



Capital Allowances Act 1990

1990 CHAPTER 1

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

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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.
- (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.

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.
- (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

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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.
- (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—
 - (a) 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;

- (b) section 126 shall not apply; and
 - (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.
- (3) The expenditure referred to in subsection (2)(c) above is whichever is the lesser of—
- (a) the net price paid by the person concerned for the purchase of the relevant interest; and
 - (b) 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.

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.
- (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.

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(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
- (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

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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.

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 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—

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“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.