence of his incurring that expenditure, the computer software belongs to him, but
  - (c) the computer software does not constitute machinery or plant,
- then for the purposes of this Part the computer software shall be treated as machinery or plant.]

**Textual Amendments**

**F89** S. 67A inserted (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), s. **68(1)(8)**.

**68 Exclusion of certain expenditure relating to films, tapes and discs.**

- (1) Expenditure which—
- (a) is incurred on the production or acquisition of a film, tape or disc, and
  - (b) would, apart from this subsection, constitute capital expenditure on the provision of machinery or plant for the purposes of this Part,
- shall be regarded for the purposes of the Tax Acts as expenditure of a revenue nature unless it is expenditure falling within subsection (9) below.
- (2) In this section—
- (a) any reference to a film is a reference to an original master negative of the film and its soundtrack, if any;
  - (b) any reference to a tape is a reference to an original master film tape or original master audio tape; and

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- (c) any reference to a disc is a reference to an original master film disc or original master audio disc;

and any reference to the acquisition of a film, tape or disc includes a reference to the acquisition of any description of rights in a film, tape or disc.

- (3) Subject to the following provisions of this section, in computing the profits or gains accruing to any person from a trade or business which consists of or includes the exploitation of a film, tape or disc, expenditure which—

- (a) is incurred on the production or acquisition of a film, tape or disc, and  
(b) is expenditure of a revenue nature (whether by virtue of subsection (1) above or otherwise),

shall be allocated to relevant periods in accordance with subsections (4) to (6) below; and in this section “relevant period” means a period for which the accounts of the trade or business concerned are made up or, if those accounts are not made up for any period, a period the profits or gains of which are taken into account in assessing the income of the trade or business for any chargeable period.

- (4) Subject to the following provisions of this section, the amount of expenditure falling within subsection (3) above which falls to be allocated to any relevant period shall be such as is just and reasonable, having regard to—

- (a) the amount of that expenditure which remains unallocated at the beginning of that period;  
(b) the proportion which the estimated value of the film, tape or disc which is realised in that period (whether by way of income or otherwise) bears to the aggregate of the value so realised and the estimated remaining value of the film, tape or disc at the end of that period; and  
(c) the need to bring the whole of the expenditure falling within subsection (3) above into account over the time during which the value of the film, tape or disc is expected to be realised.

- (5) In addition to any expenditure which is allocated to a relevant period in accordance with subsection (4) above, if a claim is made in that behalf not later than two years after the end of that period, there shall also be allocated to that period so much of the unallocated expenditure as is specified in the claim and does not exceed the difference between—

- (a) the amount allocated to that period in accordance with subsection (4) above; and  
(b) the value of the film, tape or disc which is realised in that period (whether by way of income or otherwise).

- (6) As respects any relevant period, “the unallocated expenditure” referred to in subsection (5) above is that expenditure falling within subsection (3) above—

- (a) which does not fall to be allocated to that period in accordance with subsection (4) above; and  
(b) which has not been allocated to any earlier relevant period in accordance with subsection (4) or (5) above.

- (7) Subsections (3) to (6) above do not apply to the profits or gains of a trade in which the film, tape or disc concerned constitutes trading stock, as defined in section 100(2) of the principal Act.

- (8) In a case where any expenditure on the production or acquisition of a film, tape or disc is expenditure to which subsection (1) above applies, the sums received from

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the disposal of that film, tape or disc shall be regarded for the purposes of the Tax Acts as receipts of a revenue nature (if they would not be so regarded apart from this subsection); and the reference in this subsection to sums received from the disposal of any film, tape or disc shall be construed as including—

- (a) sums received from the disposal of any interest or right in or over the film, tape or disc, including an interest or right created by the disposal; and
- (b) insurance or compensation moneys and other moneys of a like nature which are derived from the film, tape or disc.

(9) Subsections (1) to (8) above do not apply to expenditure which is incurred—

- (a) by a person who carries on a trade or business which consists of or includes the exploitation of films, tapes or discs; and
- (b) on the production or acquisition of a film, tape or disc which is certified by the Secretary of State under Schedule 1 to the <sup>M27</sup>Films Act 1985 as a qualifying film, tape or disc for the purposes of this section and the value of which is expected to be realisable over a period of not less than two years.

(10) In this section “expenditure of a revenue nature” means expenditure which, if it were incurred in the course of a trade the profits or gains of which are chargeable to tax under Case I of Schedule D, would be taken into account for the purpose of computing the profits, gains or losses of the trade; and “receipts of a revenue nature” means receipts which, if they were receipts of such a trade, would be taken into account for that purpose.

#### Marginal Citations

M27 1985 c. 21.

## 69 Expenditure on fire safety.

(1) If a person carrying on a trade incurs expenditure in taking steps specified in a notice served on him by the fire authority under section 5(4) of the <sup>M28</sup>Fire Precautions Act 1971, and—

- (a) the notice was issued on an application for a fire certificate in respect of premises used by him for the purposes of the trade; and
- (b) an allowance or deduction in respect of the expenditure could not, apart from this subsection, be made in taxing the trade or computing the profits or gains arising from it,

this Part shall apply as if the expenditure were capital expenditure incurred on the provision of machinery or plant for the purposes of the trade, and as if the machinery or plant had, in consequence of his incurring the expenditure, belonged to him, and as if the disposal value of the machinery or plant were nil.

(2) If a person carrying on a trade incurs expenditure in taking, in respect of any premises used by him for the purposes of the trade—

- (a) steps specified, in a letter or other document sent or given to him by or on behalf of the fire authority on an application for a fire certificate under the <sup>M29</sup>Fire Precautions Act 1971 in respect of those premises, as steps that would have to be taken in order to satisfy the authority as mentioned in section 5(4) of that Act, being steps which might have been, but were not, specified in a notice under that subsection; or



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- (b) steps which, in consequence of the making of an order under section 10 of that Act prohibiting or restricting the use of the premises, had to be taken to enable the premises to be used without contravention of the order,
- then, if an allowance or deduction in respect of the expenditure could not, apart from this subsection, be made in taxing the trade or computing the profits or gains arising from it, this Part shall apply as regards the expenditure as it would apply by virtue of subsection (1) above if the expenditure fell within that subsection.

#### Marginal Citations

M28 1971 c. 40.

M29 1971 c. 40.

## 70 Expenditure on safety at sports grounds.

- (1) If a person carrying on a trade incurs expenditure in taking, in respect of any sports ground used by him for the purposes of the trade or in respect of any regulated stand at a sports ground so used—

- (a) steps necessary for compliance with the terms and conditions of a safety certificate issued for the sports ground or stand; or
- (b) steps specified in a letter or other document sent or given to him by or on behalf of the local authority for the area in which the sports ground is situated as steps the taking of which would be taken into account by them in deciding what terms and conditions to include in a safety certificate to be issued for the sports ground or stand or lead to the amendment or replacement of a safety certificate issued or to be issued for it,

then, if an allowance or deduction in respect of the expenditure could not, apart from this section, be made in taxing the trade or computing the profits or gains arising from it, this Part shall apply as if the expenditure were capital expenditure incurred on the provision of machinery or plant for the purposes of the trade, and as if the machinery or plant had, in consequence of his incurring the expenditure, belonged to him and as if the disposal value of the machinery or plant were nil.

- (2) If a person carrying on a trade incurs expenditure in respect of a sports ground used for the purposes of the trade (not being expenditure in respect of a regulated stand), then, if—

- (a) at the time when the expenditure was incurred the sports ground was of the description specified in section 1(1) of the <sup>M30</sup>Safety of Sports Grounds Act 1975 but no designation order under that section had come into operation in respect of the sports ground; and
- (b) the expenditure was incurred in taking steps which the local authority for the area in which the sports ground is situated certify would have fallen within subsection (1)(a) or (b) above if such an order had then been in operation and a safety certificate had then been issued or applied for,

subsection (1) above shall have effect in relation to the expenditure as it has effect in relation to the expenditure mentioned in that subsection.

- (3) Except in relation to expenditure incurred in respect of a regulated stand or as provided by subsection (2) above, subsection (1) above shall not apply in relation to expenditure incurred in respect of a sports ground at any time when it is not a designated sports ground within the meaning of the <sup>M31</sup>Safety of Sports Grounds Act 1975.

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- (4) Any provision of regulations made under section 6(1)(b) of the Safety of Sports Grounds Act 1975 (power of local authorities to charge fees) shall, with the necessary modifications, apply to the issue of a certificate for the purposes of subsection (2) above as it applies to the issue of a safety certificate.
- (5) In this section—
- (a) as it has effect in relation to expenditure incurred in respect of a regulated stand, “regulated stand”, “sports ground”, “safety certificate” and “local authority” have the same meanings as in Part III of the <sup>M32</sup>Fire Safety and Safety of Places of Sports Act 1987;
  - (b) as it has effect in relation to other expenditure, “sports ground”, “safety certificate” and “local authority” have the same meanings as in the Safety of Sports Grounds Act 1975.

#### Marginal Citations

**M30** 1975 c. 52.

**M31** 1975 c. 52.

**M32** 1987 c. 27.

## 71 Security.

- (1) This section applies where—
- (a) an individual, or a partnership of individuals, carries on a trade, profession or vocation,
  - (b) expenditure is incurred by the individual or partnership in connection with the provision for or use by the individual, or any of the individuals, of a security asset,
  - (c) no sum in respect of the expenditure could be deducted in computing the profits or gains of the trade, profession or vocation for the purposes of Case I or Case II of Schedule D, and
  - (d) apart from this section, paragraph (a) or paragraph (b) (or both) of section 24(1) would not apply.
- (2) In a case where this section applies, this Part shall apply as if—
- (a) the expenditure were capital expenditure incurred on the provision of machinery or plant wholly and exclusively for the purposes of the trade, profession or vocation concerned,
  - (b) in consequence of the expenditure being incurred, the machinery or plant belonged to the individual or partnership carrying on the trade, profession or vocation, and
  - (c) the disposal value of the machinery or plant were nil.
- (3) Subsection (2) above shall not apply unless the asset is provided or used to meet a threat which—
- (a) is a special threat to the individual’s personal physical security, and
  - (b) arises wholly or mainly by virtue of the particular trade, profession or vocation concerned.
- (4) Subsection (2) above shall not apply unless the person incurring the expenditure—

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- (a) has as his sole object in doing so the meeting of that threat, and
  - (b) subject to subsection (5) below, intends the asset to be used solely to improve personal physical security,
- (5) In a case where—
- (a) apart from subsection (4)(b) above, subsection (2) would apply, and
  - (b) the person incurring the expenditure intends the asset to be used partly to improve personal physical security,
- subsection (2) above shall nevertheless apply, but only so as to treat the appropriate proportion of the expenditure there mentioned as capital expenditure incurred as there mentioned.
- (6) For the purposes of subsection (5) above, the appropriate proportion of the expenditure mentioned in subsection (2) above is such proportion of that expenditure as is attributable to the intention of the person incurring it that the asset be used to improve personal physical security.

## **72 Security: supplementary.**

- (1) For the purposes of section 71—
- (a) a security asset is an asset which improves personal security,
  - (b) references to an asset do not include references to a car, a ship or an aircraft,
  - (c) references to an asset do not include references to a dwelling or grounds appurtenant to a dwelling, and
  - (d) references to an asset include references to equipment and to a structure (such as a wall).
- (2) If the person incurring the expenditure intends the asset to be used solely to improve personal physical security, but there is another use which is incidental to improving personal physical security, that other use shall be ignored in construing section 71(4)(b).
- (3) The fact that an asset improves the personal physical security of any member of the family or household of the individual concerned, as well as that of the individual, shall not prevent section 71(2) from applying.
- (4) For the purposes of section 71, it is immaterial whether or not the asset becomes affixed to land (whether constituting a dwelling or otherwise).
- (5) Section 71 applies where expenditure is incurred on or after 6th April 1989.

## **CHAPTER VIII**

### **SUPPLEMENTARY PROVISIONS**

## **73 Manner of making allowances and charges.**

- (1) Subject to subsection (2) below, any allowance or charge made to or on any person under this Part shall be made to or on that person in taxing his trade.
- (2) Any allowance made by virtue of section 61(1) shall be made by way of discharge or repayment of tax, and, subject to subsection (3) below and section 67(3), shall be

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available primarily against income from the letting of machinery or plant; and effect shall be given to any charge made by virtue of section 61(1)—

- (a) if a charge to income tax, by making the charge under Case VI of Schedule D,
  - (b) if a charge to corporation tax, by treating the amount on which the charge is to be made as income from the letting of machinery or plant.
- (3) Where an allowance falling to be made for any chargeable period by virtue of section 61(1) is in respect of expenditure on the provision of machinery or plant which for the whole or any part of that period or its basis period is not used for the purposes of a trade carried on by the lessee, that allowance or, as the case may require, a proportionate part thereof shall be available primarily against income from the letting of that machinery or plant only.

#### **74 Allowances not available: expenses of Members of Parliament.**

No allowance shall be made under this Part in respect of any expenditure incurred by a Member of the House of Commons in or in connection with the provision or use of residential or overnight accommodation to enable him to perform his duties in or about the Palace of Westminster or his constituency.

#### **75 Further restrictions on allowances.**

- (1) Subject to sections 76 and 77, where a person incurs capital expenditure on the provision by purchase of machinery or plant, and—
- (a) he and the seller are connected with each other, or
  - (b) the machinery or plant continues to be used for the purposes of a trade carried on by the seller, or
  - (c) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which, but for this subsection, might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part,

a first-year allowance shall not be made in respect of the expenditure [<sup>F90</sup>or any additional VAT liability incurred in respect of it] or, if made, shall be withdrawn, and there shall be disregarded for the purposes of sections 24, 25 and 26 [<sup>F91</sup>so much (if any) of the aggregate of the expenditure and any such additional VAT liability] as exceeds the disposal value to be brought into account under those sections by reason of the sale.

- (2) Subject to sections 76 and 77, where a person enters into a contract under which, on the performance thereof, he will or may become the owner of machinery or plant belonging to another person, and—
- (a) he and that person are connected with each other, or
  - (b) the machinery or plant continues to be used for the purposes of a trade carried on by that person, or
  - (c) it appears with respect to the transaction, or with respect to transactions of which it is one, that the sole or main benefit which, but for this subsection, might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part,

a first-year allowance shall not be made in respect of any expenditure incurred by him under the contract so far as relating to that machinery or plant [<sup>F92</sup>or in respect of any additional VAT liability incurred by him in respect of any such expenditure]

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or, if made, shall be withdrawn, and there shall be disregarded for the purposes of sections 24, 25 and 26 [<sup>F93</sup>so much (if any) of the aggregate of the expenditure and any such additional VAT liability] as exceeds the disposal value to be brought into account under those sections by reason of the contract so far as relating thereto.

- (3) Subject to sections 76 and 77, where a person, being entitled to the benefit of a contract under which, on the performance thereof, he will or may become the owner of any machinery or plant, assigns the benefit of the contract so far as it relates to that machinery or plant to another person, and—
- (a) he and the assignee are connected with each other, or
  - (b) the machinery or plant continues to be used for the purposes of a trade carried on by him, or
  - (c) it appears with respect to the assignment, or with respect to transactions of which the assignment is one, that the sole or main benefit which, but for this subsection, might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part,

a first-year allowance shall not be made in respect of any expenditure incurred by him under the contract so far as so relating, or by way of consideration for the assignment [<sup>F94</sup>or in respect of any additional VAT liability incurred by him in respect of any such expenditure] or, if so made, shall be withdrawn, and there shall be disregarded for the purposes of sections 24, 25 and 26 [<sup>F95</sup>so much (if any) of the aggregate of the assignee's expenditure and any such additional VAT liability] as exceeds the disposal value to be brought into account under section 60 by reason of the assignment.

- (4) In this section references to persons connected with each other shall be construed in accordance with section 839 of the principal Act.
- (5) All such assessments and adjustments of assessments shall be made as are necessary to give effect to this section.

#### Textual Amendments

- F90** Words in s. 75(1) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by Finance Act 1991 (c. 31), s. 59, Sch. 14 Pt. II para. 11(1)(a).
- F91** Words in s. 75(1) substituted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by Finance Act 1991 (c. 31), s. 59, Sch. 14 Pt. II para. 11(1)(b).
- F92** Words in s. 75(2) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by Finance Act 1991 (c. 31), s. 59, Sch. 14 Pt. II para. 11(2)(a).
- F93** Words in s. 75(2) substituted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by Finance Act 1991 (c. 31), s. 59, Sch. 14 Pt. II para. 11(2)(b).
- F94** Words in s. 75(3) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by Finance Act 1991 (c. 31), s. 59, Sch. 14 Pt. II para. 11(3)(a).
- F95** Words in s. 75(3) substituted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by Finance Act 1991 (c. 31), s. 59, Sch. 14 Pt. II para. 11(3)(b).

## 76 Extension of section 75.

- (1) Paragraph (b) of each of subsections (1) to (3) of section 75 shall have effect as if the reference to the machinery or plant continuing to be used for the purposes of a trade carried on by the person there mentioned included a reference to its being used after the date of the sale, the making of the contract or the assignment of the benefit of the contract (as the case may be) for the purposes of a trade carried on by that person or

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another person who is connected with him (other than the buyer, the person entering into the contract or the assignee) without having been used since that date for the purposes of any other trade except that of leasing machinery or plant.

(2) In a case in which no disposal value falls to be brought into account as mentioned in subsection (1) of section 75, that subsection shall have effect as if for the reference to the disposal value to be so brought into account there were substituted a reference to an amount equal to whichever of the following is the smallest—

- (a) the open market value of the machinery or plant;
- (b) where capital expenditure was incurred by the seller on the provision of the machinery or plant, the amount of that expenditure;
- (c) where capital expenditure was incurred by any person connected with the seller on the provision of the machinery or plant, the amount of the expenditure incurred by that person.

[<sup>F96</sup>(2A) In any case where—

- (a) section 75(1) has effect with the modification specified in paragraph (a) of subsection (2) above, but
- (b) the open market value of the machinery or plant in question is determined for the purposes of those provisions inclusive of value added tax,

section 75(1) as so modified shall have effect with the omission of the words “the aggregate of” and “and any such additional VAT liability”.

(2B) For the purposes of paragraphs (b) and (c) of subsection (2) above—

- (a) any additional VAT liability incurred by the seller or, as the case may be, any person connected with him in respect of capital expenditure incurred on the provision of the machinery or plant shall be regarded as capital expenditure incurred on the provision of the machinery or plant, and
- (b) any additional VAT rebate made to the seller or, as the case may be, any person connected with him in respect of any such expenditure shall be regarded as reducing the amount of capital expenditure so incurred by him,

to the extent that the liability or rebate in question would not, apart from this subsection, fall to be so regarded.]

(3) Section 75(1) shall not by virtue of paragraph (a) or (b) thereof deny a first-year allowance if the machinery or plant has not before the sale been used for the purposes of a trade by the seller or any person connected with him but for the purposes of that allowance there shall be disregarded so much (if any) of the expenditure as exceeds whichever is the smallest of the amounts mentioned in subsection (2)(a), (b) and (c) above.

(4) [<sup>F97</sup>Subsections (2), (2A), (2B) and (3)] above shall apply in relation to section 75(2) and (3) as they apply in relation to section 75(1) but taking references—

- (a) to the sale as references to the making of the contract and to the assignment of the benefit of the contract respectively;
- (b) to the seller as references to the person to whom the machinery or plant belongs and to the assignor respectively.

(5) Neither subsection (1) nor subsection (2) of section 75 shall apply in relation to a sale or contract if the machinery or plant has never been used before the sale or the making of the contract and the business or part of the business of the seller or owner was the manufacture or supply of machinery or plant of that class and the sale was effected or the contract was made in the ordinary course of that business.

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(6) In this section—

- (a) “open market value” in relation to any machinery or plant means an amount equal to the price which the machinery or plant would have fetched if sold in the open market; and
- (b) references to persons connected with each other shall be construed in accordance with section 839 of the principal Act.

#### Textual Amendments

- F96** S. 76(2A)(2B) inserted (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31), s. 59, Sch. 14 Pt. II para. 11(4).
- F97** Words in s. 76(4) substituted (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31), s. 59, Sch. 14 Pt. II para. 11(5).

## 77 Successions to trades: connected persons.

- (1) Where a person (in this subsection referred to as “the successor”) has succeeded to a trade which was until that time carried on by another person (in this subsection referred to as “the predecessor”) and the two persons are connected with each other within the terms of section 839 of the principal Act and the successor is not a dual resident investing company, those persons may by notice to the inspector elect that the provisions of this subsection shall have effect; and in that event—
  - (a) for the purpose of making allowances and charges under this Part, the trade shall not be treated as discontinued;
  - (b) allowances and charges shall be so made to or on the successor as if everything done to or by the predecessor had been done to or by the successor, but with no account being taken of the sale or transfer from the predecessor to the successor of any machinery or plant which was in use for the purposes of the trade at the time of the succession.
- (2) Subsection (1) above shall not apply in relation to successions occurring after the passing of the <sup>M33</sup>Finance Act 1988 (29th July 1988); and the requirement in that subsection that the successor must not be a dual resident investing company shall not apply if the successor began to carry on the trade before 1st April 1987.
- (3) Where at any time after the passing of the Finance Act 1988 a person (referred to below as “the successor”) succeeds to a trade which was until that time carried on by another person (referred to below as “the predecessor”) and—
  - (a) the two persons are connected with each other;
  - (b) each of them is within the charge to tax in the United Kingdom on the profits of the trade; and
  - (c) the successor is not a dual resident investing company,those persons may by notice given to the inspector not later than two years after that time, elect that the provisions of subsection (4) below shall have effect.
- (4) In the event of an election under subsection (3) above—
  - (a) for the purpose of making allowances and charges under this Part, any machinery or plant which—

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- (i) immediately before the time when the succession took place, belonged to the predecessor and was in use for the purposes of the trade; and
  - (ii) immediately after that time, belonged to the successor and was in use for those purposes,
- shall (notwithstanding any actual sale or transfer) be treated as sold by the predecessor to the successor at a price which does not give rise to a balancing allowance or balancing charge; and
- (b) allowances and charges shall be made under this Part to or on the successor as if everything done to or by the predecessor had been done to or by the successor.
- (5) For the purposes of subsection (3) above the predecessor and the successor are connected with each other if—
- (a) they are connected with each other within the terms of section 839 of the principal Act;
  - (b) one of them is a partnership and the other has the right to a share in that partnership;
  - (c) one of them is a body corporate and the other has control over that body;
  - (d) both of them are partnerships and some other person has the right to a share in both of them; or
  - (e) both of them are bodies corporate, or one of them is a partnership and the other is a body corporate, and (in either case) some other person has control over both of them.
- (6) In subsection (5) above “control” shall be construed in accordance with section 840 of the principal Act; and any reference to the right to a share in a partnership is a reference to the right to a share of the assets or income of that partnership.
- (7) All such assessments and adjustments of assessments shall be made as are necessary to give effect to subsections (3) and (4) above.
- (8) Sections 41(5) and 78(1) shall not apply in any case where an election is made under subsection (3) above.

This subsection shall not apply in relation to successions occurring before 27th July 1989.

#### **Modifications etc. (not altering text)**

**C26** S. 77(3) modified (for the year of assessment 1988-1989) by [S.I. 1991/851](#), [regs. 1, 9](#), [Sch.2](#).

**C27** S. 77(3) modified (for the year of assessment 1989-1990) by [S.I. 1992/511](#), [regs. 1, 9](#), [Sch.2](#).

**C28** S. 77(3) applied (with modifications) (for the year of assessment 1990–91) by [The Lloyd’s Underwriters \(Tax\) \(1990–91\) Regulations 1993 \(S.I. 1993/415\)](#), [reg. 9](#), [Sch.2](#)

#### **Marginal Citations**

**M33** 1988 c. 39.

## **78 Succession to trades where no election made under section 77.**

- (1) Where a person succeeds to any trade which until that time was carried on by another person and, by virtue of section 113 or 337(1) of the principal Act (changes in persons



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carrying on a trade, and special rules for corporation tax), the trade is to be treated as discontinued, any property which, immediately before the succession takes place, was either in use or provided and available for use for the purposes of the discontinued trade and, without being sold, is, immediately after the succession takes place, either in use or provided and available for use for the purposes of the new trade shall, for the purposes of this Part be treated as if—

- (a) it had been sold to the successor when the succession takes place, and
- (b) the net proceeds of the sale had been the price which that property would have fetched if sold in the open market;

but no first-year allowance shall be made by virtue of this subsection.

- (2) Where a person succeeds to a trade as a beneficiary under the will or on the intestacy of a deceased person who carried on that trade and the beneficiary by notice to the inspector so elects, then, in relation to any machinery or plant which passes to him together with the trade, being machinery or plant—
  - (a) previously owned by the deceased person, and
  - (b) either used or provided and available for use by him for the purposes of that trade,

the reference in subsection (1) above to the price which the machinery or plant would have fetched if sold in the open market shall, in relation to the succession and any previous succession occurring on or after the death of the deceased, be deemed to be a reference to that price or, if it is less than that price, any excess of qualifying expenditure over disposal value which would have been taken into account under sections 24, 25 and 26 for making an allowance for the chargeable period related to the permanent discontinuance of the deceased person's trade if the machinery or plant had had no disposal value.

[<sup>F98</sup>(2A) Where the disposal value of any machinery or plant in relation to which an election under subsection (2) above has effect falls to be ascertained in accordance with section 26, that section shall apply as if the person mentioned in subsection (2) of that section were the deceased.]

- (3) This subsection has effect as respects any allowance under this Part, other than a balancing allowance.

Where, after the setting up and before the permanent discontinuance of a trade which at any time is carried on in partnership, anything is done for the purposes thereof, any such allowance which, if the trade had at all times been carried on by one and the same person, would have fallen to be made to him shall be made to the person or persons from time to time carrying on that trade, and the amount of any such allowance shall be computed as if that person or those persons had at all times been carrying on the trade, and as if everything done to or by his or their predecessors in the carrying on thereof had been done to or by him or them.

- (4) Where, after the setting up and on or before the permanent discontinuance of a trade which at any time is carried on in partnership, any event occurs which gives rise or may give rise to a balancing allowance or balancing charge under this Part in respect of machinery or plant, any balancing allowance or balancing charge which, if the trade had at all times been carried on by one and the same person, would have fallen to be made to or on him in respect of that machinery or plant by reason of that event shall be made to or on the person or persons carrying on the trade at the time of that event, and the amount of any such allowance or charge shall be computed as if that person or those persons had at all times been carrying on the trade and as if everything done

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to or by his or their predecessors in the carrying on thereof had been done to or by him or them.

- (5) Notwithstanding section 27(1), this section shall not apply to any employment or office.

#### Textual Amendments

**F98** S. 78(2A) inserted by [Finance Act 1990 \(c. 29\)](#), s. 88, [Sch. 13 para. 3\(1\)\(2\)](#)

### 79 Effect of use partly for trade etc. and partly for other purposes.

- (1) A first-year allowance may be made to a person in respect of any machinery or plant notwithstanding that it appears that the provision of the machinery or plant is partly for purposes other than those of a trade carried on by him; but the allowance in any such case shall be so much only of the allowance that would fall to be made if the provision of the machinery or plant were wholly and exclusively for the purposes of the trade as may be just and reasonable having regard to all the relevant circumstances of the case and, in particular, to the extent to which it appears that the machinery or plant is likely to be used for those other purposes.
- (2) Where a person carrying on a trade incurs capital expenditure on the provision of machinery or plant partly for the purposes of a trade (in subsections (4) to (6) below referred to as “the actual trade”) and partly for other purposes, it shall be assumed for the purposes of sections 24, 25 and 26 that he incurred the expenditure on the provision of the machinery or plant wholly and exclusively for the purposes of a trade (in subsections (4) to (6) below referred to as “the notional trade”) carried on by him separately from the actual trade and any other trade carried on him.
- (3) If, for any chargeable period, a person who has incurred expenditure on the provision of machinery or plant for the purposes of a trade (in subsections (4) to (6) below referred to as “the actual trade”) is required to bring the disposal value of the machinery or plant into account by reason of it beginning in that chargeable period or its basis period to be used partly, but not wholly, for purposes other than those of the actual trade, it shall be assumed for the purposes of sections 24, 25 and 26 that, immediately after the beginning of that chargeable period or its basis period, he incurs capital expenditure equal to that disposal value on the provision of the machinery or plant wholly and exclusively for the purposes of a trade (in subsections (4) to (6) below referred to as “the notional trade”) carried on by him separately from the actual trade and any other trade carried on by him.
- (4) Without prejudice to section 24(6)(c)(i) to (iii), it shall be assumed for the purposes of that section that the notional trade is permanently discontinued on the machinery or plant beginning to be used wholly for purposes other than those of the actual trade.
- (5) The allowance or charge under section 24 which, on the above assumptions, and having regard to subsection (6) below, would fall to be made for any chargeable period in the case of the notional trade—
  - (a) shall be reduced to such extent as may be just and reasonable having regard to all the relevant circumstances of the case and, in particular, to the extent to which the machinery or plant was used in that chargeable period or its basis period otherwise than for the purposes of the actual trade; and

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- (b) shall, as so reduced, be made for that chargeable period in the case of the actual trade.
- (6) If an allowance under section 24 falling to be made by virtue of this section for any chargeable period in the case of the actual trade is not claimed <sup>F99</sup>, or is reduced in amount in accordance with a requirement under subsection (3) <sup>F99</sup> of that section then, in determining the allowance or charge under that section which would fall to be made for any subsequent chargeable period in the case of the notional trade, any allowance falling to be made in the case of that trade for the first-mentioned chargeable period shall be treated as not claimed <sup>F99</sup> or, as the case may require, as proportionately reduced.

#### Textual Amendments

**F99** Words repealed by Finance Act 1990 (c. 29), ss. 103(1)(2), 132, Sch. 17 para. 14, Sch. 19 Pt. V, Note 6

### 80 Effect of subsidies towards wear and tear.

- (1) If it appears that, during the period during which any machinery or plant will be used by a person for the purposes of his trade, sums which—
- are in respect of, or take account of, the wear and tear to the machinery or plant occasioned by its use for those purposes, and
  - do not fall to be taken into account as income of that person, or in computing the profits or gains of any trade carried on by him,
- are, or are to be, payable to that person directly or indirectly by the Crown, or by any government or public or local authority (whether in the United Kingdom or elsewhere), or by any other person, then, unless those sums are in respect of, or take account of, part only of that wear and tear, any expenditure incurred by the first-mentioned person in providing the machinery or plant shall be wholly disregarded for the purposes of this Part.
- (2) Where subsection (1) above would apply to a person's expenditure on the provision of machinery or plant but for the fact that the sums there referred to are in respect of, or take account of, part only of the wear and tear to the machinery or plant, a first-year allowance may be made in respect of the expenditure, but the amount thereof shall be reduced to such extent as may be just and reasonable having regard to all the relevant circumstances of the case.
- (3) Where sums within subsection (1) above are paid as mentioned in that subsection to a person carrying on a trade, but are in respect of, or take account of, part only of the wear and tear to the machinery or plant in respect of which they are paid, subsections (4) to (6) below shall have effect with respect to the allowances and charges to be made in the case of the trade ("the actual trade") under section 24.
- (4) If an allowance has been made under section 24 for a chargeable period prior to the relevant period, the machinery or plant shall be treated for the purposes of that section as having begun to be used wholly for purposes other than those of the actual trade immediately after the beginning of the relevant period.
- (5) Whether or not subsection (4) above applies—
- it shall be assumed for the purposes of section 24—

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- (i) that (with section 81 applying where appropriate) immediately after the beginning of the relevant period, capital expenditure was incurred on providing the machinery or plant wholly and exclusively for the purposes of a trade (“the notional trade”) carried on by the person carrying on the actual trade separately from that and any other trade carried on by him,
  - (ii) that from then until the notional trade is treated by virtue of subparagraph (iii) below as permanently discontinued no sums within subsection (1) above are paid in respect thereof to the person carrying on that trade, and
  - (iii) that without prejudice to section 24(6)(c)(i) to (iii), the notional trade is permanently discontinued on the machinery or plant beginning to be used wholly or partly for purposes other than those of the actual trade; and
- (b) the allowance or charge under section 24 which, on the assumptions set out in paragraph (a) above and having regard to subsection (6) below, would fall to be made for any chargeable period in the case of the notional trade—
- (i) shall be reduced to such extent as may be just and reasonable having regard to all the relevant circumstances of the case, and
  - (ii) shall, as so reduced, be made for that chargeable period in the case of the actual trade.
- (6) If an allowance under section 24 falling by virtue of this section to be made for any chargeable period in the case of the actual trade is not claimed <sup>F100</sup>, or is reduced in amount in accordance with a requirement under subsection (3) <sup>F100</sup> of that section then, in determining the allowance or charge under that section which would fall to be made for any subsequent chargeable period in the case of the notional trade, any allowance falling to be made in the case of that trade for the first-mentioned chargeable period shall be treated as not claimed <sup>F100</sup> or, as the case may require, as proportionately reduced.
- (7) In subsections (4) and (5) above “the relevant period” means the chargeable period in which or, as the case may be, in the basis period for which the first sum is paid as mentioned in subsection (1) above in respect of the machinery or plant in question.

#### Textual Amendments

**F100** Words repealed by Finance Act 1990 (c. 29), ss. 103(1)(2), 132, Sch. 17 para. 15, Sch. 19 Pt. V, Note 6

### 81 Effect of use after user not attracting capital allowances, or after receipt by way of gift.

- (1) Subject to section 63, where a person—
- (a) brings into use for the purposes of a trade carried on by him machinery or plant which belongs to him in consequence of his having incurred capital expenditure on its provision, for purposes which were such that that expenditure has not been taken into account in computing any allowance falling to be made in the case of the trade under this Part, or
  - (b) brings into use for the purposes of a trade carried on by him machinery or plant which belongs to him in consequence of a disposition by way of gift,

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sections 24, 25 and 26 shall have effect as if that person had incurred capital expenditure on the provision of the machinery or plant for the purposes of the trade in the chargeable period related to its bringing into use for those purposes, the amount of that expenditure being taken as the price which the machinery or plant would have fetched if sold in the open market on the date when it was so brought into use, and the machinery or plant being treated as belonging to that person in consequence of his having incurred that expenditure.

- (2) Where subsection (1) above applies, the question whether the provision of the machinery or plant is to be taken to be wholly and exclusively or only partly for the purposes of the trade shall be determined according to whether the use referred to in paragraph (a) or, as the case may be, (b) of that subsection is wholly and exclusively or only partly for those purposes.
- (3) Where a person is treated as having incurred capital expenditure on the provision of machinery or plant by virtue of subsection (1)(b) above, he shall for the purposes of section 75 be treated as having done so by way of purchase from the donor.
- (4) This section shall have effect in any case where the machinery or plant in question was brought into use before 27th July 1989—
  - (a) with the addition at the end of subsection (1)(b) of the words “by reason of which the donor was required by virtue of section 24(6) to bring into account for the purposes there mentioned a disposal value equal to the price which the machinery or plant would have fetched if sold in the open market at the time of the gift”, and
  - (b) with the omission of subsection (3).

## 82 Capital expenditure to which this Part does not apply.

[<sup>F101</sup>(1)] This Part shall not apply to capital expenditure—

- (a) which was not eligible expenditure within the meaning of section 39 of the <sup>M34</sup>Finance Act 1976 (which brought expenditure previously not within Chapter I of Part III of the <sup>M35</sup>Finance Act 1971 within that Chapter but with certain exceptions), and
- (b) which was incurred in a chargeable period or its basis period ending before 6th April 1976,

and the repeals made by this Act shall not have effect in relation to any such expenditure.

[<sup>F102</sup>(2)] This Part shall not apply to capital expenditure—

- (a) on animals or other creatures to which Schedule 5 to the principal Act (treatment of farm animals etc for purposes of Case I of Schedule D) applies; or
- (b) on shares in such animals or creatures.]

### Textual Amendments

**F101** S. 82 renumbered as s. 82(1) (retrospectively) by [Finance Act 2000 \(c. 17\), s. 76\(1\)\(3\)](#)

**F102** S. 82(2) inserted (retrospectively) by [Finance Act 2000 \(c. 17\), s. 76\(1\)\(3\)](#)

### Marginal Citations

**M34** 1976 c. 40.

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M35 1971 c. 68.

### 83 Other interpretative provisions.

- (1) In this Part, except where the context otherwise requires—
  - “income” includes any amount on which a charge to tax is authorised to be made under this Part;
  - “mineral exploration and access” and “trade of mineral extraction” have the same meaning as in section 121;
  - “motor car” has the meaning given by section 36;
  - “new” (except in the expression “new expenditure”) means unused and not second-hand.
- (2) For the purposes of this Part, any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated as if it had been incurred by him on the first day on which he does carry it on.
- (3) Any reference in this Part to an allowance or charge is a reference to such an allowance or charge under this Part and a reference to an allowance made or postponed under this Part includes, so far as the context permits, a reference to an allowance relating to expenditure in respect of machinery or plant (or anything treated as machinery or plant) made or postponed under any enactment repealed by this Act or by any other Act, notwithstanding that this Act does not re-enact that repealed enactment.
- (4) The provisions of this Part, and the provisions applying for the purposes of this Part, shall apply in relation to a share in machinery or plant as they apply in relation to a part of machinery or plant; and for the purposes of those provisions, a share in machinery or plant shall be deemed to be used for the purposes of a trade so long as, and only so long as, the machinery or plant is used for those purposes.
- (5) This Part has effect subject to section 577(1)(c) of the principal Act (under which the use of an asset for providing business entertainment is not to be treated as use for the purposes of a trade).
- (6) For the purposes of this Part, where a person is carrying on a trade of mineral extraction, expenditure incurred by him in connection with that trade on the provision of machinery or plant for mineral exploration and access shall be taken to be incurred on the provision of the machinery or plant wholly and exclusively for the purposes of that trade.

## PART III

### DWELLING-HOUSES LET ON ASSURED TENANCIES

### 84 Application of Part III.

- (1) Subject to subsection (2) below, this Part has effect to provide for reliefs in respect of expenditure incurred on the construction of buildings consisting of or including dwelling houses let on assured and certain other tenancies, but only where the expenditure concerned is incurred before 1st April 1992.

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- (2) If the tenancy is an assured tenancy for the purposes of the <sup>M36</sup>Housing Act 1988, subsection (1) above shall not apply unless—
- (a) the expenditure was incurred before 15th March 1988 or it consists of the payment of sums under a contract entered into before that date and (in either case) it was incurred—
    - (i) by an approved company, or
    - (ii) by a person who sells or sold the relevant interest in the building to an approved company before any of the dwelling-houses comprised in it are or were used; or
  - (b) the expenditure was incurred by an approved company which, before 15th March 1988, bought or contracted to buy the relevant interest in the building.
- (3) In this section, “approved company” means a company which was on 15th March 1988 an approved body.

**Marginal Citations**

**M36** 1988 c. 50.

**85 Writing-down allowances.**

- (1) Subject to the provisions of this Part, where—
- (a) an approved body or a body which has been an approved body is, at the end of a chargeable period or its basis period, entitled to an interest in a building, and
  - (b) at the end of that chargeable period or its basis period, the building is or includes a qualifying dwelling-house or two or more qualifying dwelling-houses, and
  - (c) that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building,
- an allowance (“a writing-down allowance”) shall be made to that body for that chargeable period in respect of the dwelling-house or, as the case may be, each dwelling-house falling within paragraph (b) above.
- (2) The writing-down allowance in respect of a dwelling-house shall be equal to one-twenty-fifth of the capital expenditure which is appropriate to that dwelling-house, except that for a chargeable period of less than a year that fraction shall be proportionately reduced.
- (3) If, in the case of a building which is or includes a qualifying dwelling-house—
- (a) the interest which is the relevant interest in relation to any expenditure is sold, and
  - (b) the sale is an event to which section 87(1) applies,
- then, subject to any further adjustment under this subsection on a later sale, the writing-down allowance in respect of that dwelling-house for any chargeable period, if that chargeable period or its basis period ends after the time of the sale, shall be the residue, as defined in section 90(1), of that expenditure immediately after the sale, reduced in the proportion (if it is less than one) which the length of the chargeable period bears to the part unexpired at the date of the sale of the period of 25 years beginning with the time when the building was first used.



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- (4) Notwithstanding anything in subsections (1) to (3) above, in no case shall the amount of a writing-down allowance made to a body for any chargeable period in respect of any expenditure exceed what, apart from the writing-off falling to be made by reason of the making of that allowance, would be the residue of that expenditure at the end of that chargeable period or its basis period.

## 86 Qualifying dwelling-houses.

- (1) In this Part “qualifying dwelling-house” means, subject to subsections (2) to (4) below, a dwelling-house let on a tenancy which is for the time being an assured tenancy.
- (2) A dwelling-house which has been a qualifying dwelling-house by virtue of subsection (1) above shall be regarded as a qualifying dwelling-house at any time when—
- (a) it is for the time being subject to a regulated tenancy or a housing association tenancy; and
  - (b) the landlord under that tenancy either is an approved body or was an approved body but has ceased to be such for any reason.
- (3) Notwithstanding that a dwelling-house is let as mentioned in subsection (1) or (2) above, it is not a qualifying dwelling-house for the purposes of this Part—
- (a) unless the landlord is a company and either is for the time being entitled to the relevant interest in the dwelling-house or is the person who incurred the capital expenditure on the construction of the building in which the dwelling-house is comprised; or
  - (b) if the landlord is a housing association which is approved for the purposes of section 488 of the principal Act or is a self-build society within the meaning of the <sup>M37</sup>Housing Associations Act 1985; or
  - (c) if the landlord and the tenant are connected persons; or
  - (d) if the tenant is a director of a company which is or is connected with the landlord; or
  - (e) if the landlord is a close company and the tenant is, for the purposes of Part XI of the principal Act, a participator in that company or an associate of such a participator; or
  - (f) if the tenancy is entered into as part of an arrangement between the landlords (or owners) of different dwelling-houses under which one landlord takes a person as a tenant in circumstances where, if that person was the tenant of a dwelling-house let by the other landlord, that dwelling-house would not be a qualifying dwelling-house by virtue of any of paragraphs (c) to (e) above; and section 839 of the principal Act applies for the purposes of this subsection.
- (4) In this section “regulated tenancy” and “housing association tenancy” have the same meaning as in the <sup>M38</sup>Rent Act 1977.
- (5) Subsection (3)(a) shall have effect—
- (a) in relation to expenditure incurred before 5th May 1983 and expenditure incurred on or after that date pursuant to a contract entered into before that date, and
  - (b) in any case where a person other than a company became entitled to the relevant interest before that date, and such a person has not become so entitled on or after that date,



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with the omission of the words “is a company and either”.

#### Marginal Citations

M37 1985 c. 69.

M38 1977 c. 42.

### 87 Balancing allowances and charges and withdrawal of initial allowances in certain cases.

- (1) Where any capital expenditure has been incurred on the construction of a building which is to be or include a qualifying dwelling-house and any of the following events occur while a dwelling-house comprised in that building is a qualifying dwelling-house, that is to say—
  - (a) the relevant interest in the dwelling-house is sold, or
  - (b) that interest, being a leasehold interest, comes to an end otherwise than on the person entitled to it acquiring the interest which is reversionary on it, or
  - (c) the dwelling-house is demolished or destroyed or, without being demolished or destroyed, ceases altogether to be used,then, subject to subsection (2) below, for the chargeable period related to that event an allowance or charge (a “balancing allowance” or a “balancing charge”) shall, in the circumstances mentioned below, be made to or, as the case may be, on the person entitled to the relevant interest immediately before that event occurs.
- (2) No balancing allowance or balancing charge shall be made by reason of any event occurring more than 25 years after the dwelling-house was first used.
- (3) Subject to section 88, where there are no sale, insurance, salvage or compensation moneys, or where the residue of the expenditure immediately before the event exceeds those moneys, a balancing allowance shall be made and the amount of it shall be the amount of that residue, or as the case may be, of the excess of that residue over those moneys.
- (4) Subject to section 88, if the sale, insurance, salvage or compensation moneys exceed the residue, if any, of the expenditure immediately before the event, a balancing charge shall be made, and the amount on which it is made shall be an equal amount to the excess or, where the residue is nil, to those moneys.
- (5) For the purposes of this Part, any transfer of the relevant interest in a dwelling-house, otherwise than by way of sale, shall be treated as a sale of that interest for a price other than that which it would have fetched if sold on the open market; and if sections 157 and 158 would not, apart from this subsection, have effect in relation to a transfer treated as a sale by virtue of this subsection, those sections shall have effect in relation to it as if it were a sale falling within section 157(1)(a).
- (6) Notwithstanding anything in subsections (1) to (5) above, or in section 88, 157 or 158, in no case shall the amount on which a balancing charge is made on any person in respect of any expenditure on the construction of a dwelling-house comprised in a building exceed the amount of the initial allowance, if any, made to him in respect of the expenditure appropriate to that dwelling-house together with the amount of any writing-down allowances made to him in respect of that expenditure for chargeable

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periods which end on or before the date of the event giving rise to the charge or of which the basis periods end on or before that date.

- (7) Notwithstanding the repeal by this Act of sub-paragraph (3) of paragraph 1 of Schedule 12 to the <sup>M39</sup>Finance Act 1982, where an initial allowance has been granted in respect of any expenditure relating to a dwelling-house which, when it comes to be used, is not a qualifying dwelling-house, all such assessments shall be made to secure that effect is given to the prohibition in that sub-paragraph on the making of an initial allowance in such a case.
- (8) In this section “initial allowance” means an initial allowance granted under paragraph 1 of Schedule 12 to the <sup>M40</sup>Finance Act 1982.

#### **Marginal Citations**

**M39** 1982 c. 39.

**M40** 1982 c. 39.

## **88 Dwelling-houses not continuously qualifying dwelling-houses.**

- (1) If, in a case where section 87(1) applies, a dwelling-house which had been a qualifying dwelling-house was not, for any part of the relevant period, such a dwelling-house, the provisions of this section shall have effect instead of subsections (3) and (4) of that section.
- (2) Subject to subsection (4) below, where the sale, insurance, salvage or compensation moneys are not less than the capital expenditure appropriate to the dwelling-house, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the allowances given.
- (3) Subject to subsection (4) below, where there are no sale, insurance, salvage or compensation moneys or where those moneys are less than the capital expenditure appropriate to the dwelling-house, then—
- (a) if the adjusted net cost of the dwelling-house exceeds the allowances given, a balancing allowance shall be made and the amount thereof shall be an amount equal to the excess;
  - (b) if the adjusted net cost of the dwelling-house is less than the allowances given, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the shortfall.
- (4) No balancing charge or allowance shall be made under this section on the occasion of a sale if, by virtue of section 158, the dwelling-house is treated as having been sold for a sum equal to the residue of expenditure before the sale.
- (5) In this section—

“the relevant period” means the period beginning at the time when the dwelling-house was first used for any purpose and ending with the event giving rise to the balancing allowance or charge, except that where there has been a sale of the dwelling-house after that time and before that event, the relevant period shall begin on the day following that sale or, if there has been more than one such sale, the last such sale;

“the capital expenditure” means—

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- (a) where paragraph (b) of this definition does not apply, the capital expenditure incurred (or by virtue of section 91 deemed to have been incurred) on the construction of the dwelling-house;
- (b) where the person to or on whom the balancing allowance or charge falls to be made is not the person who incurred (or is deemed to have incurred) that expenditure, the residue of that expenditure at the beginning of the relevant period,

together (in either case) with any amount to be added to the residue of that expenditure by virtue of section 90(9);

“the allowances given” means the allowances referred to in section 87(6);

“the adjusted net cost” means—

- (a) where there are no sale, insurance, salvage or compensation moneys, the expenditure appropriate to the dwelling-house; and
- (b) where those moneys are less than that expenditure, the amount by which they are less,

reduced (in either case) in the proportion that the part, or the aggregate of the parts, of the relevant period for which the dwelling-house is a qualifying dwelling-house bears to the whole of that period.

## **89 Supplementary provisions where dwelling-house ceases to be a qualifying dwelling-house.**

- (1) If a dwelling-house ceases to be a qualifying dwelling-house otherwise than by reason of a sale or transfer of the relevant interest in it, that relevant interest shall be treated for the purposes of this Part as having been sold, at the time the dwelling-house ceases to be a qualifying dwelling-house, for the price which it would have fetched if sold in the open market.
- (2) For the purposes of this Part, a dwelling-house shall not be regarded as ceasing altogether to be used by reason that it falls temporarily out of use, and where, immediately before any period of temporary disuse, it is a qualifying dwelling-house, it shall be regarded as continuing to be a qualifying dwelling-house during the period of temporary disuse.

## **90 Writing off of expenditure and meaning of “residue of expenditure”.**

- (1) Any expenditure appropriate to a qualifying dwelling-house shall be treated for the purposes of this Part as written off to the extent and as at the times specified below, and the references in this Part to the residue of any such expenditure shall be construed accordingly.
- (2) An initial allowance made under paragraph 1 of Schedule 12 to the <sup>M41</sup>Finance Act 1982 in respect of a qualifying dwelling-house shall be treated as written off as at the time when the qualifying dwelling-house is first used.
- (3) Where, by reason of the whole or part of a building being at any time a qualifying dwelling-house, a writing-down allowance is made for any chargeable period in respect of the expenditure, the amount of that allowance shall, subject to subsection (4) below, be treated as written off as at that time.
- (4) Where, at a time which is material for the purposes of subsection (3) above, an event occurs which gives rise or may give rise to a balancing allowance or a balancing

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charge, the amount directed to be treated as written off by that subsection as at that time shall be taken into account in computing the residue of that expenditure immediately before that event for the purpose of determining whether any and if so what balancing allowance or balancing charge is to be made.

- (5) If, for any period or periods between the time when the whole or part of a building was first used for any purpose and the time at which the residue of the expenditure falls to be ascertained, the building or part, as the case may be, has not been a qualifying dwelling-house, there shall in ascertaining that residue be treated as having been previously written off in respect of that period or those periods amounts equal to writing-down allowances made for chargeable periods of a total length equal thereto at such rate or rates as would have been appropriate having regard to any sale on which section 85(3) operated.
- (6) Where, on the occasion of a sale, a balancing allowance is made in respect of the expenditure, there shall be treated as written off as at the time of the sale the amount by which the residue of the expenditure before the sale exceeds the net proceeds of the sale.
- (7) Where, on the occasion of a sale, a balancing charge is made in respect of the expenditure, the residue of the expenditure shall be deemed for the purposes of this Part to be increased as at the time of the sale by the amount on which the charge is made.
- (8) Where, on the occasion of a sale, a balancing charge is made under section 88(3) (b) in respect of the expenditure and, apart from this subsection, the residue of the expenditure immediately after the sale would by virtue of subsection (7) above be deemed to be greater than the net proceeds of the sale, the residue immediately after the sale shall be deemed for the purposes of this Part to be equal to the net proceeds.
- (9) Where a dwelling-house is demolished, and the demolition gives rise, or might give rise, to a balancing allowance or charge under this Part to or on the person incurring the cost of demolition, the net cost to him of the demolition (that is to say, the excess, if any, of the cost of the demolition over any moneys received for the remains of the property) shall be added for the purposes of this Part to the residue, immediately before the demolition, of the expenditure appropriate to the dwelling-house; and if this subsection applies to the net cost to a person of the demolition of any property, the cost or net cost shall not be treated, for the purposes of this Part, as expenditure incurred in respect of any other property by which that property is replaced.

#### **Marginal Citations**

**M41** 1982 c. 39.

## **91 Buildings bought unused.**

- (1) Subject to subsection (2) below, where expenditure is incurred on the construction of a building which is to be or include a qualifying dwelling-house and the relevant interest in the building is sold before any dwelling-house comprised in it is used—
  - (a) the expenditure actually incurred on the construction of the building shall be left out of account for the purposes of sections 85 to 90; but
  - (b) the person who buys that interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, expenditure

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on the construction of the building equal to the expenditure actually incurred or to the net price paid by him for that interest, whichever is the less.

- (2) Where the relevant interest in a building which is to be or include a qualifying dwelling-house is sold more than once before any dwelling-house comprised in it is used, the provisions of subsection (1)(b) above shall have effect only in relation to the last of those sales.
- (3) Where the expenditure incurred on the construction of a building which is to be or include a qualifying dwelling-house was incurred by a person carrying on a trade which consists, as to the whole or any part thereof, in the construction of buildings with a view to their sale, and, before any dwelling-house comprised in it is used, he sells the relevant interest in the building in the course of that trade, or, as the case may be, of that part of that trade, paragraph (b) of subsection (1) above shall have effect subject to the following modifications—
  - (a) if that sale is the only sale of the relevant interest before any dwelling-house comprised in the building is used that paragraph shall have effect as if the words “the expenditure actually incurred or to” and “whichever is the less” were omitted; and
  - (b) in any other case, that paragraph shall have effect as if the reference to the expenditure actually incurred on the construction of the building were a reference to the price paid on that sale.

## **92 Manner of making allowances and charges.**

- (1) Any allowance under this Part shall be made to a person by way of discharge or repayment of tax and shall be available primarily against the following income, that is to say—
  - (a) income taxed under Schedule A in respect of any premises which at any time in the chargeable period consist of a qualifying dwelling-house; or
  - (b) income which is the subject of a balancing charge under this Part.
- (2) Effect shall be given to a balancing charge to be made on a person—
  - (a) if it is a charge to income tax, by making the charge under Case VI of Schedule D,
  - (b) if it is a charge to corporation tax, by treating the amount on which the charge is to be made as income of the description in subsection (1)(a) above.

## **93 Repairs, and double allowances.**

- (1) This Part shall have effect in relation to capital expenditure incurred by a person on repairs to any part of a building as if it were capital expenditure incurred by him on the construction for the first time of that part of the building.
- (2) No allowance shall be made under this Part in respect of any expenditure on a building or in respect of a dwelling-house if for the same or any other chargeable period an allowance is or can be made under any provisions of Part V in respect of that expenditure or that dwelling-house.
- (3) Subsection (2) above shall not have effect in relation to any chargeable period or its basis period ending after 26th July 1989.

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#### **94 Holding over by lessees, etc.**

- (1) Where the relevant interest in relation to the capital expenditure incurred on the construction of a building is an interest under a lease, this Part shall have effect subject to the following provisions of this section, and in those provisions—
  - (a) except in subsection (5), any reference to a lessor or lessee is a reference to the lessor or lessee under that lease; and
  - (b) in subsection (5) the reference to the first lease is a reference to that lease.
- (2) Where, with the consent of the lessor, a lessee of any building remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Part to continue so long as he remains in possession as aforesaid.
- (3) Where, on the termination of a lease, a new lease is granted to the lessee in pursuance of an option available to him under the terms of the first lease, the provisions of this Part shall have effect as if the second lease were a continuation of the first lease.
- (4) Where, on the termination of a lease, the lessor pays any sum to the lessee in respect of a building comprised in the lease, the provisions of this Part shall have effect as if the lease had come to an end by reason of the surrender thereof in consideration of the payment.
- (5) Where, on the termination of a lease, another lease is granted to a different lessee and, in connection with the transaction, that lessee pays a sum to the person who was the lessee under the first lease, the provisions of this Part shall have effect as if both leases were the same lease and there had been an assignment thereof by the lessee under the first lease to the lessee under the second lease in consideration of the payment.

#### **95 The relevant interest.**

- (1) Subject to the provisions of this section, in this Part “the relevant interest” means—
  - (a) in relation to any expenditure incurred on the construction of a building, the interest in that building to which the person who incurred the expenditure was entitled when he incurred it; and
  - (b) in relation to a dwelling-house comprised in a building which is to be or include a qualifying dwelling-house, that interest, to the extent that it subsists in the dwelling-house, which is the relevant interest in relation to the capital expenditure incurred on the construction of that building.
- (2) Where, when it incurs expenditure on the construction of a building, a body is entitled to two or more interests in the building and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Part.
- (3) An interest shall not cease to be the relevant interest for the purposes of this Part by reason of the creation of any lease or other interest to which that interest is subject, and where the relevant interest is a leasehold interest and is extinguished by reason of the surrender thereof or on the body entitled thereto acquiring the interest which is reversionary on it, the interest into which that leasehold interest merges shall thereupon become the relevant interest.

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## 96 The appropriate capital expenditure.

- (1) For the purposes of this Part the capital expenditure appropriate to a dwelling-house shall be determined as follows—
- (a) if the building concerned consists of a single qualifying dwelling-house, then, subject to the relevant limit, the whole of the capital expenditure on the construction of the building is appropriate to that dwelling-house; and
  - (b) in the case of a dwelling-house which forms part of a building, the capital expenditure appropriate to it is, subject to the relevant limit, the aggregate of—
    - (i) that proportion of the capital expenditure on the construction of the building which is properly attributable to the construction of that dwelling-house; and
    - (ii) where there are common parts of the building, such proportion of the capital expenditure on those common parts as it is just and reasonable to attribute to the dwelling-house and as does not exceed one-tenth of that proportion of the capital expenditure referred to in sub-paragraph (i) above;
- and in this section “the relevant limit” means £60,000 if the dwelling-house is in Greater London, and £40,000 if it is elsewhere.
- (2) In subsection (1) above “common parts”, in relation to a building, means common parts of the building which—
- (a) are not intended to be in separate occupation (whether for domestic, commercial or other purposes); and
  - (b) are intended to be of benefit to some or all of the qualifying dwelling-houses included in the building;
- and the capital expenditure on any such parts of the building is so much of the expenditure on the construction of the building as it is just and reasonable to attribute to those parts.
- (3) Capital expenditure is appropriate to a dwelling-house only if it was incurred after 9th March 1982 and before 1st April 1992 or is deemed to have been so incurred by virtue of section 91.

## 97 Interpretation.

- (1) In this Part, except where the context otherwise requires—
- “approved body” has the meaning given by section 56(4) of the <sup>M42</sup>Housing Act 1980;
  - “assured tenancy” means a tenancy which is an assured tenancy within the meaning of section 56 of the Housing Act 1980, or a tenancy which for the purposes of the <sup>M43</sup>Housing Act 1988 is an assured tenancy but is not an assured shorthold tenancy;
  - “building” includes part of a building;
  - “dwelling-house” has the same meaning as in the <sup>M44</sup>Rent Act 1977;
  - “expenditure appropriate to a dwelling-house” has the meaning given by section 96; and
  - “qualifying dwelling-house” has the meaning given by section 86.
- (2) References in this Part to expenditure incurred on the construction of a building do not include any expenditure incurred on the acquisition of, or of rights in or over, any land.

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- (3) A person who has incurred expenditure on the construction of a building shall be deemed, for the purposes of any provision of this Part referring to his interest therein at the time when the expenditure was incurred, to have had the same interest therein as if the construction thereof had been completed at that time.
- (4) Without prejudice to any of the other provisions of this Part relating to the apportionment of the sale, insurance, salvage or compensation moneys, the sum paid on the sale of the relevant interest in a building or structure, or any other sale, insurance, salvage or compensation moneys payable in respect of any building or structure, shall for the purposes of this Part be deemed to be reduced by an amount equal to so much thereof as, on a just apportionment, is attributable to assets representing expenditure other than expenditure in respect of which an allowance can be made under this Part.

#### Marginal Citations

**M42** 1980 c. 51.

**M43** 1988 c. 50.

**M44** 1977 c. 42.

## PART IV

### MINERAL EXTRACTION

#### CHAPTER I

##### ALLOWANCES AND CHARGES

#### 98 Writing-down and balancing allowances.

- (1) Allowances shall be made in accordance with this section to a person who carries on a trade of mineral extraction in respect of qualifying expenditure incurred by him for the purposes of that trade.
- (2) Subject to subsection (4) below, for the chargeable period related to the incurring of the expenditure, there shall be made to the person incurring it an allowance equal to the appropriate percentage of the excess (if any) of that expenditure over any disposal receipts which he is required to bring into account by reference to that expenditure for that chargeable period.
- (3) Subject to subsection (4) below, for each of the chargeable periods following that related to the incurring of the expenditure, there shall be made to the person incurring it an allowance equal to the appropriate percentage of the excess (if any) of that expenditure over the aggregate of—
  - (a) the allowances made in respect of the expenditure for earlier chargeable periods by virtue of subsection (2) above and this subsection; and
  - (b) any disposal receipts which he is or was required to bring into account by reference to that expenditure for the chargeable period in question and any earlier chargeable periods.



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- (4) For a chargeable period for which, in accordance with section 101, a balancing allowance falls to be made to any person in respect of any expenditure, subsection (2) or, as the case may be, subsection (3) above shall have effect with the omission of the words “the appropriate percentage of”.
- (5) Subject to subsection (6) below, in relation to expenditure which is qualifying expenditure falling within section 105, 108 or 109, other than expenditure falling within section 105(1)(b), the appropriate percentage is 25 and, in relation to all other qualifying expenditure, the appropriate percentage is 10.
- (6) If a chargeable period or its basis period is part only of a year or if the period is a year of assessment but the trade has been carried on for part only of it, the percentage appropriate under subsection (5) above shall be correspondingly reduced.

## 99 Disposal receipts.

- (1) In any case where—
  - (a) qualifying expenditure has been incurred by any person on the provision of any assets (including the construction of any works), and
  - (b) in any chargeable period or its basis period any of those assets is disposed of or otherwise permanently ceases (whether because of the discontinuance of the trade or for any other reason) to be used by him for the purposes of a trade of mineral extraction,  
he shall bring into account as a disposal receipt in respect of that expenditure for the chargeable period related to the disposal or, as the case may be, cessation the disposal value of any asset falling within paragraph (b) above.
- (2) If, at any time after a mineral asset has been acquired by any person, it begins to be used (by him or by any other person) in a way which constitutes development but is neither existing permitted development nor development for the purposes of a trade of mineral extraction carried on by him, the asset shall be treated as having permanently ceased, immediately before that time, to be used by him for the purposes of that trade; and for the purposes of this subsection “existing permitted development” means—
  - (a) development which, prior to the acquisition, had been or had begun to be lawfully carried out; and
  - (b) any other development for which planning permission is granted by a development order made as a general order and in force at the time of the acquisition;and section 110(3) applies for the purposes of this subsection as it applies for the purposes of section 110(2).
- (3) Subject to section 112, section 26 shall apply to determine the disposal value of any asset falling within subsection (1) above, substituting a reference to that asset for any reference in those subsections to machinery or plant.
- (4) In any case where—
  - (a) qualifying expenditure has been incurred by any person, and
  - (b) in any chargeable period or its basis period he receives any capital sum which, in whole or in part, it is reasonable to attribute to that expenditure, and
  - (c) that capital sum does not fall to be brought into account as a disposal receipt by virtue of subsection (1) above,

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he shall bring into account as a disposal receipt in respect of that expenditure for the chargeable period related to the receipt of that capital sum so much of it as is reasonably attributable to the expenditure.

#### **100 Balancing charges: excess of allowances etc. over expenditure.**

- (1) If, for any chargeable period for which a person is required to bring into account a disposal receipt in respect of qualifying expenditure incurred by him, the aggregate of—
  - (a) the disposal receipts in respect of that expenditure which he is required to bring into account for that period, and
  - (b) any disposal receipts in respect of that expenditure which he was required to bring into account for earlier chargeable periods, and
  - (c) the net amount of the allowances made to him for earlier chargeable periods under section 98 in respect of that expenditure,
 exceeds the expenditure concerned, there shall be made on him a charge (“a balancing charge”).
- (2) In relation to any qualifying expenditure, the amount on which a balancing charge is made for a chargeable period shall be whichever is the less of—
  - (a) the amount by which the aggregate referred to in subsection (1) above exceeds the expenditure; and
  - (b) the net amount of the allowances made as mentioned in subsection (1)(c) above.
- (3) In relation to any chargeable period, the net amount of the allowances made to any person for earlier chargeable periods under section 98 in respect of expenditure incurred by him means the total of those allowances less the total of the amounts on which balancing charges have been made on him for earlier chargeable periods, being charges arising by reason of his bringing into account disposal receipts in respect of that expenditure.

#### **101 Occasions of balancing allowances.**

- (1) For the chargeable period related to the permanent discontinuance of a trade of mineral extraction, any allowance to which the person carrying on that trade is entitled under section 98 in respect of qualifying expenditure incurred by him for the purposes of that trade shall be a balancing allowance.
- (2) If in any chargeable period or its basis period a person carrying on a trade of mineral extraction permanently ceases to work particular mineral deposits (and subsection (1) above does not apply in respect of that period) any allowance to which he is entitled for that chargeable period under section 98 in respect of—
  - (a) expenditure on mineral exploration and access which relates solely to those deposits, or
  - (b) expenditure on the acquisition of a mineral asset which consists of those deposits or any part of them,
 shall be a balancing allowance.
- (3) Where a person carrying on a trade of mineral extraction is for the time being entitled to two or more mineral assets which at any time were comprised in a single mineral asset or were otherwise derived from a single mineral asset, subsection (2) above shall

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not apply until such time as he permanently ceases to work the deposits comprised in all the mineral assets concerned taken together and, for this purpose, where a mineral asset relates to, but does not actually consist of, mineral deposits, the deposits to which the asset relates shall be treated as comprised in the asset.

- (4) If, in a case where subsection (1) of section 99 applies, neither subsection (1) nor subsection (2) above has effect in relation to the expenditure referred to in subsection (1)(a) of that section, then, for the chargeable period related to the disposal or cessation referred to in subsection (1)(b) of that section, any allowance in respect of that expenditure shall be a balancing allowance.
- (5) In relation to pre-trading expenditure on machinery or plant and pre-trading exploration expenditure falling within section 107(3), any allowance under section 98 shall be a balancing allowance.
- (6) If in any chargeable period or its basis period a person who has incurred qualifying expenditure on mineral exploration and access (including pre-trading exploration expenditure falling within section 107(2)) gives up the search, exploration or inquiry to which the expenditure related and does not carry on then or subsequently a trade of mineral extraction which consists of or includes the working of any mineral deposits to which the mineral exploration and access related, any allowance to which he is entitled for that chargeable period under section 98 in respect of that expenditure shall be a balancing allowance.
- (7) In any case where—
- (a) a person has incurred expenditure consisting of contributions falling within section 108 to the cost of any buildings or works, and
  - (b) in any chargeable period or its basis period the buildings or works permanently cease to be used for the purposes of, or in connection with, a trade of mineral extraction carried on by him,

then, without prejudice to subsection (1) above, any allowance to which he is entitled for that chargeable period under section 98 in respect of that expenditure shall be a balancing allowance.

- (8) If in any chargeable period or its basis period any of the following events occurs in relation to assets representing any qualifying expenditure, namely—
- (a) the person by whom the expenditure was incurred loses possession of the assets in circumstances where it is reasonable to assume that the loss is permanent,
  - (b) the assets cease to exist as such (as a result of destruction, dismantling or otherwise),
  - (c) the assets begin to be used wholly or partly for purposes other than those of the trade of mineral extraction carried on by that person,

any allowance to which that person is entitled for that chargeable period under section 98 in respect of that expenditure shall be a balancing allowance.

## 102 Treatment of qualifying expenditure on mineral exploration and access.

For the purposes of this Chapter, where a person is carrying on a trade of mineral extraction, qualifying expenditure incurred by him in connection with that trade (whether before or after the trade begins to be carried on) on mineral exploration and access shall be taken to be incurred for the purposes of the trade.

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### **103 Demolition costs.**

- (1) The net cost to a person of the demolition of an asset representing qualifying expenditure shall, for the purposes of this Chapter, be added to that qualifying expenditure in determining the amount of any balancing allowance or balancing charge for the chargeable period related to the demolition of the asset.
- (2) The cost or net cost to a person of the demolition of any asset shall not, if subsection (1) above applies to it, be treated for the purposes of this Part as expenditure incurred in respect of any other asset by which that asset is replaced.
- (3) Any reference in this section to the net cost of the demolition of any asset is a reference to the excess (if any) of the cost of the demolition over any moneys received for the remains of the asset.

### **104 Manner of making allowances and charges.**

All allowances and charges falling to be made under this Chapter to or on any person shall be made to or on him in taxing his trade of mineral extraction.

## **CHAPTER II**

### **QUALIFYING EXPENDITURE**

### **105 General provisions.**

- (1) Subject to subsections (2) to (5) below, in relation to a person carrying on a trade of mineral extraction, the following capital expenditure is qualifying expenditure, namely—
  - (a) expenditure on mineral exploration and access;
  - (b) expenditure on the acquisition of a mineral asset;
  - (c) expenditure on the construction of any works in connection with the working of a source of mineral deposits, being works which, when the source is no longer worked, are likely to be of little or no value to the person working it immediately before that time; and
  - (d) where a source of mineral deposits is worked under a foreign concession, expenditure on the construction of works which, when the concession comes to an end, are likely to become valueless to the person working it immediately before that time.
- (2) Where expenditure falling within subsection (1)(a) above is incurred by any person before he begins to carry on a trade of mineral extraction, it shall not be qualifying expenditure except to the extent that section 106 or 107 provides.
- (3) Chapter III of this Part shall have effect to limit in certain cases the amount of expenditure which is qualifying expenditure.
- (4) Except as provided by section 106, expenditure on the provision of machinery or plant or on any asset which has been treated for any chargeable period as machinery or plant is not qualifying expenditure.
- (5) The following is not qualifying expenditure by virtue of this section—

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- (a) any expenditure on the acquisition of the site of any such works as are referred to in subsection (1) above, or of rights in or over any such site;
  - (b) any expenditure on works constructed wholly or mainly for subjecting the raw product of a source to any process, except a process designed for preparing the raw product for use as such;
  - (c) any expenditure on buildings or structures provided for occupation by or for the welfare of workers;
  - (d) any expenditure on a building where the whole of the building was constructed for use as an office; and
  - (e) any expenditure on so much of a building or structure as was constructed for use as an office, unless the capital expenditure on the construction of the part of the building or structure constructed for use as an office was not more than one-tenth of the capital expenditure incurred on the construction of the whole building or structure.
- (6) Where a person carrying on a trade of mineral extraction incurs expenditure on seeking any planning permission necessary to enable any mineral exploration and access to be undertaken at any place or any mineral deposits to be worked and that permission is not granted, the expenditure shall be treated for the purposes of this Part as expenditure on mineral exploration and access; and in this subsection “seeking”, in relation to planning permission, includes not only making any necessary application but also pursuing any appeal against a refusal of permission.
- (7) In so far as any provision of this Part or any other enactment is expressed to be about expenditure falling within subsection (1)(a) or (b) above—
- (a) expenditure on the acquisition of, or of rights in or over, the site of a source, and
  - (b) expenditure on the acquisition of, or of rights in or over, mineral deposits,
- shall be treated as falling within subsection (1)(b) and not within subsection (1)(a).

## **106 Pre-trading expenditure on machinery or plant which is sold etc.**

- (1) This section applies where—
- (a) capital expenditure is incurred by any person on the provision of machinery or plant; and
  - (b) that expenditure falls within section 105(1)(a); and
  - (c) that expenditure is so incurred before he begins to carry on a trade of mineral extraction; and
  - (d) before he begins to carry on that trade, the machinery or plant is sold, demolished, destroyed or abandoned.
- (2) Where this section applies and there is such an excess of expenditure as is referred to in subsection (3) below, then, for the purposes of this Part, the person concerned shall be treated as incurring qualifying expenditure equal to that excess on the first day on which he begins to carry on a trade of mineral extraction; and that qualifying expenditure is in this Part referred to as pre-trading expenditure on machinery or plant.
- (3) Subject to subsection (4) below, the excess referred to in subsection (2) above is the amount by which the capital expenditure referred to in subsection (1) above exceeds any sale, insurance, salvage or compensation moneys resulting from the event mentioned in subsection (1)(d) above.

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- (4) If, in a case where this section applies, the mineral exploration and access at the source in connection with which the machinery or plant was used ceased before the first day referred to in subsection (2) above, any capital expenditure which was incurred more than six years before that day shall be left out of account in determining the amount of any excess under subsection (3) above.

#### **107 Pre-trading exploration expenditure.**

- (1) This section applies to capital expenditure which—
- (a) is incurred by any person on mineral exploration and access at any source, and
  - (b) is so incurred before he begins to carry on a trade of mineral extraction, and
  - (c) is not incurred on the provision of machinery or plant.
- (2) Where this section applies to any capital expenditure and the mineral exploration and access is continuing at the source in question at the time when the person concerned begins to carry on a trade of mineral extraction, so much of the expenditure as exceeds any relevant capital sum received by him is qualifying expenditure.
- (3) Where this section applies to any capital expenditure and the mineral exploration and access has ceased at the source in question before the time when the person concerned begins to carry on a trade of mineral extraction, so much of that expenditure as was incurred within the six years ending at that time and exceeds any relevant capital sum received by him shall be treated as qualifying expenditure incurred on the first day on which he begins to carry on that trade.
- (4) In relation to capital expenditure to which this section applies, a relevant capital sum is a capital sum—
- (a) which is received by the person incurring the expenditure before he begins to carry on a trade of mineral extraction; and
  - (b) which is or, as the case may be, to the extent to which it is reasonably attributable to the incurring of the expenditure at the source in question.
- (5) Expenditure which is qualifying expenditure by virtue of subsection (2) or (3) above is in this Part referred to as pre-trading exploration expenditure.

#### **108 Contributions by mining concerns to public services etc. outside the United Kingdom.**

- (1) Subject to subsections (2) and (3) below, expenditure incurred by a person carrying on a trade of mineral extraction outside the United Kingdom and consisting of contributions of capital sums to the cost of—
- (a) buildings to be occupied by persons employed at or in connection with the working of a source outside the United Kingdom, or
  - (b) works for the supply of water, gas or electricity wholly or mainly to buildings occupied or to be occupied by persons so employed, or
  - (c) works to be used in providing other services or facilities wholly or mainly for the welfare of persons so employed or their dependants,
- is by virtue of this section qualifying expenditure.
- (2) Expenditure incurred by any person as mentioned in subsection (1) above is not qualifying expenditure unless—
- (a) it is incurred for the purposes of his trade of mineral extraction; and

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- (b) when the source in question is no longer worked, the buildings or works concerned are likely to be of little or no value to the person working the source immediately before that time.
- (3) Subsection (1) does not apply—
  - (a) to expenditure resulting in the acquisition of an asset by the person incurring the expenditure; nor
  - (b) to expenditure in respect of which an allowance may be made under any provision of the Tax Acts (other than this Part).

### **109 Restoration expenditure.**

- (1) Where a person who has ceased to carry on a trade of mineral extraction incurs expenditure on the restoration of the site of a source to the working of which that trade related and all or any of that expenditure—
  - (a) is incurred within the period of three years immediately following the last day on which he carried on that trade, and
  - (b) has not been deducted for the purposes of corporation tax or income tax in relation to that or any other trade carried on by him, and
  - (c) is expenditure which, if it had been incurred while that trade was being carried on, either would have been qualifying expenditure by virtue of any provision of sections 105 to 108 or would have been allowable as a deduction in computing the profits or gains from that trade,

so much of that expenditure as falls within paragraphs (a) to (c) above and does not exceed the net cost of the restoration of the site shall be qualifying expenditure by virtue of this section and shall be treated as incurred by him on the last day on which he carried on that trade.
- (2) Any reference in this section to the site of a source includes a reference to land used in connection with the working of the source.
- (3) In this section “restoration” includes landscaping and—
  - (a) in relation to land in the United Kingdom, the carrying out of any works required by a condition subject to which planning permission for development consisting of the winning and working of minerals was granted; and
  - (b) in relation to land outside the United Kingdom, the carrying out of any works required by any equivalent condition imposed under the law of the territory in which the land is situated.
- (4) For the purposes of this section, the net cost to any person of the restoration of the site of a source is the excess, if any, of expenditure falling within subsection (1)(a) to (c) above over any receipts which—
  - (a) are attributable to the restoration (whether for spoil or other assets removed from the site or for tipping rights or otherwise); and
  - (b) are received within the period of three years immediately following the last day on which the person concerned carried on a trade of mineral extraction.
- (5) As respects the person who incurs any expenditure which is qualifying expenditure by virtue of this section—
  - (a) expenditure falling within subsection (1)(a) to (c) above (not only so much of it as constitutes qualifying expenditure) shall not be deductible in computing his income for any purpose of income tax or corporation tax; and

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- (b) to the extent that any receipts are, under subsection (4) above, taken into account to determine the net cost of the restoration of the site of a source, those receipts shall not constitute income of his for any purpose of income tax or corporation tax.
- (6) All such adjustments shall be made, whether by way of discharge or repayment of tax or otherwise, as may be required in consequence of subsections (1) to (5) above.

### CHAPTER III

#### LIMITATIONS ON QUALIFYING EXPENDITURE ETC.

#### 110 Expenditure on the acquisition of land.

- (1) In so far as capital expenditure falling within section 105(1)(b) consists of expenditure on the acquisition of an interest in land (whether in the United Kingdom or elsewhere) and that land includes a source of mineral deposits, so much of that expenditure as is equal to the undeveloped market value of the interest shall not constitute qualifying expenditure.
- (2) In relation to the acquisition of an interest in land, the undeveloped market value means the consideration which, at the time of the acquisition, the interest might reasonably be expected to fetch on a sale in the open market on the assumptions—
  - (a) that there is no source of mineral deposits on or in the land; and
  - (b) that it is and will continue to be unlawful to carry out any development of the land other than—
    - (i) development which, at the time of the acquisition, has been or had begun to be lawfully carried out; and
    - (ii) any other development for which planning permission is granted by a development order which has been made as a general development order and is in force at that time.
- (3) In the application of subsection (2) above to the acquisition of an interest in land outside the United Kingdom—
  - (a) any question whether development has been or is being lawfully carried out shall be determined in accordance with the law of the territory in which the land is situated; and
  - (b) any question whether development is of a character for which planning permission is granted by a general development order shall be determined as if the land were situated in England or Wales.
- (4) In any case where—
  - (a) subsections (1) to (3) above have effect to limit the amount of expenditure falling within section 105(1)(b) which is qualifying expenditure, and
  - (b) the undeveloped market value of the interest in land in question includes the value of any buildings or other structures on the land, and
  - (c) at the time of the acquisition of the interest in land or at any time thereafter, those buildings or structures cease permanently to be used for any purpose,
 then at the time referred to in paragraph (c) above the person who incurred the expenditure referred to in paragraph (a) above shall be treated as having incurred



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qualifying expenditure falling within section 105(1)(b) equal to the unrelieved value of the buildings or structures referred to in paragraph (b) above.

- (5) In subsection (4) above “the unrelieved value” of buildings or structures falling within paragraph (b) of that subsection means the value of those buildings or structures determined as at the date of the acquisition of the interest in land (and without regard to any value properly attributable to the land on which the buildings or structures stand) less the excess of any allowances over balancing charges which the person treated by subsection (4) above as incurring expenditure has received in respect of buildings or structures or assets therein under this Act disregarding Part III and, in cases where the buildings or structures have ceased before 27th July 1989 permanently to be used for any purpose, Part V.
- (6) References in subsections (1) to (5) above to the time of the acquisition of an interest in land are not affected by section 120.

### **111 Reduction of qualifying expenditure for premium relief.**

In any case where—

- (a) a person incurs capital expenditure falling within section 105(1)(b) on the acquisition of an asset which is or includes an interest in land, and
- (b) for chargeable periods previous to the chargeable period for which he first becomes entitled in respect of the expenditure to an allowance under section 98, the person incurring the expenditure has been allowed, in respect of that land, any deductions under section 87 of the principal Act (deductions where premiums etc. taxable),

the expenditure shall be treated for the purposes of this Part as reduced by so much of those deductions as would have been excluded by subsection (7) of section 87 of the principal Act if the person concerned had been entitled to an allowance under section 98 of this Act (or, as the case may be, section 60 of the 1968 Act) for the previous chargeable periods referred to in paragraph (b) above.

### **112 Restriction of disposal receipts.**

- (1) Where a disposal receipt to be brought into account in respect of any expenditure for a chargeable period would, apart from this section, be the disposal value of an interest in land (determined as mentioned in section 99(3)), only so much of that disposal value as exceeds the undeveloped market value of the interest shall constitute a disposal receipt for the purposes of Chapter I of this Part.
- (2) Section 110(2) and (3) shall apply to determine the undeveloped market value of an interest for the purposes of this section as they would apply in relation to an acquisition of that interest at the time the disposal value falls to be determined.

### **113 Assets formerly owned by traders.**

- (1) Subject to subsection (2) below, section 114 applies where a person carrying on a trade of mineral extraction (“the buyer”) incurs capital expenditure in acquiring an asset (“the purchased asset”) from another person in circumstances falling within subsection (3) below.
- (2) This section and section 114 have effect subject to section 116, and neither this section, section 114 nor section 116 applies if—

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- (a) the purchased asset is a mineral asset situated in the United Kingdom; and
  - (b) the capital expenditure incurred by the buyer consists of the payment of sums under a contract entered into by him before 16th July 1985.
- (3) Subject to subsection (5) below, the circumstances referred to in subsection (1) above are that—
- (a) in connection with a trade of mineral extraction carried on by him, the other person referred to in subsection (1) above incurred expenditure on the acquisition or bringing into existence of the purchased asset; or
  - (b) that other person has not incurred expenditure as mentioned in paragraph (a) above but, at any time prior to the buyer’s acquisition, the purchased asset was owned by a person who, in connection with a trade of mineral extraction carried on by him, had incurred such expenditure as is mentioned in paragraph (a) above;
- and, in a case where the purchased asset is a mineral asset situated in the United Kingdom, the reference in paragraph (b) above to a time prior to the buyer’s acquisition does not include any time earlier than 1st April 1986.
- (4) In this section “the previous trader” means—
- (a) where the circumstances are as mentioned in paragraph (a) of subsection (3) above, the person referred to in that paragraph; and
  - (b) where the circumstances are as mentioned in paragraph (b) of subsection (3) above, the last person who, prior to the buyer’s acquisition, incurred such expenditure as is mentioned in paragraph (a) of that subsection;
- and, subject to subsections (5) and (6) below, any reference in section 114 to the previous trader’s qualifying expenditure is a reference to so much of the expenditure incurred by him on the acquisition or bringing into existence of the purchased asset as constituted his qualifying expenditure for the purposes of this Part.
- (5) Any reference in subsections (3) and (4) above to the purchased asset includes a reference—
- (a) to two or more assets which together make up the purchased asset; and
  - (b) to an asset from which or, as the case may be, to two or more assets from the combination of which the purchased asset is derived.
- (6) Where the previous trader in fact incurred expenditure on the acquisition or bringing into existence of one or more assets from which the purchased asset is derived, so much of that expenditure as was qualifying expenditure of his for the purposes of this Part and as it is just and reasonable to attribute to the purchased asset shall be taken to be the previous trader’s qualifying expenditure.

#### **114 Assets previously acquired.**

- (1) In this section “the buyer’s expenditure” means the capital expenditure incurred by him as mentioned in section 113(1), less any amount of that expenditure which, by virtue of section 110, does not constitute qualifying expenditure.
- (2) If the previous trader did not become entitled to an allowance or liable to a balancing charge in respect of his qualifying expenditure, so much of the buyer’s expenditure as does not exceed the amount of the previous trader’s qualifying expenditure shall be the buyer’s qualifying expenditure in respect of the acquisition of the purchased asset.

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- (3) If the previous trader became entitled to an allowance or liable to a balancing charge in respect of his qualifying expenditure, so much of the buyer's expenditure as does not exceed the residue of the previous trader's qualifying expenditure shall be the buyer's qualifying expenditure in respect of the acquisition of the purchased asset.
- (4) In relation to the previous trader's qualifying expenditure, the residue referred to in subsection (3) above is that expenditure—
  - (a) less the total of all allowances made to him in respect of that expenditure; and
  - (b) plus the amount (if any) on which a balancing charge was made in respect of that expenditure.
- (5) For the purposes of subsection (4) above, where the previous trader's qualifying expenditure is an amount attributed to the purchased asset on a just and reasonable basis in accordance with section 113(6), any allowances and any balancing charge made by reference to a greater amount of expenditure shall be apportioned on the like basis.
- (6) In this section—
  - “allowance” means an allowance under section 98;
  - “balancing charge” means a balancing charge under section 100; and
  - “the buyer”, “the previous trader” and “the purchased asset” have the same meanings as in section 113.

#### **115 Expenditure partly attributable to mineral exploration and access.**

- (1) This section applies where, in a case falling within section 113(1)—
  - (a) the purchased asset is a mineral asset; and
  - (b) part of the value of that asset is attributable to expenditure incurred by the previous trader on mineral exploration and access.
- (2) Where this section applies—
  - (a) such part of the buyer's expenditure as it is just and reasonable to attribute to the part of the value referred to in subsection (1)(b) above (being no greater than the amount of the previous trader's expenditure on mineral exploration and access which is properly attributable to that part of the value) shall be treated for the purposes of Chapters I and II of this Part as expenditure on mineral exploration and access and the remainder shall be treated for those purposes as expenditure on the acquisition of a mineral asset; and
  - (b) if under Part VII allowances were made to the previous trader in taxing his trade, the existence of these allowances shall not affect the question whether any of his expenditure on the purchased asset was qualifying expenditure.
- (3) In this section “the previous trader” and “the purchased asset” have the same meanings as in section 113 and “the buyer's expenditure” has the same meaning as in section 114.

#### **116 Oil licences etc.**

- (1) Where a person carrying on a trade of mineral extraction (“the buyer”) incurs capital expenditure falling within section 105(1)(b) in acquiring a Petroleum Act licence or any interest in such a licence, only so much of that expenditure as does not exceed the corresponding expenditure of the original licensee shall be the buyer's qualifying expenditure.

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- (2) In this section “a Petroleum Act licence” means a licence under the <sup>M45</sup>Petroleum (Production) Act 1934 or the <sup>M46</sup>Petroleum (Production) Act (Northern Ireland) 1964 authorising the winning of oil, as defined in section 1 of the <sup>M47</sup>Oil Taxation Act 1975; and in relation to such a licence “the original licensee” means the person to whom the licence was granted under the enactment in question.
- (3) In relation to the acquisition of a Petroleum Act licence “the corresponding expenditure” of the original licensee is the amount of the payment made by him (whenever made) to the Secretary of State or, in Northern Ireland, to the Department of Economic Development for the purpose of obtaining the licence, and, in relation to an interest in such a licence, that corresponding expenditure is such portion of the amount of that payment as it is just and reasonable to attribute to that interest.

#### Marginal Citations

**M45** 1934 c. 36.

**M46** 1964 c. 28(N.I.).

**M47** 1975 c. 22.

### 117 Transfer of mineral assets within a group.

- (1) Subject to subsection (2) below, this section applies where a company (“the transferee”) acquires a mineral asset from another company (“the transferor”) and either—
- (a) the transferor has control of the transferee or the transferee has control of the transferor, or
  - (b) both the transferor and the transferee are under the control of another person.
- (2) This section does not apply—
- (a) where the acquisition is a sale in respect of which an election is made under section 158; nor
  - (b) where the mineral asset in question is, or is an interest in, a Petroleum Act licence as defined in section 116;
- but, subject to paragraph (a) above, this section applies notwithstanding anything in section 157.
- (3) Subject to subsection (4) below, so much, if any, of the capital expenditure incurred by the transferee on the acquisition of the mineral asset as exceeds the capital expenditure incurred by the transferor on the acquisition of the mineral asset by him shall be left out of account for the purposes of this Part (and, accordingly, if the transferee is carrying on a trade of mineral extraction, shall not be qualifying expenditure).
- (4) Where the mineral asset acquired by the transferee consists of an interest or right granted by the transferor in a mineral asset acquired by him, the reference in subsection (3) above to the capital expenditure incurred by the transferor on the acquisition of the mineral asset by him shall be construed as a reference to so much of that expenditure as, on a just apportionment, is referable to the interest or right granted by the transferor.
- (5) If the transferee is carrying on a trade of mineral extraction and the expenditure incurred by him on the acquisition of the mineral asset is expenditure falling within section 110, any reference in that section to the time of the acquisition of the interest in

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land is a reference to the time it was acquired by the transferor or, if there is a sequence of two or more acquisitions each of which falls within subsection (1) above, the time at which the interest was acquired by the company which was the transferor under the earliest of those acquisitions.

- (6) If, in a case where subsection (5) above applies, there is a sequence of two or more acquisitions each of which falls within subsection (1) above—
- (a) any expenditure which one of the companies involved in the sequence is treated as incurring under section 110(4) shall be treated as incurred by the company which is the transferee from that company and by any subsequent transferee company in the sequence; and
  - (b) the reference in section 110(5) to the person treated by subsection (4) of that section as incurring expenditure shall be construed as including a reference to any other company which, under paragraph (a) above, is treated as incurring that expenditure.

### **118 Assets formerly owned by non-traders.**

Where a person incurs expenditure on mineral exploration and access and, without having carried on a trade of mineral extraction, he sells any assets representing that expenditure, then, if the person who acquires the assets carries on such a trade, only so much of the price paid by him for the assets as does not exceed the amount of the seller's expenditure which is represented by the assets shall be qualifying expenditure for the purposes of this Part.

### **[<sup>F103</sup>118A] Disposals of oil licences relating to undeveloped areas.**

- (1) If, at the time of the material disposal of a licence, the licence relates to an undeveloped area, then, to the extent that the consideration for the disposal consists of—
- (a) another licence which at that time relates to an undeveloped area or an interest in another such licence, or
  - (b) an obligation to undertake exploration work or appraisal work in an area which is or forms part of the licensed area in relation to the licence disposed of,
- the value of that consideration shall be treated as nil for the purposes of this Part and Part VII.
- (2) For the purposes of this section “material disposal” means a disposal (including a part disposal) other than a disposal in relation to which sections 157 and 158 of this Act have effect.
- (3) If a material disposal of a licence which, at the time of the disposal, relates to an undeveloped area is part of a larger transaction under which one party makes to another material disposals of two or more licences, each of which at the time of the disposal relates to an undeveloped area, the reference in subsection (1)(b) above to the licensed area in relation to the licence disposed of shall be construed as a reference to the totality of the licensed areas in relation to those two or more licences.
- (4) Expressions used in this section and in section 194 of the Taxation of Chargeable Gains Act 1992 have the same meaning in this section as they have in that.]

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**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

### Textual Amendments

**F103** S. 118A inserted (in relation to tax for the year 1992/93 and subsequent years subject as mentioned in s. 289 of the amending Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289(1), 290(1), [Sch. 10 para. 21\(1\)](#) (with ss. 60, 101(1), 201(3)).

## CHAPTER IV

### SUPPLEMENTARY PROVISIONS

#### 119 Transitional provisions relating to old expenditure.

(1) Except as provided by subsections (2) to (5) below, this Part does not apply in relation to old expenditure and in this section—

“old expenditure” means expenditure which is not new expenditure;

“new expenditure” means, subject to the following provisions of this section, expenditure incurred on or after 1st April 1986; and

“the relevant day” means 1st April 1986.

(2) If—

(a) immediately before the relevant day, no allowance had been made under Chapter III of Part I of the 1968 Act in respect of old expenditure incurred before that day on mineral exploration and access; and

(b) after that day and before mineral exploration and access ceases at the source in question, the person by whom the expenditure was incurred began or begins to carry on a trade of mineral extraction,

then section 106 or 107, as the case may be, shall (or shall continue to) apply as if the expenditure were new expenditure.

In this subsection “source” has the same meaning as it had in Schedule 14 to the 1986 Act.

(3) For the purposes of this Part—

(a) expenditure which by virtue of any provision of Schedule 14 to the 1986 Act was treated immediately before the coming into force of this Act as new expenditure incurred on the relevant day for any purpose or purposes shall continue to be so treated;

(b) any allowances treated as having been made under Schedule 13 of that Act shall continue to be so treated;

(c) any amount treated as qualifying expenditure for the purposes of that Schedule shall continue to be so treated; and

(d) in relation to any expenditure to which paragraph 6(4)(a) of Schedule 14 to the 1986 Act applied, section 112 shall not apply (so that no deduction shall be made from the amount of any disposal receipt by reference to the undeveloped market value of the land in question);

but, in the case of expenditure incurred in the acquisition of a mineral asset, nothing in paragraph (c) above shall affect the time as at which under section 110 the undeveloped market value of an interest is to be determined.

(4) In any case where—

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- (a) by virtue of any provision of this section the whole or any part of the outstanding balance (within the meaning of paragraph 1 of Schedule 14 to the 1986 Act) of an item of old expenditure is treated for the purposes of this Part as qualifying expenditure, and
- (b) a balancing charge falls to be made under section 100 in respect of that expenditure,

then, in determining the amount on which that charge falls to be made, subsection (2) (b) of that section shall have effect as if it referred not only to allowances made as mentioned in subsection (1)(c) of that section but also, subject to subsection (5) below, to allowances made in respect of the item under Chapter III of Part I of the 1968 Act.

- (5) Where the qualifying expenditure in respect of which a balancing charge falls to be made represents part only of the outstanding balance of an item of old expenditure, the reference in subsection (4) above to allowances made in respect of that item shall be construed as a reference to such part of those allowances as it is just and reasonable to apportion to that part of the balance (having regard to any apportionment made under paragraph 3(2) of Schedule 14 to the 1986 Act).
- (6) In this section “the 1986 Act” means the <sup>M48</sup>Finance Act 1986.

#### Marginal Citations

M48 1986 c. 41.

### 120 Time when expenditure is incurred.

- (1) For the purposes of this Part, except section 119, expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated as if it had been incurred by him on the first day on which he does carry it on.
- (2) Without prejudice to subsection (1) above, pre-trading expenditure on machinery or plant and pre-trading exploration expenditure shall be treated for the purposes of Chapter I of this Part as incurred on the first day on which the person who incurred the expenditure carries on a trade of mineral extraction.

### 121 Interpretation of Part IV.

- (1) In this Part—
  - “development” and “development order” have the meanings given by the relevant planning enactment;
  - “mineral asset” means any mineral deposits or land comprising mineral deposits, or any interest in or right over such deposits or land;
  - “mineral exploration and access” means searching for or discovering and testing the mineral deposits of any source or winning access to any such deposits;
  - “planning permission” has the meaning given by the relevant planning enactment;
  - “pre-trading expenditure on machinery or plant” shall be construed in accordance with section 106;
  - “pre-trading exploration expenditure” shall be construed in accordance with section 107;

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“qualifying expenditure” shall be construed in accordance with Chapters II and III of this Part;

“the relevant planning enactment” means—

- (a) in relation to land in England and Wales, section 290(1) of the <sup>M49</sup>Town and Country Planning Act 1971;
- (b) in relation to land in Scotland, section 275(1) of the <sup>M50</sup>Town and Country Planning (Scotland) Act 1972;
- (c) in relation to land in Northern Ireland, Article 2(2) of the <sup>M51</sup>Planning (Northern Ireland) [<sup>F104</sup>Order 1991] ;

“source of mineral deposits” includes a mine, an oil well and a source of geothermal energy; and

“trade of mineral extraction” means a trade which consists of or includes the working of a source of mineral deposits.

- (2) Any reference in this Part to mineral deposits is a reference to mineral deposits of a wasting nature and, in the case of a mineral asset which consists of or includes an interest in or right over mineral deposits or land, the asset shall not be regarded as situated in the United Kingdom unless the deposits or land are or is so situated.
- (3) Any reference in this Part to assets representing any expenditure includes, in relation to expenditure on mineral exploration and access, any results obtained from any search, exploration or inquiry upon which the expenditure was incurred.
- (4) Any reference in this Part to a chargeable period or its basis period is a reference to a chargeable period or, as the case may be, its basis period beginning (or treated by virtue of section 55 of the <sup>M52</sup>Finance Act 1986 as beginning) on or after 1st April 1986.
- (5) The provisions of this Part apply in relation to a share in an asset of any description as, by virtue of section 161(7), they apply to a part of an asset; and, for the purposes of those provisions, a share in an asset of any description shall be deemed to be used for the purposes of a trade so long as, and only so long as, the asset is used for those purposes.

#### Textual Amendments

**F104** Words in s. 121(1) substituted (21.8.1991) by S.I.1991/1220 (N.I. 11), arts. 1(2), 133(1), **Sch. 5**

#### Marginal Citations

**M49** 1971 c. 78.

**M50** 1972 c. 52.

**M51** S.I. 1972/1634 (N.I.17).

**M52** 1986 c. 41.



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## PART V

### AGRICULTURAL BUILDINGS ETC.

#### CHAPTER I

##### AGRICULTURE

### 122 Allowances for expenditure incurred before 1st April 1986.

- (1) Subject to the provisions of this section, where the owner or tenant of any agricultural land has, before 1st April 1986 or, if it is expenditure under an existing contract, before 1st April 1987, incurred any capital expenditure on the construction of farmhouses, farm buildings, cottages, fences or other works, there shall be made to him during a writing-down period of 8 years beginning with the chargeable period related to the incurring of that expenditure, writing-down allowances of an aggregate amount equal to four-fifths of that expenditure.
- (2) In any case where by virtue of subsection (3A) of section 68 of the 1968 Act the aggregate amount of allowances and the period during which allowances may be made under paragraph (b) of subsection (1) of that section (and accordingly also under subsection (1) above) are increased, the amount of the allowances and the period during which they may be made under subsection (1) above shall be similarly increased.
- (3) Where a person would, if he continued to be the owner or, as the case may be, the tenant of any land, be entitled under this section to a writing-down allowance in respect of any expenditure, and the whole of his interest in the land in question, or in any part of the land in question, is transferred, whether by operation of law or otherwise, to some other person, then, subject to subsection (4) below, for the part of the writing-down period falling after the date of the transfer, the person to whom the interest is transferred shall, to the exclusion of the person from whom it is transferred, be entitled to the allowances (a writing-down allowance to either of them for a chargeable period falling partly before and partly within that part of the writing-down period being reduced accordingly).
- (4) Where the interest transferred is in part only of the land, subsection (3) above shall apply to so much of the allowance as is properly referable to that part of the land as if it were a separate allowance.
- (5) For the purposes of subsections (3) and (4) above, where an interest in land is a tenancy and that tenancy comes to an end, that interest shall be deemed to have been transferred—
  - (a) if an incoming tenant makes any payment to the outgoing tenant in respect of assets representing the expenditure, to the incoming tenant, and
  - (b) in any other case, to the owner of the interest in immediate reversion on the tenancy.
- (6) For the purposes of this section as it applies for income tax purposes, the basis period for a year of assessment is the year ending with 31st March next preceding that year of assessment, or with such other date as may be agreed by the owner or tenant in question and the inspector, and section 160 shall not apply for the purposes of this section.

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- (7) Subject to any provision to the contrary, any reference to this Part which is contained in this Part does not include a reference to this section.

### **123 Allowances for expenditure incurred after 31st March 1986.**

Subject to the following provisions of this Part, if a person having a major interest in any agricultural land has incurred or incurs, after 31st March 1986 or, if it is expenditure under an existing contract, after 31st March 1987, any capital expenditure on the construction of farmhouses, farm buildings, cottages, fences or other works, there shall be made to him during a writing-down period of 25 years beginning on the first day of the chargeable period related to the incurring of the expenditure, writing-down allowances of an aggregate amount equal to that expenditure.

### **124 Expenditure qualifying for allowances.**

- (1) No expenditure shall be taken into account for the purposes of this Part, including section 122, unless it is incurred for the purposes of husbandry on the agricultural land in question, and—

- (a) where the expenditure is on a farmhouse, one-third only of the expenditure shall be taken into account, or, if the accommodation and amenities of the farmhouse are out of due relation to the nature and extent of the farm, such proportion thereof not greater than one-third as may be just,
- (b) where expenditure is incurred on any asset other than a farmhouse, being an asset which is to serve partly the purposes of husbandry and partly other purposes, such apportionment of the expenditure shall be made for the purposes of this Part as may be just.

- (2) In any case where—

- (a) capital expenditure is incurred on the construction of any building, fence or other works, but
- (b) when the building, fence or other works comes to be used it is not used for the purposes of husbandry,

the expenditure shall be left out of account for the purposes of this Part and, accordingly, any writing-down allowance made in respect of the expenditure under section 123 shall be withdrawn and all such assessments and adjustments of assessments shall be made as may be necessary to give effect to that withdrawal.

- (3) Where an allowance or charge is or has been made under section 24 by reference to an amount of qualifying expenditure which took account of a particular amount of capital expenditure, that capital expenditure shall be left out of account for the purposes of this Part.

This subsection shall not have effect in relation to any chargeable period or its basis period ending after 26th July 1989.

**Status:** Point in time view as at 01/07/1992. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

VALID FROM 27/07/1993

**[124A <sup>F105</sup>Initial allowances: contracts entered into between October 1992 and November 1993.**

- (1) Subject to the following provisions of this Part, if a person having a major interest in any agricultural land incurs any expenditure to which this section applies, there shall be made to him, for the chargeable period which is that related to the incurring of the expenditure, an allowance (“an initial allowance”) equal to 20 per cent. of the amount of that expenditure.
- (2) This section applies to any expenditure falling within section 123 which is incurred under a contract which—
  - (a) is entered into either—
    - (i) in the period beginning with 1st November 1992 and ending with 31st October 1993; or
    - (ii) for the purpose of securing that obligations under a contract entered into in that period are complied with;
  - but
  - (b) is not entered into for the purpose of securing that obligations under a contract entered into before the beginning of that period are complied with.
- (3) No expenditure on the construction of any building, fence or other works shall be taken into account for the purposes of any initial allowance under this Part unless it is incurred for the purposes of husbandry on the agricultural land in question; and no initial allowance shall be made under this Part in respect of expenditure on the construction of any building, fence or other works unless the building, fence or other works is or is to be first used for the purposes of husbandry on or before 31st December 1994.
- (4) Where expenditure is incurred on a farmhouse or any asset (other than a farmhouse) which is to serve partly the purposes of husbandry and partly other purposes, the same apportionment of that expenditure shall be made for the purposes of any initial allowance under this Part as is required by section 124(1)(a) or (b) to be made for the purposes of writing-down allowances.
- (5) In a case where—
  - (a) any expenditure to which this section applies is incurred on the construction of any building, fence or other works; and
  - (b) either—
    - (i) when the building, fence or other works comes to be used it is not used for the purposes of husbandry; or
    - (ii) it has not come to be so used by the end of 31st December 1994,the expenditure shall be left out of account for the purposes of initial allowances under this Part and, accordingly, any initial allowance made in respect of the expenditure under this section shall be withdrawn and all such assessments and adjustments of assessments shall be made as may be necessary to give effect to that withdrawal.
- (6) Subject to subsection (7) below, a person making a claim by virtue of this section as it applies for income tax purposes may require the initial allowance to be reduced to a

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specified amount; and a company may by notice given to the inspector not later than two years after the end of the chargeable period for which the allowance falls to be made disclaim the initial allowance or require it to be reduced to a specified amount.

- (7) Subsection (6) above shall have effect as respects allowances falling to be made for accounting periods ending after the day appointed for the purposes of section 10 of the principal Act (pay and file) with the omission of the words “as it applies for income tax purposes” and the words from “and a company” onwards.]

#### Textual Amendments

**F105** Ss. 124A, 124B inserted (27.7.1993 with effect as mentioned in s. 114(2) of the amending Act) by 1993 c. 34, s. 114, [Sch. 12 para.3](#)

VALID FROM 27/07/1993

#### <sup>F106</sup>**124B** Restriction on writing-down allowance where initial allowance made.

Where an initial allowance under this Part is made for any chargeable period in respect of any expenditure on the construction of a building, fence or other works, a writing-down allowance in respect of that expenditure shall be made under this Part for the same chargeable period only if the building, fence or other works has come to be used for the purposes of husbandry before the end of that period.

#### Textual Amendments

**F106** Ss. 124A, 124B inserted (27.7.1993 with effect as mentioned in s. 114(2) of the amending Act) by 1993 c. 34, s. 114, [Sch. 12 para.3](#)

### 125 Meaning of “major interest” and “the relevant interest”.

- (1) In this Part a “major interest” in land means—
- (a) the fee simple estate in the land or an agreement to acquire that estate;
  - (b) in Scotland, the estate or interest of the proprietor of the *dominium utile* (or, in the case of property other than feudal property, of the owner) and any agreement to acquire such an estate or interest, and
  - (c) a lease.
- (2) Subject to the provisions of this section, in this Part “the relevant interest” means, in relation to any expenditure falling within section 123, the major interest in the agricultural land concerned to which the person who incurred the expenditure was entitled when he incurred it.
- (3) Where, when he incurs expenditure falling within section 123, a person is entitled to two or more major interests in the agricultural land concerned, and one of those interests is an interest which is in reversion on all the others, that interest is the relevant interest for the purposes of this Part.

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- (4) A major interest shall not cease to be the relevant interest for the purposes of this Part by reason of the creation of any lease (or other interest) to which the interest is subject; and where the relevant interest is a lease which is extinguished—
- (a) by reason of the surrender thereof, or
  - (b) on the person entitled thereto acquiring the interest which is the reversion on the relevant interest,
- then, unless a new lease of the land concerned is granted to take effect on the extinguishment of the former lease, the interest into which that lease merges shall thereupon become the relevant interest.

## 126 Transfers of relevant interest.

- (1) In any case where—
- (a) if a person (“the former owner”) continued to be the owner of the relevant interest in any land, he would be entitled to a writing-down allowance in respect of any expenditure, and
  - (b) another person (“the new owner”) acquires the relevant interest in the whole or part of that land (whether by transfer, by operation of law or otherwise),
- the former owner shall not be entitled to an allowance under this Part for any chargeable period of his after that related to the acquisition and the new owner shall be entitled to allowances under this Part for the chargeable period of his related to the acquisition and for subsequent chargeable periods falling within the writing-down period.
- (2) If, in a case falling within subsection (1) above, the date of the acquisition occurs during a chargeable period of the former owner or its basis period, he shall be entitled only to an appropriate portion of an allowance for the chargeable period related to the acquisition and, similarly, if the date of the acquisition occurs during a chargeable period of the new owner or its basis period, he shall be entitled only to an appropriate portion of an allowance for the chargeable period (of his) related to the acquisition.
- (3) Where the new owner acquires the relevant interest in part only of the land concerned, subsections (1) and (2) above shall apply to so much only of the allowance as is properly referable to that part of the land as if it were a separate allowance.
- (4) Where section 125(4) applies and the person who owns the interest into which the lease is merged is not the same as the person who owned the lease, the relevant interest shall be treated for the purposes of this Part as acquired by the owner of the interest into which the lease is merged.
- (5) Where the relevant interest is a lease which comes to an end and section 125(4) does not apply, then, for the purposes of this Part—
- (a) if a new lease is granted to a person who makes any payment to the outgoing lessee in respect of assets representing the expenditure in question, the new lease shall be treated as the same interest as the former lease and, accordingly, the relevant interest shall be treated as acquired by the incoming lessee; and
  - (b) if a new lease is granted to the person who was the lessee under the former lease, the new lease shall be treated as the same interest as the former lease; and
  - (c) in any other case, the former lease and the interest of the person who was the landlord under the former lease shall be treated as the same interest and, accordingly, the relevant interest shall be treated as acquired by that person.

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- (6) If, by virtue only of the operation of subsections (1) to (5) above and, where appropriate, section 146(2) and (3), the total allowances which, apart from this subsection, would fall to be made under this Part in respect of any expenditure during the writing-down period appropriate to it would be less than the amount of that expenditure, then, for the chargeable period in which that writing-down period ends, the allowance in respect of that expenditure shall be increased to such amount as will secure that the total of the allowances equals the amount of that expenditure.
- (7) This section has effect subject to sections 127 to 133.

## 127 Buildings etc. bought unused.

- (1) This section applies where expenditure falling within section 123 is expenditure on the construction of a building, fence or other works and, before the building, fence or works comes to be used, the relevant interest is sold.
- (2) Where this section applies—
- the expenditure shall be left out of account for the purposes of this Part and, accordingly, any writing-down allowance made in respect of the expenditure shall be withdrawn and all such assessments and adjustments of assessments shall be made as may be necessary to give effect to that withdrawal;
  - section 126 shall not apply; and
  - the person who buys the relevant interest shall be treated for the purposes of this Part as having incurred, on the date when the purchase price becomes payable, expenditure falling within section 123 on the construction of the building, fence or other works.
- (3) The expenditure referred to in subsection (2)(c) above is whichever is the lesser of—
- the net price paid by the person concerned for the purchase of the relevant interest; and
  - the expenditure referred to in subsection (1) above.
- (4) Where the relevant interest is sold more than once in circumstances falling within subsection (1) above, subsection (2)(c) and (3) above shall have effect only in relation to the last of those sales.

VALID FROM 27/07/1993

### [127A <sup>F107</sup> Purchases of buildings and structures: cases involving initial allowances.

- (1) This section shall apply (subject to subsection (2) below) where—
- there is expenditure on the construction of any building, fence or other works (“the actual expenditure”) which—
    - is expenditure falling within section 123; and
    - is not expenditure which would fall to be disregarded for the purposes of writing-down allowances by virtue of section 124(1);
  - some or all of the actual expenditure is expenditure to which section 124A applies or would be such expenditure if it were capital expenditure; and
  - before the building, fence or other works comes to be used, the relevant interest is sold.

**Status:** Point in time view as at 01/07/1992. This version of this Act contains provisions that are not valid for this point in time.

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- (2) In relation to any case in which the relevant interest is sold in pursuance of a contract entered into in the period beginning with 1st November 1992 and ending with 31st October 1993 by a person who—
- (a) carries on a trade which consists, in whole or in part, in the construction of buildings or structures with a view to their sale; and
  - (b) has been entitled to that interest since before 1st November 1992,
- section 124A(2) above shall have effect for the purposes of subsection (1)(b) above and subsection (6) below as if for the words from “contract which” onwards there were substituted “contract entered into either before 1st November 1993 or for the purpose of securing that obligations under a contract entered into before that date are complied with.”
- (3) Where this section applies—
- (a) the actual expenditure shall be left out of account for the purposes of this Part and, accordingly—
    - (i) any initial allowance or writing-down allowance made in respect of the actual expenditure shall be withdrawn; and
    - (ii) all such assessments and adjustments of assessments shall be made as may be necessary to give effect to that withdrawal;
  - (b) section 126 shall not apply;
  - (c) the person who buys the relevant interest shall be treated for the purposes of this Part as having incurred, on the date when the purchase price becomes payable, expenditure falling within section 123 on the construction of the building, fence or other works (“the deemed expenditure”); and
  - (d) the deemed expenditure shall be treated (without prejudice to section 124(2) and 124A(5)) as incurred for the purposes of husbandry on the agricultural land in question.
- (4) The deemed expenditure—
- (a) shall be whichever is the lesser of the net price paid by the person concerned for the purchase of the relevant interest and the actual expenditure; and
  - (b) shall be regarded as comprising a section 124A element and a residual element.
- (5) The section 124A element of the deemed expenditure shall be calculated in accordance with the formula—
- $$A \times \frac{B}{C}$$
- (6) In subsection (5) above—
- A is the deemed expenditure;
- B is so much of the actual expenditure as is expenditure to which section 124A applies or expenditure that would be such expenditure if it were capital expenditure; and
- C is the actual expenditure.
- (7) The residual element of the deemed expenditure shall be so much (if any) of the deemed expenditure as does not comprise the section 124A element.
- (8) Notwithstanding the provisions of subsection (3)(c) above—

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- (a) the section 124A element of the deemed expenditure shall be treated for the purpose only of determining entitlement to allowances as expenditure to which that section applies; and
  - (b) the residual element of the deemed expenditure shall be treated for that purpose as expenditure which is not expenditure to which that section applies.
- (9) Where the relevant interest is sold more than once before the building, fence or other works is used, subsections (2) and (3)(c) and (d) above shall have effect only in relation to the last of those sales.]

#### Textual Amendments

**F107** S. 127A inserted (27.7.1993 with effect as mentioned in s. 114(2) of the amending Act) by 1993 c. 34, s. 114, Sch. 12 para.6

### 128 Balancing allowances and charges.

- (1) If, in respect of any expenditure falling within section 123, a balancing event occurs in a chargeable period or its basis period and, apart from this section, a person would be entitled to a writing-down allowance in respect of that expenditure for the chargeable period related to that event, no such allowance shall be made but an allowance or charge (a “balancing allowance” or “balancing charge”) shall, in the circumstances mentioned below, be made for that period to or, as the case may be, on the person entitled to the relevant interest immediately before that event occurs.
- (2) In relation to any expenditure, the amount of any balancing allowance or charge shall be determined in accordance with the following provisions of this section by reference to—
  - (a) the residue of that expenditure, that is to say, the amount of that expenditure falling to be taken into account for the purposes of this Part less the aggregate of any writing-down allowances made in respect of it (whether or not to the person to or on whom the allowance or charge is to be made); and
  - (b) subject to subsection (3) below, any sale, insurance, salvage or compensation moneys related to the event which gives rise to the balancing allowance or balancing charge.
- (3) If, by virtue of section 124(1)(a) or (b), only a portion of any expenditure falls to be taken into account for the purposes of this Part, any reference in subsections (4) and (5) below to the sale, insurance, salvage or compensation moneys is a reference only to the like portion of those moneys.
- (4) Where there are no sale, insurance, salvage or compensation moneys or where the residue of the expenditure immediately before the balancing event exceeds those moneys, a balancing allowance shall be made of an amount equal to that residue or, as the case may be, to the excess of it over those moneys.
- (5) If the sale, insurance, salvage or compensation moneys exceed the residue of the expenditure immediately before the event, a balancing charge shall be made on an amount equal to that excess.



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(6) Notwithstanding anything in subsection (5) above, in no case shall the amount on which a balancing charge is made on any person exceed the amount of the writing-down allowances made to him in respect of the expenditure before the balancing event.

(7) If a balancing event relates to—

- (a) the acquisition of the relevant interest in part only of the land in which it subsisted at the time the expenditure was incurred, or
- (b) only part of the building, fence or other works on the construction of which the expenditure was incurred,

subsections (1) to (6) above shall apply to so much of the expenditure as is properly attributable to the part of the land, building, fence or other works concerned, as if it were an item of expenditure separate from the rest.

(8) Where—

- (a) before 6th April 1990, a woman was entitled to the relevant interest in relation to expenditure falling within section 123 (whether she was entitled to it when the expenditure was incurred or acquired it afterwards);
- (b) for a chargeable period ending before that date, an allowance under section 123 was made to the woman's husband in respect of her relevant interest; and
- (c) on or after that date there occurs an event which is a balancing event and in respect of which the woman is entitled to all or part of any sale, insurance, salvage or compensation moneys,

the allowance shall be treated for the purposes of subsection (6) above as having been made to the woman.

## 129 Balancing events.

(1) Subject to subsection (2) below, in relation to expenditure ("the original expenditure") for which, apart from section 128, a person ("the former owner") would be entitled to a writing-down allowance, the following events are balancing events for the purposes of this Part—

- (a) the acquisition of the relevant interest by another person ("the new owner") as mentioned in section 126; and
- (b) where any building, fence or other works on the construction of which the expenditure was incurred is demolished, destroyed or otherwise ceases to exist as such.

(2) An event falling within subsection (1) above is not a balancing event for the purposes of this Part unless an election is made with respect to that event by notice given to the inspector not more than two years after the end of the chargeable period related to the occurrence of the event.

(3) Where, during the writing-down period applicable to the original expenditure, a balancing event falling within subsection (1)(a) above occurs, the amount of any writing-down allowances to which the new owner is entitled for chargeable periods which, or the basis periods for which, end after the balancing event shall be determined as if—

- (a) that part of the writing-down period applicable to the original expenditure which falls after the balancing event were itself the writing-down period in which the allowances in respect of that expenditure were to be made; and

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- (b) the allowances were in respect of expenditure equal to the residue of the original expenditure (determined under section 128(2)(a)) immediately before the balancing event less the amount of any balancing allowance made to the former owner or, as the case may be, plus the amount on which any balancing charge was made on him by reason of the balancing event.
- (4) Subject to subsection (5) below, an election under this section shall be made as follows—
- (a) where the event falls within subsection (1)(a) above, jointly by the former owner and the new owner; and
  - (b) where the event falls within subsection (1)(b) above, by the former owner.
- (5) No election may be made under this section if any person by whom that election should be made is not within the charge to tax in the United Kingdom; and no election may be made in relation to an acquisition falling within subsection (1)(a) above if it appears with respect to that acquisition, or with respect to transactions of which that acquisition is one, that the sole or main benefit which (apart from section 157) might have been expected to accrue to the parties or any of them was the obtaining of an allowance, or a greater allowance, under this Part.

**Modifications etc. (not altering text)**

- C29** S. 129(2) modified (19.4.1991) for the year of assessment 1988-1989 by [S.I. 1991/851](#), [regs. 1, 9](#), [Sch.2](#).
- C30** S. 129(2) modified (28.3.1992) for the year of assessment 1989-1990 by [S.I. 1992/511](#), [regs. 1, 9](#), [Sch.2](#).
- C31** S. 129(2) applied (with modifications) (23.3.1993) by [S.I. 1993/415](#), [reg. 9](#), [Sch.2](#)

**130 Restriction of balancing allowances on sale of buildings.**

- (1) This section has effect where—
- (a) the relevant interest in a building is sold subject to a subordinate interest; and
  - (b) a balancing allowance under section 128 would, apart from this section, fall to be made to the person who is entitled to the relevant interest immediately before the sale (“the former owner”) by virtue of the sale; and
  - (c) either—
    - (i) the former owner, the person to whom the relevant interest is sold and the grantee of the subordinate interest, or any two of them, are connected with each other within the terms of section 839 of the principal Act, or
    - (ii) it appears with respect to the sale or to the grant of the subordinate interest, or with respect to transactions including the sale or grant, that the sole or main benefit which, apart from this section, might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part.
- (2) For the purposes of section 128, the net proceeds to the former owner of the sale—
- (a) shall be taken to be increased by an amount equal to any premium receivable by him for the grant of the subordinate interest; and
  - (b) where no rent, or no commercial rent, is payable in respect of the subordinate interest, shall be taken to be what those proceeds would have been if a

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commercial rent had been payable and the relevant interest had been sold in the open market (increased by any amount to be added under paragraph (a) above);

but the net proceeds of sale shall not by virtue of this subsection be taken to be greater than such amount as will secure that no balancing allowance falls to be made.

(3) Where subsection (2) above operates in relation to a sale to deny or reduce a balancing allowance in respect of any expenditure, section 129(3) shall have effect as if that balancing allowance had been made or, as the case may be, had not been reduced.

(4) In this section—

“subordinate interest” means any interest in or right over the building in question (whether granted by the former owner or by somebody else);

“premium” includes any capital consideration except so much of any sum as corresponds to any amount of rent or profits falling to be computed by reference to that sum under section 34 of the principal Act (premium treated as rent or Schedule D profits);

“capital consideration” means consideration which consists of a capital sum or would be a capital sum if it had taken the form of a money payment;

“rent” includes any consideration which is not capital consideration;

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

(5) Where the terms on which a subordinate interest is granted are varied before the sale of the relevant interest, any capital consideration for the variation shall be treated for the purposes of this section as a premium for the grant of the interest, and the question whether any and, if so, what rent is payable in respect of the interest shall be determined by reference to the terms as in force immediately before the sale.

## CHAPTER II

### FORESTRY

#### **131 Forestry: transitional provisions.**

(1) The provisions of this section shall have effect to enable certain allowances to be made under this Part in respect of capital expenditure incurred for the purposes of forestry.

(2) Subject to subsections (4) and (5) below, this Part shall have effect—

(a) in relation to any chargeable period beginning before 20th June 1989 which is a period in relation to which no election under paragraph 4 of Schedule 6 to the <sup>M53</sup>Finance Act 1988 (commercial woodlands: Schedule D election for transitional period) has effect in respect of the relevant land, and

(b) in relation to any chargeable period beginning before 6th April 1993 which is a period in relation to which an election under that paragraph has effect in respect of the relevant land,

subject to the modifications set out in subsection (3) below.

(3) Those modifications are as follows—

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- (a) in sections 122(1) and 123 for the words “agricultural land” and “farm buildings” there shall be substituted respectively the words “agricultural or forestry land” and “farm or forestry buildings”;
  - (b) in section 124—
    - (i) in subsection (1) for the words “agricultural land” there shall be substituted the words “agricultural or forestry land”; and
    - (ii) in subsections (1) and (2) after the word “husbandry” there shall be inserted the words “or forestry”; and
  - (c) in section 125(2) and (3) for the words “agricultural land” there shall be substituted the words “agricultural or forestry land”.
- (4) Any allowance which falls to be made by virtue of subsection (2)(a) above for an accounting period of a company beginning before and ending on or after 20th June 1989 shall be apportioned (on a time basis according to their respective lengths) between the part of that period beginning on that date and the other part; and so much of any such allowance as is apportioned to the part beginning on that date shall not be made.
- (5) Any allowance which falls to be made by virtue of subsection (2)(b) above for an accounting period of a company beginning before and ending on or after 6th April 1993, other than an allowance under section 132(2), shall be apportioned (on a time basis according to their respective lengths) between the part of that period beginning on that date and the other part; and so much of any such allowance as is apportioned to the part beginning on that date shall not be made.
- (6) In subsection (2) above “the relevant land”, in relation to an allowance falling to be made in respect of any expenditure, means the land for the purposes of forestry on which that expenditure was incurred.

#### Marginal Citations

M53 1988 c. 39.

## CHAPTER III

### SUPPLEMENTAL

#### 132 Manner of making allowances and charges.

- (1) An allowance under section 122(1) shall be made by way of discharge or repayment of tax and shall be available primarily against agricultural income and forestry income.
- (2) Any other allowance and any charge made to or on any person under this Part shall, except as provided by subsections (3) and (4) below, be made to or on him in taxing his trade; and subsection (3) does not apply to an allowance to which subsection (1) above applies.
- (3) Any allowance which falls to be made to a person for a chargeable period in which he is not carrying on a trade shall be made by way of discharge or repayment of tax and shall be available primarily against agricultural income and forestry income and income which is the subject of a balancing charge.

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- (4) Effect shall be given to a balancing charge to be made on a person for a chargeable period in which he is not carrying on a trade—
- (a) if it is a charge to income tax, by making the charge under Case VI of Schedule D, and
  - (b) if it is a charge to corporation tax, by treating the amount on which the charge is to be made as agricultural income or forestry income.
- (5) In relation to chargeable periods beginning on or after 6th April 1993 subsections (1) and (3) above shall have effect with the omission of the words “and forestry income” and subsection (4) above shall have effect with the omission of the words “or forestry income”.

### 133 Interpretation of Part V.

- (1) In this Part, including section 122—
- “agricultural land” means land, houses or other buildings in the United Kingdom occupied wholly or mainly for the purposes of husbandry;
- “agricultural income” means income chargeable under Schedule A in respect of agricultural land, and income chargeable under Schedule D in respect of farming or market gardening in the United Kingdom;
- “forestry land” means woodlands in the United Kingdom in respect of which an election is in force for assessment and charge to tax under Schedule D by virtue of paragraph 5 of Schedule 6 to the <sup>M54</sup>Finance Act 1988, and any houses or other buildings in the United Kingdom which are occupied together with, and wholly or mainly for the purposes of, such woodlands;
- “forestry income” means income chargeable under Schedule A in respect of forestry land, and income chargeable under Schedule D in respect of the occupation of woodlands in the United Kingdom;
- “husbandry” includes any method of intensive rearing of livestock or fish on a commercial basis for the production of food for human consumption;
- and references to this Part shall be construed in accordance with section 122(7).
- (2) Subsection (1) above shall have effect, from 6th April 1993, with the omission of the definitions of “forestry land” and “forestry income”.
- (3) In this Part, including section 122, “expenditure under an existing contract” means expenditure which consists of the payment of sums under a contract entered into on or before 13th March 1984 by the person incurring the expenditure.
- (4) If an interest in land is conveyed or assigned by way of security and subject to a right of redemption, then, so long as such a right subsists, the interest held by the creditor shall be treated for the purposes of this Part as held by the person having that right.
- (5) Any reference in this Part to a writing-down allowance is a reference to an allowance under section 123.
- (6) Any reference in this Part to expenditure incurred on the construction of a building does not include any expenditure incurred on the acquisition of, or of rights in or over, any land.
- (7) Without prejudice to any provision of Part VIII relating to the apportionment of sale, insurance, salvage or compensation moneys, the sum paid on the sale of the relevant interest in a building, fence or other works or any other sale, insurance, salvage or

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compensation moneys payable in respect of any building, fence or other works shall, for the purposes of this Part, be deemed to be reduced by an amount equal to so much thereof as, on a just apportionment, is attributable to assets representing expenditure other than expenditure in respect of which an allowance can be made under this Part.

- (8) For the purposes of this Part and of the provisions of Part VIII which are relevant to this Part, any transfer of the relevant interest (in relation to any expenditure falling within section 123) otherwise than by way of sale shall be treated as a sale of the interest for a price other than that which it would have fetched if sold in the open market.
- (9) If section 157 would not apart from this subsection have effect in relation to a transfer treated as a sale by virtue of subsection (8) above, that section shall have effect in relation to it as if it were a sale falling within section 157(1)(a).

#### Marginal Citations

M54 1988 c. 39.

## PART VI

### DREDGING

#### 134 Allowances for expenditure on dredging.

- (1) Subject to the provisions of this section, where a person for the purposes of any qualifying trade carried on by him incurs or has incurred capital expenditure on dredging, and either—
- the trade consists of the maintenance or improvement of the navigation of a harbour, estuary or waterway, or
  - the dredging is for the benefit of vessels coming to, leaving or using any dock or other premises occupied by him for the purposes of the trade,
- then writing-down allowances shall be made in respect of that expenditure to the person for the time being carrying on the trade during a writing-down period of 25 years or, if the expenditure was incurred before 6th November 1962, 50 years beginning with the first relevant chargeable period, but where a writing-down allowance falls to be made for a year of assessment to such a person, and he is within the charge to income tax in respect of the trade for part only of that year, that part shall be treated as a separate chargeable period for the purposes of computing allowances under this section.
- (2) If the trade is permanently discontinued in any chargeable period, then for that chargeable period there shall be made to the person last carrying on the trade, in addition to any other allowance made to him, an allowance equal to the amount of the expenditure less the allowances made in respect of it under subsection (1) above for that and previous chargeable periods.
- (3) The reference in subsection (2) above to allowances made for previous chargeable periods—
- shall include a reference to any initial allowance granted under section 67 of the 1968 Act or under section 17 of the <sup>M55</sup>Finance Act 1956, and

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- (b) except in relation to initial allowances, shall be construed as if section 17 of the Finance Act 1956 had always had effect (instead of having had effect only for chargeable periods after the year 1955-56).
- (4) For the purposes of this Part, a trade shall not be treated by virtue of section 113 or 337(1) of the principal Act (changes in persons carrying on a trade, and special rules for corporation tax) as permanently discontinued; but, subject to section 343(2) of that Act (company reconstructions etc.), where a trade is sold, it shall be treated for those purposes as having been permanently discontinued at the time of the sale, unless the sale is such a sale as is specified in section 157(1).
- (5) Any allowance under this section shall be made in taxing the trade.
- (6) Where expenditure is incurred partly for the purposes of a qualifying trade and partly for other purposes, subsection (1) above shall apply to so much only of that expenditure as on a just apportionment ought fairly to be treated as incurred for the purposes of that trade.
- (7) Where a person incurs capital expenditure for the purposes of a trade or part of a trade not yet carried on by him but with a view to carrying it on, or incurs capital expenditure in connection with a dock or other premises not yet occupied by him for the purposes of a qualifying trade but with a view to so occupying the dock or premises, subsections (1) to (6) above shall apply as if he had been carrying on the trade or part of the trade or occupying the dock or premises for the purposes of the qualifying trade, as the case may be, at the time when the expenditure was incurred.
- (8) Where a person contributes a capital sum to expenditure on dredging incurred by another person, he shall be treated as incurring capital expenditure on that dredging, and capital expenditure incurred by any person shall not be treated as incurred for the purposes of any trade carried on or to be carried on by him in so far as it has been or is to be met directly or indirectly by the Crown or by any government or public or local authority, whether in the United Kingdom or elsewhere, or by capital sums contributed by any other person for purposes other than those of that trade.

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**Marginal Citations**

**M55** 1956 c. 54.

### 135 Interpretation of Part VI.

- (1) In this Part “qualifying trade” means any trade or undertaking which, or a part of which, complies with any of the following conditions, that is to say—
- the condition that it consists of the maintenance or improvement of the navigation of a harbour, estuary or waterway, or
  - any condition set out in section 18(1),
- but where part only of a trade or undertaking complies with those conditions, section 134(6) shall apply as if the part which does comply and the part which does not were separate trades.
- (2) For the purposes of this Part, the first relevant chargeable period, in relation to expenditure incurred by any person, is the chargeable period related to the following event or occasion, that is—
- the incurring of the expenditure, or

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- (b) in the case of expenditure for which allowances are to be made by virtue of section 134(7), the occasion when he first both carries on the trade or part of the trade for the purposes of which the expenditure was incurred, and occupies for the purposes of that trade or part of the trade the dock or other premises in connection with which it was incurred.
- (3) In this Part, “dredging” does not include things done otherwise than in the interests of navigation, but (subject to that) includes the removal of anything forming part of or projecting from the bed of the sea or of any inland water, by whatever means it is removed and whether or not at the time of removal it is wholly or partly above water; and this Part shall apply to the widening of an inland waterway in the interests of navigation as it applies to dredging.

## PART VII

### SCIENTIFIC RESEARCH

#### **136 Allowances for expenditure on scientific research not of a capital nature, and on payments to research associations, universities etc.**

Notwithstanding anything in section 74 of the principal Act (general rules as to deductions not allowable in computing the profits or gains of a trade), where a person carrying on a trade—

- (a) incurs expenditure not of a capital nature on scientific research related to that trade and directly undertaken by him or on his behalf, or
- (b) pays any sum to any scientific research association for the time being approved for the purposes of this section by the Secretary of State, being an association which has as its object the undertaking of scientific research related to the class of trade to which the trade he is carrying on belongs, or
- (c) pays any sum to be used for such scientific research as is mentioned in paragraph (b) above to any such university, college research institute or other similar institution as is for the time being approved for the purposes of this section by the Secretary of State,

the expenditure incurred or sum paid, as the case may be, may be deducted as an expense in computing the profits or gains of the trade for the purposes of tax.

#### **137 Allowances for capital expenditure on scientific research.**

- (1) Subject to the provisions of this section and section 138, where a person—
- (a) while carrying on a trade, incurs expenditure of a capital nature on scientific research related to that trade and directly undertaken by him or on his behalf, or
  - (b) incurs expenditure of a capital nature on scientific research directly undertaken by him or on his behalf, and thereafter sets up and commences a trade connected with that research,

a deduction equal to the whole of the expenditure shall be allowed in taxing the trade for the relevant chargeable period as defined in subsections (5) to (7) below.

[<sup>F108</sup>(1A) Where a person—



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- (a) has incurred allowable scientific research expenditure of a capital nature as mentioned in paragraph (a) or (b) of subsection (1) above, and
- (b) incurs an additional VAT liability in respect of that expenditure at any time before the relevant event (as defined in section 138(1)) occurs in relation to the asset in question,

that liability shall, subject to the following provisions of this section, be regarded for the purposes of this Act as expenditure of a capital nature incurred on the scientific research.]

- (2) No allowance shall be made under subsection (1) above in respect of expenditure on the acquisition of, or of rights in or over, any land except in so far as, on a just apportionment, that expenditure is referable to the acquisition of, or of rights in or over, or of machinery or plant which forms part of, a building or other structure already constructed on that land.
- (3) For the purposes of this section, expenditure on the provision of a dwelling is not scientific research expenditure; but where part of a building is used for scientific research and part consists of a dwelling and [<sup>F109</sup>,disregarding any additional VAT liability or rebate,] the capital expenditure which it is just to apportion to the construction or acquisition of the dwelling is not more than one-quarter of the capital expenditure which is referable to the construction or acquisition of the whole building, the whole of the building shall be treated for the purposes of this Part as used for scientific research.
- (4) Subject to subsections (2) and (3) above, where after 26th July 1989 a person incurs capital expenditure which is partly within subsection (1) above and partly not, such apportionment of the expenditure shall be made for the purposes of this Part as may be just.
- (5) For corporation tax purposes the relevant chargeable period shall be the accounting period in which the expenditure was incurred or, if it was incurred before the setting up and commencement of the trade, the accounting period beginning with that setting up and commencement.
- (6) For income tax purposes the relevant chargeable period shall be—
  - (a) in the case of expenditure incurred before the end of the year of assessment in which the trade was set up and commenced, that year of assessment,
  - (b) in the case of expenditure incurred after the end of that year of assessment but not later than 12 months from the setting up and commencement of the trade, the year of assessment next following that in which the trade was set up and commenced,
  - (c) in the case of expenditure incurred after 12 months from the setting up and commencement of the trade and during the basis year for any year of assessment, but subject to subsection (7) below, that year of assessment,
  - (d) in the case of expenditure incurred during the year of assessment in which the trade is permanently discontinued, that year of assessment.

In paragraph (c) above, “basis year” means, in relation to a year of assessment, the period the profits or gains of which are, under section 60 of the principal Act, to be taken to be the profits or gains of the year preceding that year of assessment.

- (7) For the purposes of subsection (6)(c) above—
  - (a) where two basis years overlap, any expenditure incurred in the period common to both shall be deemed to have been incurred in the first basis year only,

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- (b) where there is an interval between the end of the basis year for one year of assessment and the beginning of the basis year for the next year of assessment, any expenditure incurred during the interval shall be deemed to have been incurred in the second basis year, and
- (c) any expenditure which is incurred before the end of, but after the end of the basis year for, the last complete year of assessment before the permanent discontinuance of the trade shall be deemed to have been incurred in that basis year,

and, in paragraph (a) above, the reference to the overlapping of two basis years includes a reference to the coincidence of two basis years, or to the inclusion of one basis year in another, and the reference to the period common to both of two basis years shall be construed accordingly.

#### Textual Amendments

**F108** S. 137(1A) inserted (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31, SIF 63:1), s. 59, **Sch. 14 Pt. III para. 12(1)**.

**F109** Words in s. 137(3) inserted (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31, SIF 63:1), s. 59, **Sch. 14 Pt. III para. 12(2)**.

#### Modifications etc. (not altering text)

**C32** S. 137 restricted (in relation to tax for the year 1992/93 and subsequent years subject as mentioned in s. 289 of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 195(6)(a), 289(1)** (with **ss. 60, 101(1), 201(3)**).

### 138 Assets ceasing to belong to traders.

- (1) Subsections (2) and (3) below shall have effect where an asset representing allowable scientific research expenditure of a capital nature incurred by the person carrying on a trade ceases to belong to him; and the occasion of that asset ceasing to belong to him is referred to below as “the relevant event”.
- (2) If the relevant event occurs in or after the chargeable period for which an allowance in respect of the expenditure is made under section 137, then, subject to subsection (6) below—
  - (a) the sum by which the aggregate of the disposal value of the asset and the amount of the allowance exceeds the amount of the expenditure, or
  - (b) the amount of the allowance if it is less than that sum,
 shall be treated as a trading receipt of the trade accruing at the time of the relevant event or, if the relevant event occurs on or after the date on which the trade is permanently discontinued, accruing immediately before the discontinuance.

[<sup>F110</sup>(2A) Where one or more additional VAT rebates have been made in respect of the expenditure at any time before the relevant event, the amount of the allowance and the amount of the expenditure shall each be treated for the purposes of subsection (2)(a) and (b) above as reduced by the aggregate amount of such of those rebates as fell, or fall, to be treated as trading receipts under subsection (3A) below.]

- (3) If the relevant event occurs before the chargeable period for which an allowance in respect of the expenditure would fall to be so made, that allowance shall not be made, but, subject to subsection (6) below, if the disposal value of the asset is less than the

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expenditure, a deduction equal to the difference shall be allowed in taxing the trade for the chargeable period in which the relevant event occurs.

[<sup>F111</sup>(3A) In any case where—

- (a) a person carrying on a trade has incurred allowable scientific research expenditure of a capital nature as mentioned in paragraph (a) or (b) of section 137(1), and
- (b) an additional VAT rebate in respect of that expenditure is made to him at any time before the relevant event occurs in relation to the asset in question,

then, unless that rebate falls to be brought into account for the purpose of making allowances and charges under Part I or Part II, an amount equal to the rebate shall be treated as a trading receipt of the trade accruing for the chargeable period related to the making of the rebate or, if the rebate is made on or after the date on which the trade is permanently discontinued, accruing immediately before the discontinuance.]

- (4) For the purposes of this section the disposal value of an asset depends upon the nature of the relevant event, and—
  - (a) if that event is the actual sale of the asset at a price not lower than that which it would have fetched in the open market, equals the proceeds of that sale;
  - (b) if that event is the deemed sale of the asset under subsection (5) below, equals the deemed proceeds of sale under that subsection; and
  - (c) in any other event, equals the price which the asset would have fetched if sold in the open market.
- (5) Where an asset is destroyed, it shall for the purposes of this section be treated as if it had been sold immediately before its destruction, and any insurance moneys or other compensation of any description received by the person carrying on the trade in respect of the destruction, and any moneys received by him for the remains of the asset, shall be treated as if they were proceeds of that sale; and where this subsection has effect on the demolition of an asset—
  - (a) the cost of demolition to the person carrying on the trade shall, for the purposes of subsections (2) and (3) above, be added to the expenditure represented by the asset, and
  - (b) if the case falls within the first of those subsections but, by reason of that addition, the aggregate there referred to is less than the amount of the expenditure represented by the asset, then, unless prior to its demolition the asset had begun to be used for purposes other than scientific research related to the trade, and subject to subsection (6) below, a deduction equal to the difference shall be allowed in taxing the trade for the chargeable period in which the asset is treated as having been sold or, if it is treated as having been sold on or after the date on which the trade is permanently discontinued, for the last chargeable period in which the trade was carried on before the discontinuance.
- (6) No amount shall be allowed or charged by virtue of this section in respect of any relevant event if that event gives rise to a balancing allowance or balancing charge under Part I or Part II.
- (7) In relation to any chargeable period or its basis period ending after 26th July 1989, subsection (6) above shall have effect with the omission of the words “allowed or” and “balancing allowance or”.

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**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

[<sup>F112</sup>(7A) Where the relevant event is the material disposal of a licence for the purposes of section 118A, subsection (4) above shall have effect subject to that section.]

[<sup>F113</sup>(8) For the purposes of subsections (2) and (3) above, any question arising whether the relevant event occurred in or after, or (as the case may be) before, the chargeable period for which an allowance is given in respect of the expenditure there mentioned shall be determined without reference to the making of any allowance by virtue of section 137(1A); but this subsection is without prejudice to any question as to the amount of the expenditure or of the allowance for the purposes of those subsections.]

#### Textual Amendments

- F110** S. 138(2A) inserted (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31, SIF 63:1), s. 59, **Sch. 14 Pt. III para. 13(1)**.
- F111** S. 138(3A) inserted (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31, SIF 63:1), s. 59, **Sch. 14 Pt. III para. 13(2)**.
- F112** S. 138(7A) inserted (in relation to tax for the year 1992/93 and subsequent years subject as mentioned in s. 289 of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289(1), 290(1), **Sch. 10 para. 21(2)** (with ss. 60, 101(1), 201(3)).
- F113** S. 138(8) added (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31, SIF 63:1), s. 59, **Sch. 14 Pt. III para. 13(3)**.

#### Modifications etc. (not altering text)

- C33** S. 138(3) (in relation to tax for the year 1992/93 and subsequent years subject as mentioned in s. 289 of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 195(6)(b)**, 289(1) (with ss. 60, 101(1), 201(3)).

#### [<sup>F114</sup>138A] Disposal of oil licences etc.

- (1) For the purposes of section 138 where—
- (a) a person (“the transferor”) disposes of any interest in an oil licence to another (“the transferee”), and
  - (b) part of the value of that interest is attributable to any allowable exploration expenditure incurred by the transferor,
- that disposal shall be deemed (subject to section 138B) to be a disposal by which an asset representing the allowable exploration expenditure to which that part of the value is attributable ceases to belong to the transferor.
- (2) Section 138 shall have effect in relation to the disposal of an interest in an oil licence, to the extent that the disposal is treated by virtue of subsection (1) above as a disposal of an asset representing allowable exploration expenditure, as if the disposal value of the asset were an amount equal to such part of the transferee’s expenditure on acquiring the interest as it is just and reasonable to attribute to the part of the value of that interest that is attributable to the allowable exploration expenditure.
- (3) In this section and section 138B references to allowable exploration expenditure are references to any allowable scientific research expenditure of a capital nature incurred on mineral exploration and access.
- (4) In this section and section 138B—

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**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

“foreign oil concession” means any right to search for or win overseas petroleum, being a right conferred or exercisable (whether or not by virtue of a licence) in relation to a particular area;

“interest” in relation to an oil licence, includes, where there is an agreement which—

- (a) relates to oil from the whole or any part of the area to which the licence applies, and
- (b) was made before the extraction of the oil to which it relates,

any entitlement under that agreement to, or to a share of, either that oil or the proceeds of its sale;

“mineral exploration and access” has the same meaning as in Part IV;

“oil”—

- (a) except in relation to a UK licence, means any petroleum; and
- (b) in relation to such a licence, has the same meaning as in Part I of the <sup>M56</sup>Oil Taxation Act 1975;

“oil licence” means any UK licence or foreign oil concession;

“overseas petroleum” means any petroleum that exists in its natural condition at a place to which neither the <sup>M57</sup>Petroleum (Production) Act 1934 nor the <sup>M58</sup>Petroleum (Production) Act (Northern Ireland) 1964 applies;

“petroleum” has the <sup>M59</sup>same meaning as in the Petroleum (Production) Act 1934; and

“UK licence” means a licence within the meaning of Part I of the Oil Taxation Act 1975.

#### Textual Amendments

**F114** Ss. 138A, 138B inserted (retrospectively) by [Finance Act 1996 \(c. 8\), s. 180\(1\)](#)

#### Marginal Citations

**M56** 1975 c. 22.

**M57** 1934 c. 36.

**M58** 1964 c. 28 (N.I.).

**M59** 1934 c. 36.

### 138B Disposal of oil licences: election for alternative tax treatment.

- (1) Subsections (2) and (3) below apply where—
  - (a) a person (“the transferor”) disposes of any interest in an oil licence to another (“the transferee”) during the transitional period;
  - (b) part of the value of the interest is attributable to allowable exploration expenditure incurred by the transferor; and
  - (c) an election is made in accordance with this section specifying an amount as the amount to be treated as so attributable.
- (2) Section 138 shall have effect in relation to the disposal as if—

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- (a) the disposal were a disposal by which an asset representing the allowable exploration expenditure ceases to belong to the transferor; and
  - (b) the disposal value of that asset were an amount equal to the amount specified in the election.
- (3) For the purposes of Part IV, the amount of any expenditure incurred—
- (a) by the transferee in acquiring the interest from the transferor, or
  - (b) by any person subsequently acquiring the interest (or an interest deriving from the interest),
- which is taken to be attributable to expenditure incurred, before the disposal to the transferee, on mineral exploration and access shall be the lesser of the amount specified in the election and the amount which, apart from this subsection, would be taken to be so attributable.
- (4) An election—
- (a) shall be made by notice to the Board given by the transferor; and
  - (b) subject to subsection (5) below, shall not have effect unless a copy of it is served on the transferee and the transferee consents to it.
- (5) If the Special Commissioners are satisfied—
- (a) that the disposal was made under or in pursuance of an agreement entered into by the transferor and the transferee on the mutual understanding that a quantified (or quantifiable) part of the value of the interest disposed of was attributable to allowable exploration expenditure, and
  - (b) that the part quantified in accordance with that understanding and the amount specified in the election are the same,
- they may dispense with the need for the transferee to consent to the election.
- (6) Any question falling to be determined by the Special Commissioners under subsection (5) above shall be determined by them in like manner as if it were an appeal; but both the transferor and the transferee shall be entitled to appear and be heard by those Commissioners or to make representations to them in writing.
- (7) Subject to subsection (8) below, an election may specify any amount, including a nil amount, as the amount to be treated as mentioned in subsection (1)(c) above.
- (8) Where—
- (a) a return has been made for a chargeable period of the transferor, and
  - (b) the return includes, at the time when it is made, an amount which, disregarding the provisions of this section, would be treated under section 138 as a trading receipt accruing in that period,
- the election must not specify an amount less than the amount included in the return unless the Board agrees the lesser amount in question.
- (9) An election made in accordance with this section—
- (a) is irrevocable; and
  - (b) shall not be varied after it is made.
- (10) For the purposes of this section a disposal is a disposal made during the transitional period if it is one made—
- (a) before 13th September 1995; or

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- (b) on or after that date in pursuance of any obligation to make the disposal which, immediately before that date, was an unconditional obligation.
- (11) For the purposes of subsection (10) above, the fact that a third party who is not connected with the transferor or the transferee may, by exercising any right or withholding any permission, prevent the fulfilment of an obligation does not prevent the obligation from being treated as unconditional.
- (12) In subsection (11) above the reference to a third party is a reference to any person, body, government or public authority, whether within or outside the United Kingdom; and section 839 of the principal Act (connected persons) applies for the purposes of that subsection.
- (13) All such assessments and adjustments of assessments shall be made as may be necessary to give effect to this section.]

#### Textual Amendments

**F114** Ss. 138A, 138B inserted (retrospectively) by [Finance Act 1996 \(c. 8\)](#), s. 180(1)

### 139 Supplemental.

- (1) In this Part—
- (a) “scientific research” means any activities in the fields of natural or applied science for the extension of knowledge;
- (b) “scientific research expenditure” means expenditure incurred on scientific research;
- (c) references to expenditure incurred on scientific research do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research, but, subject to that, include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research;
- (d) references to scientific research related to a trade or a class of trades include—
- (i) any scientific research which may lead to or facilitate an extension of that trade or, as the case may be, of trades of that class;
- (ii) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that trade or, as the case may be, of trades of that class; and
- (e) “asset” includes part of an asset.
- (2) The same expenditure shall not be taken into account for any of the purposes of this Part in relation to more than one trade.
- (3) If any question arises under this Part as to whether, and if so to what extent, any activities constitute or constituted, or any asset is or was being used for, scientific research, the Board shall refer the question for decision to the Secretary of State and his decision shall be final.
- (4) Any reference in this Part to the time when an asset ceases to belong to a person shall, in the case of a sale, be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.

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This subsection shall have effect in any case where the sale is effected, or the contract for sale entered into, after 26th July 1989.

- (5) The cost to a person of the demolition of any property shall not, if section 138(5)(a) applies to it, be treated for the purposes of this Act as expenditure incurred in respect of any other property by which that property is replaced.

## PART VIII

### SUPPLEMENTARY PROVISIONS

#### 140 Income tax allowances and charges in taxing a trade etc.

- (1) This section has effect as respects allowances and charges which, under the provisions of this Act as they apply for the purposes of income tax, fall to be made to a person in taxing his trade.
- (2) Allowances which fall to be made to a person in taxing his trade shall be made as a deduction in charging the profits or gains of the trade to income tax.
- (3) Any claim by a person for an allowance falling to be made to him in taxing his trade shall be made in his returns of income for income tax purposes, and section 42 of the <sup>M60</sup>Taxes Management Act 1970 shall not apply to any such claim.
- (4) Where full effect cannot be given in any year to any allowance falling to be made in taxing a trade owing to there being no profits or gains of the trade chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be carried forward and, so far as may be, made as a deduction in charging the profits or gains of the trade in subsequent years of assessment.
- (5) Where the allowances in respect of which deductions can be made under this section for any year include allowances carried forward under subsection (4) above from a previous year, the allowances shall, subject to paragraph 5 of Schedule 9 to the <sup>M61</sup>Finance Act 1981, be deducted in the following order—
  - (a) allowances other than those carried forward under subsection (4) above from an earlier year;
  - (b) allowances carried forward under subsection (4) above from earlier years of assessment not earlier than the year for which the basis period ended on or included 14th November 1980;
  - (c) allowances carried forward under subsection (4) above from years of assessment earlier than those referred to in paragraph (b) above.
- (6) Subsection (4) above has effect subject to section 383 of the principal Act (right to set capital allowances against general income).
- (7) Any charge falling to be made on a person for any year of assessment in taxing his trade shall be made by means of an assessment to income tax on the profits or gains of that trade for that year of assessment in addition to any other assessment falling to be made thereon for that year.
- (8) This section shall apply in relation to professions, employments, vocations and offices, and the occupation of woodlands the profits or gains whereof are assessable under



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Schedule D, as it applies in relation to trades, and nothing in this section applies to any deduction allowable under any provision of Parts I, II, IV, V and VI in computing the profits or gains of a trade.

- (9) Subsection (8) above shall have effect after 5th April 1993 with the omission of the words “and the occupation of woodlands the profits or gains whereof are assessable under Schedule D”.
- (10) Deductions allowable in taxing a trade under Part VII as it applies for the purposes of income tax shall be given effect in accordance with subsections (2) and (4) above.
- [<sup>F115</sup>(11) In the application of this section to allowances and charges which fall to be made under the provisions of Part I, references to a trade shall be treated as including references to an undertaking treated by virtue of section 21(5A) as carried on by way of trade.]

#### Textual Amendments

**F115** S. 140(11) inserted (for any chargeable period or its basis period ending on or after 06.04.1991) by Finance Act 1991 (c. 31, SIF 63:1), s. 60(8)(10).

#### Marginal Citations

**M60** 1970 c. 9.

**M61** 1981 c. 35.

### 141 Other income tax allowances.

- (1) This section has effect as respects any allowance which falls, under the provisions of this Act (except Part VII) as they apply for the purposes of income tax, to be given by way of discharge or repayment of tax and which is to be available primarily against a specified class of income.
- (2) Subject to subsection (3) below, where such an allowance falls to be made to a person for any year of assessment—
- (a) the amount of the allowance shall be deducted from or set off against income of his of the specified class for that year of assessment, and
  - (b) if the amount to be allowed is greater than the amount of his income of that class for that year of assessment, the balance shall be deducted from or set off against his income of that class for the next year of assessment, and so on for subsequent years of assessment, and tax shall be discharged or repaid accordingly.
- (3) Where the amount of the allowance is greater than the amount of the person’s income of the specified class for the first-mentioned year of assessment, he may elect that the excess shall be deducted from or set off against his other income for that year of assessment, and it shall be deducted from or set off against that income and tax discharged or repaid accordingly, and only the excess, if any, of the amount of the allowance over all his income for that year of assessment shall be deducted from or set off against his income of the specified class for succeeding years.

An election under this subsection as respects an allowance for any year of assessment shall be made by giving notice to the inspector not later than two years after the end of that year of assessment.

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- (4) An election under subsection (3) above may be made for any year of assessment with respect to an allowance for the last preceding year of assessment, so far as not previously allowed, as if the allowance were or formed part of the allowance for the year for which the election is made; and in applying subsections (2) and (3) above as extended by this subsection to any allowances, relief shall be deemed to be given in respect of an allowance carried forward from an earlier year before it is given in respect of an allowance arising in a later year.
- (5) Relief under this section shall be given on a claim (that is to say, a claim to which section 42 of the <sup>M62</sup>Taxes Management Act 1970 applies).
- (6) Subsection (3) above shall not apply to an allowance made by virtue of section 61(1).

#### Marginal Citations

M62 1970 c. 9.

### 142 Restriction of set-off of allowances against general income.

- (1) Relief shall not be given to an individual under sections 380 and 381 of the principal Act (set-off against general income) by reference to a first-year allowance made to him in respect of expenditure incurred on the provision of machinery or plant for leasing in the course of a trade if—
  - (a) at the time when the expenditure was incurred the trade was carried on by him in partnership with a company (with or without other partners); or
  - (b) a scheme has been effected or arrangements have been made (whether before or after that time) with a view to the trade being so carried on by him.
- (2) Relief shall not be given to an individual under sections 380 and 381 of the principal Act by reference to a first-year allowance if—
  - (a) the allowance is made in connection with—
    - (i) a trade which at the time when the expenditure was incurred was carried on by him in partnership or which has subsequently been carried on by him in partnership or transferred to a person who was connected with him within the meaning of section 839 of the principal Act; or
    - (ii) an asset which after that time has been transferred by him to a person who was connected with him within the meaning of section 839 of the principal Act or, at a price lower than that which it would have fetched if sold in the open market, to any other person; and
  - (b) a scheme has been effected or arrangements have been made (whether before or after that time) such that the sole or main benefit that might be expected to accrue to the individual from the transaction under which the expenditure was incurred was the obtaining of a reduction in tax liability by means of relief under sections 380 and 381 of the principal Act.
- (3) Where relief has been given in a case to which subsection (1) or (2) above applies it shall be withdrawn by the making of an assessment under Case VI of Schedule D.
- (4) For the purposes of subsection (1) above letting a ship on charter shall be regarded as leasing it if, apart from this subsection, it would not be so regarded.

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(5) In this section—

“first-year allowance” means a first-year allowance under Part II;

“trade” includes any activity in connection with which a first-year allowance can be given;

and any expression defined in section 83 has the meaning given by that section.

#### **143 Tax agreements.**

(1) This section applies in any case where a person is entitled to an allowance to which section 140 or 141 applies for a year of assessment and—

(a) he and the inspector have come to an agreement, in writing, as to the extent to which the allowance is to be given effect in that year (whether by deduction from profits or gains or by discharge or repayment of tax, or both); and

(b) no assessment giving effect to the allowance is made for that year.

(2) In a case to which this section applies the allowance shall be taken to have been given effect in the year of assessment in question, as if an assessment had been made, to the extent set out in the agreement mentioned in subsection (1) above.

#### **144 Corporation tax allowances and charges in taxing a trade.**

(1) In computing for the purposes of corporation tax a company’s profits for any accounting period there shall be made all such deductions and additions as are required to give effect to the provisions of Parts I to VI and this Part which relate to allowances and charges in respect of capital expenditure; and subsection (2) below and section 145 have effect as respects allowances and charges which fall to be made under those provisions as they apply for the purposes of corporation tax.

(2) Allowances and charges which fall to be made for any accounting period in taxing a trade under the provisions of Parts I to VI and this Part as they apply for the purposes of corporation tax shall be given effect by treating the amount of any allowance as a trading expense of the trade in that period, and by treating the amount on which any such charge is to be made as a trading receipt of the trade in that period.

(3) Deductions allowable in taxing a trade under the provisions of Part VII as they apply for the purposes of corporation tax shall be given effect in accordance with subsections (1) and (2) above.

[<sup>F116</sup>(4) In the application of subsection (2) above to allowances and charges which fall to be made under the provisions of Part I, references to a trade shall be treated as including references to an undertaking treated by virtue of section 21(5A) as carried on by way of trade.]

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#### **Textual Amendments**

**F116** S. 144(4) inserted (for any chargeable period or its basis period ending on or after 06.04.1991) by Finance Act 1991 (c. 31, SIF 63:1), s. 60(9)(10).

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#### **Modifications etc. (not altering text)**

**C34** S. 144(2) restricted (27.7.1993 with effect as mentioned in s. 95(6) of the amending Act) by 1993 c. 34, ss. 94(5), 95(6)

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*Changes to legislation:* There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

## 145 Other corporation tax allowances.

- (1) Where an allowance falls to be made to a company for any accounting period which is to be given by discharge or repayment of tax, and is to be available primarily against a specified class of income, it shall, so far as may be, be given effect by deducting the amount of the allowance from any income of the period, being income of the specified class.
- (2) Where such an allowance which is to be made for any accounting period cannot be given full effect under subsection (1) above in that period by reason of a want or deficiency of income of the relevant class, then (so long as the company remains within the charge to tax) the amount unallowed shall be carried forward to the succeeding accounting period, except in so far as effect is given to it under subsection (3) below; and the amount so carried forward shall be treated for the purposes of subsection (1) above, and of any further application of this subsection, as the amount of a corresponding allowance for that period.
- (3) Where such an allowance which is to be made for any accounting period (otherwise than by being carried forward from an earlier accounting period) cannot be given full effect under subsection (1) above in that period by reason of a want or deficiency of income of the relevant class, the company may, on making a claim to which section 42 of the <sup>M63</sup>Taxes Management Act 1970 applies, require that effect shall be given to the allowance against the profits (of whatever description) of that accounting period and, if the company was then within the charge to tax, of preceding accounting periods ending within the time specified in subsection (4) below; and, subject to that subsection and to any relief for earlier allowances or for losses, the profits of any of those accounting periods shall then be treated as reduced by the amount unallowed under subsection (1) above, or by so much of that amount as cannot be given effect under this subsection against profits of a later accounting period.
- (4) The time referred to in subsection (3) above is a time equal in length to the accounting period for which the allowance falls to be made; but the amount or aggregate amount of the reduction which may be made under that subsection in the profits of an accounting period falling partly before that time shall not, with the amount of any reduction falling to be made therein under any corresponding provision of the Corporation Tax Acts relating to losses, exceed a part of those profits proportionate to the part of the period falling within that time.
- (5) A claim under subsection (3) above shall be made within two years from the end of the accounting period first mentioned in that subsection.
- (6) All such assessments and adjustments of assessments shall be made as are necessary to give effect to a notice given by a company under section 68(3A) of the 1968 Act.

### Marginal Citations

M63 1970 c. 9.

[<sup>F117</sup>145A Corporation tax allowances: claims.

Schedule A1 to this Act shall have effect.]

**Status:** Point in time view as at 01/07/1992. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 1990 (repealed). (See end of Document for details)

### Textual Amendments

F117 S. 145A inserted by Finance Act 1990 (c. 29, SIF 63:1), s. 102(2)(4)

## 146 Writing-down allowances under Parts V and VI.

- (1) This section has effect where it is provided under Part V or VI that writing-down allowances shall be made in respect of any expenditure during a writing-down period of a specified length.
- (2) Subject to subsection (3) below, there shall for any chargeable period wholly or partly comprised in the writing-down period be made an allowance equal to the appropriate fraction of the expenditure; and, subject to any provision to the contrary, the appropriate fraction is such fraction of the writing-down period as falls within the chargeable period.
- (3) The aggregate amount of the allowances made, whether to the same or to different persons, together with the amount of any initial allowance previously made under the 1968 Act (or under any enactment re-enacted by that Act) in respect of the expenditure, shall not exceed the amount of the expenditure.
- (4) Where under paragraph 27(2) of Schedule 14 to the <sup>M64</sup>Finance Act 1965 allowances were made for accounting periods of a company falling wholly or partly within the year 1964-65 or 1965-66 in addition to allowances (for income tax purposes) made for either of those years, then in reckoning the period for which allowances are to be made, the periods for which allowances were so made shall be added together, notwithstanding that the same time is (according to the calendar) counted twice.

### Marginal Citations

M64 1965 c. 25.

## 147 Exclusion of double allowances.

- (1) Where an allowance is made to any person in respect of capital expenditure under Part I, III, IV, V, VI or VII—
  - (a) no allowance shall be made to him under any other of those Parts—
    - (i) in respect of that expenditure, or
    - (ii) in relation to the construction, provision or acquisition of any asset to the construction, provision or acquisition of which the first-mentioned allowance relates, and
  - (b) that expenditure and any expenditure relating to the provision of any asset to the provision of which the first-mentioned allowance relates shall not be taken into account in determining his qualifying expenditure for the purpose of any allowance or charge under section 24.
- (2) Where in the case of any person an allowance or charge under section 24 is made by reference to an amount of qualifying expenditure which took account of a particular amount of capital expenditure, no allowance shall be made to him under any Part of this Act other than Part II—
  - (a) in respect of that capital expenditure, or

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*Status:* Point in time view as at 01/07/1992. This version of this Act contains provisions that are not valid for this point in time.

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- (b) in relation to the provision of any asset if that capital expenditure related to the provision of that asset.
- (3) In this section—
  - “asset” means an asset of any kind, including a building or structure, and
  - “capital expenditure” includes any contribution to capital expenditure, and references to the provision of an asset include references to its construction or acquisition.
- (4) This section shall not have effect in relation to any chargeable period ending before 27th July 1989.

#### **148 Double allowances: transitional provisions.**

- (1) No allowance shall be made under or by virtue of any of the provisions of Part I in respect of, or of premises including, or of expenditure on, a building or structure if, for the same or any other chargeable period, an allowance is or can be made under any of the provisions of Part II, IV or V in respect of, or of expenditure on, that building or structure.
- (2) No initial allowance under Part I shall be made in respect of expenditure on the provision of an asset if that expenditure is expenditure in respect of which a deduction may be allowed under section 137; and no allowance under Part IV shall be made in respect of any expenditure if it is expenditure in respect of which such a deduction may be allowed.
- (3) Where a deduction is allowed for any chargeable period under section 137 or 138 in respect of expenditure represented wholly or partly by any assets, there shall not be made or allowed—
  - (a) any writing-down allowance under Part I, or
  - (b) except under Part VII, any allowance or deduction in respect of wear and tear, obsolescence or depreciation of those assets,
 for any chargeable period during any part of which they are used by the person carrying on a trade for scientific research related to that trade.
- (4) No allowance shall be made by virtue of section 134 in respect of any expenditure if for the same or any other chargeable period an allowance is or can be made in respect of it under any of the provisions of Parts I and II.
- (5) No allowance shall be made under Part II in respect of, or of the expenditure on, any machinery or plant if, for the same or any other chargeable period, an allowance is or can be made in respect of that expenditure under the provisions of section 122.
- (6) Expenditure in respect of which a deduction may be allowed under section 137 shall be disregarded for all the purposes of Part II; and where a deduction in respect of any expenditure has been allowed under that section in taxing a trade carried on by any person, section 81 shall not apply on that person’s bringing into use for the purposes of the trade any machinery or plant representing that expenditure.
- (7) This section shall not have effect in relation to any chargeable period or its basis period ending after 26th July 1989.

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## 149 Companies not resident in the United Kingdom.

- (1) Where a company not resident in the United Kingdom is within the charge to corporation tax in respect of one source of income and to income tax in respect of another source, then, in applying the provisions of this Act, allowances related to any source of income shall be given effect against income chargeable to the same tax as is chargeable on income from that source.

(2)<sup>F118</sup>

### Textual Amendments

**F118** S. 149(2) repealed by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), ss. 88, 132, [Sch. 13 para. 4\(1\)\(2\)](#), [Sch. 19 Pt. IV](#), Note 11

## 150 Apportionment of consideration, and exchanges and surrenders of leasehold interests.

- (1) Any reference in this Act to the sale of any property includes a reference to the sale of that property together with any other property and, where property is sold together with other property, so much of the net proceeds of the sale of the whole property as, on a just apportionment, is properly attributable to the first-mentioned property shall, for the purposes of this Act, be deemed to be the net proceeds of the sale of the first-mentioned property, and references to expenditure incurred on the provision or the purchase of property shall be construed accordingly.
- (2) For the purposes of subsection (1) above, all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are or purport to be agreed for separate items of that property or that there are or purport to be separate sales of separate items of that property.
- (3) The provisions of subsections (1) and (2) above shall, with the necessary modifications, apply in relation to other sale, insurance, salvage or compensation moneys as they apply in relation to the net proceeds of sales.
- (4) This Act shall have effect as if any reference therein (including any reference in subsections (1) to (3) above) to the sale of any property included a reference to the exchange of any property and, in the case of a leasehold interest, also included a reference to the surrender thereof for valuable consideration, and any provisions of this Act referring to sales shall have effect accordingly with the necessary adaptations and, in particular, with the adaptations that—
  - (a) references to the net proceeds of sale and to the price shall be taken to include references to the consideration for the exchange or surrender, and
  - (b) references to capital sums included in the price shall be taken to include references to so much of the consideration as would have been a capital sum if it had taken the form of a money payment.
- (5) The reference in subsection (1) above to expenditure incurred on the provision or the purchase of property shall in relation to sections 98 to 118 be deemed to include—
  - (a) a reference to expenditure on the acquisition of, or rights in or over, mineral deposits;
  - (b) a reference to expenditure on the acquisition of land; and
  - (c) a reference to expenditure on the acquisition of a mineral asset.



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## 151 Procedure on apportionments.

- (1) Where, under or by virtue of any provisions of Parts I, III to [F119]VII] and this Part, any sum falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more persons, any question which arises as to the manner in which the sum is to be apportioned shall be determined, for the purposes of the tax of all those persons—
- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners, unless all those persons agree that it shall be determined by the Special Commissioners,
  - (b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct, unless all those persons agree that it shall be determined by the Special Commissioners, and
  - (c) in any other case, by the Special Commissioners,
- and any such Commissioners shall determine the question in like manner as if it were an appeal, but all those persons shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.
- (2) This section applies in relation to any determination, under Part II or under section 152 or 157, of the price which property would have fetched if sold in the open market as it applies in relation to apportionments.
- (3) This section shall come into force for all purposes on 6th April 1990 to the exclusion of section 81 of the 1968 Act (which is re-enacted in this section).

### Textual Amendments

**F119** Word in s. 151(1) substituted (retrospectively) by [Finance Act 1996 \(c. 8\), s. 180\(2\)](#)

## 152 Succession to trades etc.

- (1) Where a person succeeds to any trade, profession or vocation which until that time was carried on by another person and, by virtue of section 113 or 337(1) of the principal Act (changes in persons carrying on a trade, and special rules for corporation tax), the trade, profession or vocation is to be treated as discontinued, any property which, immediately before the succession takes place, was in use for the purposes of the discontinued trade, profession or vocation and, without being sold, is immediately after the succession takes place in use for the purposes of the new trade, profession or vocation, shall, for the purposes of Parts I, IV to VI and this Part, be treated as if it had been sold to the successor when the succession takes place, and as if the net proceeds of the sale had been the price which that property would have fetched if sold in the open market.
- (2) No initial allowance shall be made by virtue of subsection (1) above.
- (3) Where, after the setting up and before the permanent discontinuance of a trade, profession or vocation which at any time is carried on in partnership, anything is done for the purposes thereof, any allowance or charge which, if the trade, profession or vocation had at all times been carried on by one and the same person, would have fallen to be made to or on him under any of the provisions of Parts I, IV to VI and this Part shall be made to or on the person or persons from time to time carrying on that



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trade, profession or vocation, and the amount of any such allowance or charge shall be computed as if that person or those persons had at all times been carrying on the trade, profession or vocation and as if everything done to or by his or their predecessors in the carrying on thereof had been done to or by him or them.

- (4) This section shall, with the necessary adaptations, apply in relation to the occupation of woodlands the profits or gains of which are assessable under Schedule D as it applies in relation to a trade.

This subsection shall cease to have effect on 6th April 1993.

### [<sup>F120</sup>152A] Insurance companies: transfers of business.

- (1) This section applies where assets are transferred as part of, or in connection with, a transfer of the whole or part of the long term business of an insurance company (“the transferor”) to another company (“the transferee”) in accordance with a scheme sanctioned by a court under section 49 of the Insurance Companies Act <sup>M65</sup>1982.
- (2) Where this section applies—
- (a) there shall be made, in accordance with this Act, to or on the transferee (instead of the transferor) any such allowances and charges as would have fallen to be made to or on the transferor; and
  - (b) the amount of any such allowance or charge shall be computed as if everything done to or by the transferor had been done to or by the transferee (but so that no sale or transfer of assets which is made to the transferee by the transferor shall be treated as giving rise to any such allowance or charge).]

#### Textual Amendments

**F120** S. 152A inserted by [Finance Act 1990 \(c. 29\), s. 48, Sch. 9 paras. 5, 7](#)

#### Marginal Citations

**M65** [1982 c.50 \(67\)](#).

VALID FROM 16/07/1992

### [<sup>F121</sup>152B] Transfer of a UK trade.

- (1) References in this section to company A, company B and the transfer shall be construed in accordance with section 269A of the Income and Corporation Taxes Act 1970 or, as the case may be, section 140A of the Taxation of Chargeable Gains Act 1992.
- (2) This section applies where—
- (a) section 269A of the Income and Corporation Taxes Act 1970 or section 140A of the Taxation of Chargeable Gains Act 1992 applies, and
  - (b) if immediately after the time of the transfer company B is not resident in the United Kingdom, the condition in subsection (3) below is met.

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- (3) The condition is that immediately after the time of the transfer company B carries on in the United Kingdom through a branch or agency a trade which consists of or includes the trade, or the part of the trade, transferred by the transfer.
- (4) Where this section applies the first and second rules set out in subsections (5) and (6) below shall have effect.
- (5) The first rule is that the transfer itself shall not be treated as giving rise to any allowances or charges under the Capital Allowances Acts.
- (6) The second rule applies with regard to anything done after the transfer in relation to the assets included in it; and the rule is that everything done to or by company A in relation to those assets before the transfer shall for the purposes of the Capital Allowances Acts be treated as having been done to or by company B (and not company A).
- (7) Where for the purposes of subsection (6) above expenditure falls to be apportioned between assets included in the transfer and other assets, the apportionment shall be made in such manner as is just and reasonable.
- (8) Any question which arises as to the manner in which an apportionment referred to in subsection (7) above is to be made shall be determined, for the purposes of the tax of both company A and company B—
  - (a) in a case where the same body of General Commissioners have jurisdiction with respect to both the companies, by those Commissioners, unless the companies agree that it shall be determined by the Special Commissioners;
  - (b) in a case where different bodies of General Commissioners have jurisdiction with respect to the companies, by such of those bodies as the Board may direct, unless the companies agree that it shall be determined by the Special Commissioners;
  - (c) in any other case, by the Special Commissioners.
- (9) The Commissioners by whom the question referred to in subsection (8) above falls to be determined shall make the determination in like manner as if it were an appeal except that company A and company B shall be entitled to appear and be heard by those Commissioners or to make representations to them in writing.
- (10) In any case where this section applies, none of the following provisions shall apply—
  - (a) section 77;
  - (b) section 152A;
  - (c) section 157;
  - (d) section 158;
  - (e) section 343(2) of the principal Act.]

#### Textual Amendments

**F121** S. 152B inserted (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), s.67.

### 153 Subsidies, contributions etc.

- (1) Expenditure shall not be regarded for any of the purposes of this Act as having been incurred by any person in so far as it has been or is to be met directly or indirectly

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by the Crown or by any government or public or local authority, whether in the United Kingdom or elsewhere, or by any person other than the first-mentioned person unless it is so met by a grant made under the provisions of Part II of the <sup>M66</sup>Industrial Development Act 1982 or Part I of the <sup>M67</sup>Industry Act 1972 or such grant made under an enactment of the Parliament of Northern Ireland or a Measure of the Northern Ireland Assembly as may be declared by the Treasury by order to correspond to a grant made under those provisions.

- (2) In considering, for the purposes of this section, how far any expenditure has been or is to be met directly or indirectly by the Crown or by any authority or person other than the person incurring the expenditure, there shall be left out of account—
- (a) any insurance moneys or other compensation moneys payable in respect of any asset which has been demolished, destroyed or put out of use, and
  - (b) any expenditure met or to be met by any person other than the Crown or a government or public or local authority, being expenditure in respect of which, apart from the provisions of this paragraph, no allowance could be made under section 154, and not being expenditure which is allowed to be deducted in computing the profits or gains of a trade, profession or vocation carried on by that person.
- (3) In determining for the purposes of subsection (2)(b) above whether an allowance could be made under the provisions of section 154, it shall be assumed that the person by whom expenditure has been or is to be met is within the charge to tax, whether or not that is in fact the case.
- (4) This section shall not apply for the purposes of Part VI and subsection (2) shall not apply for the purposes of Part VII.
- (5) In relation to expenditure incurred before 27th July 1989, and in relation to expenditure incurred on or after that date in so far as a contribution to that expenditure was made before that date, this section shall have effect with the omission of the words in subsection (2)(b) following “154” and of subsection (3).

**Modifications etc. (not altering text)**

**C35** S. 153 excluded by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), s. 126(4)

**Marginal Citations**

**M66** 1982 c. 52.

**M67** 1972 c. 63.

**154 Allowances in respect of contributions to capital expenditure.**

- (1) Where a person, for the purposes of a trade carried on or to be carried on by him or by a tenant of land in which he has an interest, contributes a capital sum to expenditure on the provision of an asset, being expenditure which, apart from the provisions of section 153, would have been regarded as wholly incurred by another person and in respect of which, apart from that section, an allowance would have been made under Part I, IV or V, then, subject to section 155, and to the following provisions of this section, such initial allowances and writing-down allowances, if any, shall be made to the contributor as would have been made to him if his contribution had been expenditure on the provision, for the purposes of that trade, of a similar asset.

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- (2) Subsection (1) above shall have effect <sup>F122</sup>as if—
- (a) the reference to expenditure in respect of which an allowance would have been made under Part I included a reference to expenditure in respect of which a first-year allowance would have been made under Part II or which would have been taken into account in determining qualifying expenditure for the purpose of any allowance or charge under section 24; and
  - (b) the reference to the making to the contributor to expenditure on the provision of an asset of such initial and writing-down allowances as would have been made to him if his contribution had been expenditure on the provision of a similar asset included a reference to his being treated under Part II as if his contribution had been expenditure on the provision of that asset;
- and for] the purposes of any allowance under Part II given by virtue of subsection (1) above in respect of any asset, that asset shall be treated as belonging to the person making the contribution in respect of which the allowance is given at any time when it belongs, or is treated under Part II as belonging, to the recipient of the contribution.
- (3) Subsection (1) above shall not apply where the person making the contribution and the person receiving it are connected persons within the terms of section 839 of the principal Act.
- (4) In relation to any contribution to expenditure incurred by the Crown, or by any public or local authority in the United Kingdom, subsection (1) above shall have effect with the omission of the words from “and in respect” to “or V”.
- (5) In subsection (1) above and section 155 “trade” includes—
- (a) a profession or vocation, and
  - (b) the occupation of woodlands in the United Kingdom in respect of which the assessment and charge to tax falls to be made under Schedule D by virtue of paragraph 5 of Schedule 6 to the <sup>M68</sup>Finance Act 1988.
- Paragraph (a) above does not apply in relation to contributions made before 27th July 1989, and paragraph (b) shall cease to have effect on 6th April 1993.

#### Textual Amendments

**F122** S. 154(2)(a)(b) and words substituted by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), s. 88, [Sch. 13 para. 5\(1\)](#) (2)

#### Marginal Citations

**M68** 1988 c. 39.

### 155 Further provisions relating to capital contributions.

- (1) This section has effect in any case where section 154 applies.
- (2) Subject to the following provisions of this section, for the purpose of determining the amount of the allowances and the manner in which they are to be made, the asset shall be deemed to continue at all material times to be in use for the purposes of the trade.
- (3) Where, when the contribution was made, the trade for the purposes of which it was made was carried on or to be carried on by the contributor, the following provisions shall have effect on any transfer of the trade or any part of the trade—

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- (a) where the transfer is of the whole trade, writing-down allowances for chargeable periods ending after the date of transfer shall be made to the transferee, and shall not be made to the transferor,
  - (b) where the transfer is of part only of the trade, paragraph (a) above shall have effect with respect to so much of the allowance as is properly referable to the part of the trade transferred.
- (4) Where, when the contribution was made, the trade was carried on or to be carried on by a tenant of land in which the contributor had an interest, a writing-down allowance shall be made to a person for a chargeable period if at the end of that period he is entitled to the contributor's interest in that land, and section 20 shall, with the necessary modifications, apply in relation to a contribution made for the purposes of a trade carried on or to be carried on by a tenant of land as it applies in relation to expenditure incurred on the construction of a building or structure.
- (5) Section 3(3) shall not apply in relation to writing-down allowances to be made in respect of contributions.
- (6) Where an allowance is made in accordance with section 154(2) in respect of a contribution made after 26th July 1989 for the purposes of a trade carried on or to be carried on by the contributor, it shall be assumed for the purposes of sections 24, 25 and 26—
- (a) that the contribution was made for the purposes of a trade carried on by the contributor separately from any trade actually carried on by him, and
  - (b) that the separate trade is discontinued or transferred (in whole or in part) when the trade actually carried on is discontinued or transferred (in whole or in part);
- and any allowance or charge which would on those assumptions fall to be made for any chargeable period in the case of the separate trade shall be made for that period in the case of the trade for the purposes of which the contribution was actually made.
- (7) Subject to subsection (8) below, subsections (3) to (5) above shall not apply where the trade is husbandry in the United Kingdom or the occupation of woodlands in the United Kingdom, and in lieu thereof section 122(3), (4) and (5) or section 126, as the case may require, shall apply with any necessary modifications.

This subsection shall have effect after 5th April 1993 with the omission of the words "or the occupation of woodlands in the United Kingdom".

- (8) In its application to allowances under Part V, except section 122, this section shall have effect with the omission of subsection (7) and as if in subsection (4) the references to section 20 and to expenditure incurred on the construction of a building or structure were references to section 125(2) to (4) and to expenditure falling within section 123.

This subsection shall have effect in relation to contributions made on or after 27th July 1989.

## 156 Meaning of "sale, insurance, salvage or compensation moneys".

In this Act, except where the context otherwise requires, "sale, insurance, salvage or compensation moneys" means, in relation to an event which gives rise or might give rise to a balancing allowance or a balancing charge to or on any person, or is material in determining whether any, and if so what, writing-down allowance is to be made to a person under Part IV—

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- (a) where the event is the sale of any property, the net proceeds to that person of the sale;
- (b) where the event is the coming to an end of an interest in property on or by reason of the coming to an end of a foreign concession, any compensation payable to that person in respect of that property;
- (c) where the event is the demolition or destruction of any property, the net amount received by him for the remains of the property, together with any insurance moneys received by him in respect of the demolition or destruction and any other compensation of any description received by him in respect thereof, in so far as that compensation consists of capital sums;
- (d) where the event is that a building or structure ceases altogether to be used or machinery or plant is put out of use, any compensation of any description received by him in respect of that event, so far as that compensation consists of capital sums.

This section does not apply for the purposes of Part II.

### 157 Sales between connected persons etc.

- (1) Subject to subsection (5) below, this section and section 158 have effect in relation to sales of any property where either—
  - (a) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them or the buyer and the seller are connected with each other within the terms of section 839 of the principal Act; or
  - (b) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from this section and section 158, might be expected to accrue to the parties or any of them was the obtaining of an allowance or deduction, the obtaining of a greater allowance or deduction or the avoidance or reduction of a charge under this Act (disregarding Part II).
- (2) References in subsection (1) above to a body of persons include references to a partnership.
- (3) This section and section 158 shall have effect in relation to a sale notwithstanding that they are not fully applicable by reason of the non-residence of a party to the sale or otherwise, but subject to subsection (3) of that section.
- (4) Where the property is sold at a price other than that which it would have fetched if sold in the open market, then, subject to section 158, the like consequences shall ensue for the purposes of this Act (except Part II) in its application to the tax of all persons concerned as would have ensued if the property had been sold for the price it would have fetched if sold in the open market.
- (5) Subsections (1) to (4) above and section 158 do not apply for the purposes of Part II.

#### Modifications etc. (not altering text)

C36 S. 157 excluded (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), s. 77, Sch. 17 paras. 5(4), 6(1), 7.

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## 158 Further provisions relating to sales without change of control or between connected persons.

- (1) Subject to subsections (3) and (5) below, where a sale is one to which paragraph (a) of subsection (1) of section 157 applies and paragraph (b) of that subsection does not apply, and the parties to the sale so elect by notice given to the inspector not later than two years after the sale, the following provisions shall have effect—
- (a) section 157(4) shall have effect as if for each of the references to the price which the property would have fetched if sold in the open market there were substituted a reference to that price or to the sum mentioned in subsection (2) below, whichever is the lower, and
  - (b) notwithstanding section 157(4) or paragraph (a) above, such balancing charge, if any, shall be made on the buyer on any event occurring after the date of the sale as would have fallen to be made on the seller if the seller had continued to own the property and had done all such things and been allowed all such allowances or deductions in connection therewith as were done by or allowed to the buyer.
- (2) The sum referred to in subsection (1)(a) above is—
- (a) in the case of an industrial building or structure [<sup>F123</sup>a qualifying hotel or a commercial building or structure,], the residue of the expenditure on the construction of that building [<sup>F124</sup>structure or hotel] immediately before the sale, computed in accordance with section 8;
  - (b) in the case of a qualifying dwelling-house, the residue of the expenditure immediately before the sale, computed in accordance with section 90;
  - (c) in the case of assets representing qualifying expenditure, within the meaning of section 121, the excess of that expenditure attributable to those assets over the aggregate of—
    - (i) any allowances made under Part IV to the seller in respect of that expenditure before the sale; and
    - (ii) any disposal receipts which the seller has been required to bring into account by reference to that expenditure by reason of any event occurring before the sale.
  - [<sup>F125</sup>(d) in the case of an asset representing allowable scientific research expenditure of a capital nature—
    - (i) if the expenditure is expenditure in respect of which an allowance is made under section 137, nil; and
    - (ii) in any other case, the amount of the expenditure.]
- (3) An election may not be made under this section—
- (a) if—
    - (i) any of the parties to the sale is not resident in the United Kingdom at the time of sale, and
    - (ii) the circumstances are not at that time such that an allowance or charge under Part I, III, IV, VI or VII falls or might fall to be made to or on that party in consequence of the sale;
  - (b) if the buyer is a dual resident investing company;
  - (c) in the case of a qualifying dwelling-house, unless both the seller and the buyer at the time of the sale are or at any earlier time were approved bodies, as defined in section 56(4) of the <sup>M69</sup>Housing Act 1980.



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- (4) All such assessments and adjustments of assessments shall be made as may be necessary to give effect to this section.
- (5) This section shall not apply in relation to any sale which is material for the purposes of Part V.
- (6) In relation to sales which occurred before 29th July 1988, this section shall have effect with the omission of subsection (4) and the words in subsection (1) “not later than two years after the sale”.

#### Textual Amendments

**F123** Words in s. 158(2)(a) inserted (retrospectively with effect as mentioned in s. 117(5) of the amending Act) by Finance Act 1993 (c. 34), s. 117(2)(a) (as modified by Finance Act 1994 (c. 9), s. 119(1))

**F124** Words in s. 158(2)(a) substituted (retrospectively with effect as mentioned in s. 117(5) of the amending Act) by Finance Act 1993 (c. 34), s. 117(2)(b) (as modified by Finance Act 1994 (c. 9), s. 119(1))

**F125** S. 158(2)(d) inserted (retrospectively with effect as mentioned in s. 117(5) of the amending Act) by Finance Act 1993 (c. 34), s. 117(3) (as modified by Finance Act 1994 (c. 9), s. 119(1))

#### Modifications etc. (not altering text)

**C37** S. 158 excluded (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 77, Sch. 17 paras. 5(4), 6(1), 7.

#### Marginal Citations

**M69** 1980 c. 51.

### 159 Capital expenditure, capital sums and time when capital expenditure is incurred.

- (1) References in this Act to capital expenditure and capital sums—
  - (a) in relation to the person incurring the expenditure or paying the sums, do not include any expenditure or sum which is allowed to be deducted in computing, for the purposes of tax, the profits or gains of a trade, profession, office, employment or vocation carried on or held by him, and
  - (b) in relation to the person receiving the amounts expended or the sums in question, do not include references to any amounts or sums which fall to be taken into account as receipts in computing the profits or gains of any trade, profession, office, employment or vocation carried on or held by him,
 and do not include, in relation to any such person, any expenditure or sum in the case of which a deduction falls or may fall to be made under section 348 or 349(1) of the principal Act (annual payments).
- (2) The following provisions of this section have effect to determine when capital expenditure [<sup>F126</sup>(other than that constituted by an additional VAT liability)] is to be taken to be incurred for the purposes of this Act and any enactment (including any enactment passed after this Act) which falls to be construed (or is expressed to have effect) as if it were contained in this Act.
- (3) Subject to subsections (4) to (6) below, an amount of capital expenditure is to be taken to be incurred on the date on which the obligation to pay that amount becomes unconditional (whether or not there is a later date on or before which the whole or any part of that amount is required to be paid).
- (4) If, under or by virtue of any agreement—



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- (a) as a result of the issue of a certificate or some other event, an obligation to pay an amount of capital expenditure on the provision of an asset becomes unconditional, and
- (b) at a time before that obligation becomes unconditional, the asset becomes the property of or is otherwise under the contract attributed to the person having that obligation,

then, in a case where the obligation referred to in paragraph (a) above becomes unconditional within the period of one month beginning at the end of a chargeable period or its basis period but the time referred to in paragraph (b) above falls at or before the end of that chargeable period or its basis period, subsection (3) above shall apply as if the obligation became unconditional immediately before the expiry of that period.

- (5) Where, under or by virtue of any agreement, the whole or any part of an amount of capital expenditure is required to be paid on (or not later than) a date which is more than four months after the date on which the obligation to pay that amount becomes unconditional, so much of that expenditure as is required to be so paid shall be taken to be incurred on the date on or before which it is required to be so paid.

- (6) In any case where—

- (a) under or by virtue of any agreement, an obligation to pay an amount of capital expenditure becomes unconditional on a date earlier than that which accords with normal commercial usage, and
- (b) the sole or main benefit which (apart from this subsection) might have been expected to be obtained from the obligation becoming unconditional on that earlier date is that, by virtue of subsection (3) above, the expenditure would be taken to be incurred in a chargeable period or its basis period which is earlier than would otherwise have been the case,

then, in relation to that amount of expenditure, subsection (3) above shall have effect as if, for the words from “on which” onwards there were substituted “on or before which it is required to be paid”; and, accordingly, subsection (5) above shall be disregarded.

- (7) In so far as (apart from subsections (3) to (6) above) any provision of this Act, or sections 520 to 533 of the principal Act (patents and know-how), would have the effect that any expenditure would for any purpose fall to be treated as incurred on a date which is later than that which would result from the application of those subsections, nothing in this section shall affect the continuing operation of that provision.

- (8) In relation to any chargeable period or its basis period ending before 27th July 1989, the reference in subsection (7) above to this Act shall be construed as excluding a reference to Parts III to V of this Act.

#### Textual Amendments

**F126** Words in s. 159(2) inserted (*for any chargeable period or its basis period ending on or after 06.04.1990*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 59, Sch. 14 Pt. IV para.14.

#### [<sup>F127</sup>159A] Additional VAT liabilities and rebates.

- (1) Subject to subsections (3) and (4) below, any additional VAT liability or rebate arising is to be regarded for the purposes of this Act as incurred or made on the last day of the relevant VAT interval.

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- (2) For the purposes of subsection (1) above “the relevant VAT interval”, in relation to an additional VAT liability or rebate, means that one of the periods of which, under the VAT capital items legislation, the VAT period of adjustment applicable to the asset in question consists, in which occurred the increase or decrease in use which gave rise to the liability or rebate.
- (3) An additional VAT liability or rebate shall, for the purpose only of determining the chargeable period—
- (a) for which an allowance or charge under this Act may be made in respect of that liability or rebate, or
  - (b) in which the amount of that liability or rebate is to be brought into account in connection with the making of such allowances or charges,
- be regarded as incurred or made at a time determined in accordance with subsection (4) below and, except for that purpose, any such liability or rebate shall not be treated as incurred or made otherwise than on the day on which it is to be regarded as incurred or made by virtue of subsection (1) above.
- (4) For the purpose of determining the chargeable period referred to in subsection (3) above—
- (a) where a return for the purposes of value added tax is made to the Commissioners of Customs and Excise in which the liability or rebate is accounted for, the liability or rebate shall be regarded as incurred or made in the chargeable period or its basis period which includes the last day of the period to which that return relates; but
  - (b) if, before any such return is made, those Commissioners assess the liability or rebate as due or repayable, then, notwithstanding paragraph (a) above, the liability or rebate shall be regarded as incurred or made on the day on which that assessment is made; and
  - (c) if the additional VAT liability or rebate has not been accounted for on a return for the purposes of value added tax to those Commissioners, or assessed by them for those purposes, before the trade in question has been permanently discontinued or treated by any provision of the Tax Acts as permanently discontinued, then, notwithstanding paragraphs (a) and (b) above, the liability or rebate shall be regarded as incurred or made on the last day of the chargeable period related to the discontinuance.
- (5) Where, disregarding any additional VAT liability or rebate, any allowance or charge falling to be made under this Act in respect of any capital expenditure falls, under any provision of this Act, to be determined by reference to—
- (a) a proportion only of that expenditure, or
  - (b) a proportion only of what that allowance or charge would have been apart from that provision,
- then, to the extent that so much of any allowance or charge as falls to be so made in respect of any additional VAT liability or rebate in respect of that expenditure would not (apart from this subsection) fall to be determined by reference to that proportion of the liability or rebate or, as the case may be, of what that portion of the allowance or charge would otherwise have been, it shall be so determined.
- (6) In this Act—
- “additional VAT liability”, in relation to any capital expenditure (or any expenditure of a capital nature), means an amount which a person becomes liable to pay by way of adjustment under any VAT capital items legislation in

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respect of input tax on an asset on the construction or provision of which the expenditure in question was incurred in whole or in part;

“additional VAT rebate”, in relation to any capital expenditure (or any expenditure of a capital nature), means an amount which a person becomes entitled to deduct by way of adjustment under any VAT capital items legislation in respect of input tax on an asset on the construction or provision of which the expenditure in question was incurred in whole or in part;

“VAT capital items legislation” means any provisions of any Act or instrument (whenever passed or made) which provide, in relation to value added tax—

- (a) for the proportion of input tax on an asset of a specified description which may be deducted by a person from his output tax to be adjusted from time to time in consequence of any increase or decrease in the extent to which the asset is used by him for the making of taxable supplies, or taxable supplies of a specified class or description, over a specified period (a “VAT period of adjustment”) applicable to the asset, or
- (b) otherwise for the purpose of giving effect to Article 20(2) to (4) of the<sup>M70</sup>Sixth Directive of the Council of the European Communities on Value Added Tax, dated 17th May 1977,

and for this purpose “taxable supply” has the same meaning as it has in the<sup>M71</sup>Value Added Tax Act 1983 by virtue of section 2(2) of that Act;

“VAT period of adjustment” has the meaning given in the definition of VAT capital items legislation.

(7) In this section—

- (a) “input tax” and “output tax” have the meaning given by section 14 of the Value Added Tax Act 1983; and
- (b) in the application of subsection (4)(c) above for the purposes of Part II, the reference to the trade in question shall be construed in accordance with section 27 as that section would apply if this section were included in that Part.]

#### Textual Amendments

**F127** S. 159A inserted (for any chargeable period or its basis period ending on or after 06.04.1990) by Finance Act 1991 (c. 31, SIF 63:1), s. 59, Sch. 14 Pt. IV para.14.

#### Marginal Citations

**M70** 77/388/EEC.

**M71** 1983 c. 55.

## 160 Meaning of “basis period”.

- (1) Except as otherwise expressly provided, in this Act as it applies for income tax purposes, “basis period” has the meaning given by the following provisions of this section.
- (2) In the case of a person to or on whom an allowance or charge falls to be made in taxing his trade, his basis period for any year of assessment is the period on the profits or gains of which income tax for that year falls to be finally computed under Case I of

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Schedule D in respect of the trade in question or, where, by virtue of any provision of section 60 of the principal Act, the profits or gains of any other period are to be taken to be the profits or gains of that period, that other period.

- (3) For the purposes of subsection (2) above, in the case of any trade—
- (a) where two basis periods overlap, the period common to both shall be deemed to fall in the first basis period only;
  - (b) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, then, unless the second-mentioned year of assessment is the year of the permanent discontinuance of the trade, the interval shall be deemed to be part of the second basis period; and
  - (c) where there is an interval between the end of the basis period for the year of assessment preceding that in which the trade is permanently discontinued and the basis period for the year in which it is permanently discontinued, the interval shall be deemed to form part of the first basis period.
- (4) Where an allowance falls to be made under Part II to a person carrying on a profession or vocation, subsections (2) and (3) above shall apply as if the references to a trade included references to a profession or vocation and as if the reference to Case I of Schedule D included a reference to Case II of Schedule D.
- (5) In the case of any other person to or on whom an allowance or charge falls to be made under Parts I to VI or this Part, his basis period for any year of assessment is the year of assessment itself.
- (6) Any reference in this section to the overlapping of two periods shall be construed as including a reference to the coincidence of two periods or to the inclusion of one period in another, and references to the period common to both of two periods shall be construed accordingly.

## 161 Other interpretative provisions.

- (1) Subject to subsection (10) below and except where the context otherwise requires, the following provisions of this section shall have effect for the interpretation of this Act.
- (2) In this Act—
- “the 1968 Act” means the <sup>M72</sup>Capital Allowances Act 1968;
- “the Board” means the Commissioners of Inland Revenue;
- “chargeable period” means an accounting period of a company or a year of assessment; and—
- (a) a reference to a “chargeable period or its basis period” is a reference to the chargeable period if it is an accounting period and to the basis period for it if it is a year of assessment;
  - (b) a reference to a “chargeable period related to” the incurring of expenditure, or a sale or other event, is a reference to the chargeable period in which, or to that in the basis period for which, the expenditure is incurred or the sale or other event takes place, and means the latter if, but only if, the chargeable period is a year of assessment;
- “control” means—
- (a) in relation to a body corporate, the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by

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the articles of association or other document regulating that or any other body corporate, that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and

- (b) in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership;

“dual resident investing company” means a company which is for the purposes of section 404 of the principal Act a dual resident investing company;

“foreign concession” means a right or privilege granted by the government of, or any municipality or other authority in, any territory outside the United Kingdom;

“income” includes any amount on which a charge to tax is authorised to be made under any of the provisions of this Act;

“lease” includes an agreement for a lease where the term to be covered by the lease has begun, and any tenancy, but does not include a mortgage, and “lessee”, “lessor” and “leasehold interest” shall be construed accordingly;

“mineral deposits” includes any natural deposits capable of being lifted or extracted from the earth and, for this purpose, geothermal energy, whether in the form of aquifers, hot dry rocks or otherwise, shall be treated as a natural deposit;

“notice” means a notice in writing;

“the principal Act” means the <sup>M73</sup>Income and Corporation Taxes Act 1988;

“scientific research allowance” means an allowance made under Part VII other than an allowance under section 136;

“tax”, where neither corporation tax nor income tax is specified, means either of those taxes;

“writing-down allowance”, where the reference is partly to years of assessment before the year 1966-67, includes an annual allowance in the sense which, in the context, that phrase had immediately before the commencement of the <sup>M74</sup>Finance Act 1965;

and any reference to a particular Part, Chapter or Schedule is a reference to that Part or Chapter of or Schedule to this Act.

- (3) This Act shall apply in relation to a trade, profession or vocation chargeable in accordance with section 65(3) of the principal Act as it applies to one chargeable to tax under Case I or II of Schedule D.
- (4) For the purposes of this Act, a source of income is “within the charge to” corporation tax or income tax if that tax is chargeable on the income arising from it, or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax shall be similarly construed.
- (5) Any reference to allowances or charges being made in taxing a trade is a reference to their being made in computing the trading income for corporation tax or in charging the profits or gains of the trade to income tax.
- (6) Any reference to an allowance made or deduction allowed includes a reference to an allowance or deduction which would be made or allowed but for an insufficiency of profits or gains, or other income, against which to make it.

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- (7) Any reference to any building, structure, machinery, plant, works, asset, farmhouse, farm or forestry building, cottage or fence shall be construed as including a reference to a part of any building, structure, machinery, plant, works, asset, farmhouse, farm or forestry building, cottage or fence.

This subsection shall not apply where the reference is expressed to be to the whole of a building or structure; and in relation to chargeable periods beginning on or after 6th April 1993 this subsection shall have effect with the omission of the words “or forestry” (in both places where they occur).

- (8) Any reference to the time of any sale shall be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.

This subsection does not apply for the purposes of Part VII.

- (9) Any reference to the setting up, commencement or permanent discontinuance of a trade includes, except where the contrary is expressly provided, a reference to the occurring of an event which, under any of the provisions of the Income Tax Acts or the Corporation Tax Acts (other than paragraph 7 of Schedule 16 to the <sup>M75</sup>Finance Act 1965), is to be treated as equivalent to the setting up, commencement or permanent discontinuance of a trade.

- (10) For the purposes of Part II this section shall have effect with the omission of the definitions of “control” and “lease” and related expressions in subsection (1) above <sup>F128</sup>, and subsections (5), (7) and (9) do not apply for the purposes of Part III.

- (11) Chapter I of Part XIII of the principal Act (which relates to patents and know-how) contains further provisions relating to capital allowances.

#### Textual Amendments

**F128** Words repealed by Finance Act 1990 (c. 29), ss. 103(1), 132, Sch. 13 para. 6(1)(2), **Sch. 19 Pt. IV**, Note 16

#### Marginal Citations

**M72** 1968 c. 3.

**M73** 1988 c. 1.

**M74** 1965 c. 25.

**M75** 1965 c. 25.

## 162 Application to Scotland.

In the application of this Act to Scotland, “leasehold interest” means the interest of a tenant in property subject to a lease; and any reference to an interest which is reversionary on a leasehold interest or on a lease shall be construed as a reference to the interest of the landlord in the property subject to the leasehold interest or lease.

## 163 Continuity and construction of enactments etc.

- (1) The continuity of the Income Tax Acts and the Corporation Tax Acts shall not be affected by the substitution of this Act for the repealed enactments.

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- (2) Any reference, whether express or implied, in any enactment, instrument or document (including this Act or any Act amended by this Act) to, or to things done or falling to be done under or for the purposes of, any provision of this Act shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments has or had effect, a reference to, or, as the case may be, to things done or falling to be done under or for the purposes of, that corresponding provision.
- (3) Any reference, whether express or implied, in any enactment, instrument or document (including the repealed enactments and enactments, instruments and documents passed or made after the passing of this Act) to, or to things done or falling to be done under or for the purposes of, any of the repealed enactments shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Act has effect, a reference to, or as the case may be, to things done or deemed to be done or falling to be done under or for the purposes of, that corresponding provision.
- (4) In connection with the transition for companies from income tax to corporation tax effected by the <sup>M76</sup>Finance Act 1965 the provisions of this Act and any other provisions of the Income Tax Acts relevant thereto shall have effect with such modifications as are necessary to preserve the continuity of the system of allowances and charges under this Act, and so that in particular references to a previous chargeable period or to a subsequent chargeable period, or to a time before, or a time after, a chargeable period, shall have effect in relation to a company as if the year 1965-66 or any earlier year of assessment preceded that company's first accounting period for corporation tax.

This subsection shall not be taken to require any time to be counted twice in reckoning duration, except in a case where any time has been so counted by virtue of section 15(2) of the 1968 Act.
- (5) In this section “the repealed enactments” means the enactments repealed by this Act and earlier enactments repealed by any enactment repealed by this Act.
- (6) The provisions of this section and section 164 are without prejudice to the provisions of the <sup>M77</sup>Interpretation Act 1978 as respects the effect of repeals.

#### Marginal Citations

**M76** 1965 c. 25.

**M77** 1978 c. 30.

## 164 Commencement, amendments and repeals.

- (1) Except as otherwise expressly provided, this Act shall have effect as respects allowances and charges falling to be made for chargeable periods ending after 5th April 1990, and, accordingly, to the extent required to give effect to section 163(1), applies in relation to expenditure incurred in chargeable periods ending before 6th April 1990.
- (2) The allowances referred to in subsection (1) above include those which fall to be made for one chargeable period by setting any part of them against the profits or gains of some other chargeable period, and, accordingly, subsection (1) above shall apply

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to allowances falling to be made for chargeable periods ending after 5th April 1990 notwithstanding that, under any provision of this Act, or under any other provision of the Income Tax Acts or the Corporation Tax Acts, effect is to be given to those allowances by setting any part of them against the profits or gains of a chargeable period ending before 6th April 1990.

- (3) Schedule 1, which makes amendments to other enactments consequential on the passing of this Act, shall have effect (but nothing in that Schedule shall affect the construction of any enactment mentioned in it for chargeable periods ending before 6th April 1990).
- (4) Subject to section 82, the enactments mentioned in Schedule 2 shall be repealed to the extent specified in the third column of that Schedule, and the provisions of this Act shall have effect in accordance with subsection (1) above to the exclusion of the corresponding provisions so repealed, and those repeals take effect accordingly.
- (5) The repeals referred to above shall not affect any enactment so far as it authorises the taking into account, in any computation required to be made for any tax purpose for chargeable periods for which this Act has effect, of expenditure incurred in earlier chargeable periods, whether by setting any part of it against profits or gains of a chargeable period ending after 5th April 1990 or otherwise.

**165 Short title.**

This Act may be cited as the Capital Allowances Act 1990.



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