SCHEDULES

SCHEDULE 3

TRANSITIONALS AND SAVINGS

PART 9

PATENT ALLOWANCES

Expenditure incurred before 1st April 1986

Scope of paragraphs 93 to 101

92 (1) Paragraphs 93 to 101 apply to capital expenditure incurred by a person before 1st April 1986 on the purchase of patent rights.

(2) Chapters 2 to 4 of Part 8 do not apply to such expenditure, except for certain provisions which are specifically applied by paragraph 101.

Qualifying expenditure and unrelieved qualifying expenditure

93 (1) In this paragraph and paragraphs 94 to 101, "qualifying expenditure" means capital expenditure incurred before 1st April 1986 on the purchase of patent rights.

(2) The result of Steps 1 to 3 is the unrelieved qualifying expenditure for a chargeable period.

Step 1

Take an item of qualifying expenditure.

Step 2

Subtract any writing-down allowances made in respect of that expenditure for earlier chargeable periods.

Step 3

If the person who incurred the expenditure sold any part of the patent rights before the beginning of the chargeable period, subtract the net proceeds of sale (so far as they consist of capital sums).

Entitlement to writing-down allowances

94 (1) A writing-down allowance is made for a chargeable period in respect of an item of qualifying expenditure if—

(a) the chargeable period falls wholly or partly within the writing-down period for that expenditure (as determined in accordance with paragraph 95),

(b) paragraph 97 does not prohibit writing-down allowances for that period, and

(c) either—

(i) the trade use condition is met for that period, or

(ii) any income receivable by that person in respect of the patent rights in that period would be liable to tax.

(2) The trade use condition is that—

(a) the person is carrying on in the chargeable period a trade which is within the charge to tax, and

(b) at any time in the chargeable period the patent rights, or other rights out of which they were granted, were, or were to be, used for the purposes of the trade.

(3) The total writing-down allowances made in respect of an item of qualifying expenditure (whether to the same or to different persons) must not exceed the amount of that expenditure.

The writing-down period

95 (1) The writing-down period for an item of qualifying expenditure—

(a) begins at the beginning of the chargeable period in respect of which the expenditure is incurred, and

(b) is of a length determined in accordance with the Table, which shows the basic rule, and the rules which apply instead of the basic rule in the cases described in items 2 and 3.

Table

LENGTH OF WRITING-DOWN PERIODS
FOR QUALIFYING EXPENDITURE

Rule	Length of writing-down period
1. Basic rule.	17 years.
2. Patent rights are purchased for a specified period.	Whichever is shorter— (a) 17 years; (b) the number of years comprised within the specified period.
3. Patent rights begin one complete year or more after the commencement of the patent, and item 2 does not apply.	17 years, less the number of complete years which, when the rights began, have elapsed since the commencement of the patent; orif 17 complete years have so elapsed, one year.

(2) For the purpose of determining the writing-down period, expenditure incurred for the purposes of a trade by a person about to carry on the trade is treated as if incurred on the first day on which that person carries on that trade, unless that person has by then sold all the rights on which the expenditure was incurred.

(3) “The commencement of the patent”, means, in relation to a patent, the date as from which the patent rights become effective.

Calculation of writing-down allowances

96 (1) The basic rule for calculating a writing-down allowance for an item of qualifying expenditure is—

$$E x \frac{C}{W}$$

where—

E is the amount of the qualifying expenditure;

C is the length of the part of the chargeable period falling within the writing-down period;

W is the length of the writing-down period.

(2) The basic rule is subject to the rules about—

(a) cessation of writing-down allowances (paragraph 97), and

(b) reduced writing-down allowances (paragraph 98).

End of writing-down allowances

97 (1) No writing-down allowance is to be made to a person for a chargeable period in respect of qualifying expenditure incurred on the purchase of patent rights if any of the following occur in that period—

(a) the patent rights come to an end without being subsequently revived,

(b) the person sells all of those rights, or so much of them as that person still owned at the beginning of the chargeable period, or

(c) the person sells part of those rights, and the net proceeds of sale for that period (so far as they consist of capital sums) are not less than the amount of the unrelieved qualifying expenditure for that period.

(2) If a writing-down allowance in respect of qualifying expenditure is prohibited by sub-paragraph (1) for a chargeable period, no writing-down allowance is to be made in respect of that expenditure for any subsequent chargeable period.

Reduced writing-down allowance

98 (1) If a person sells part of any patent rights in a chargeable period, and for that period U is greater than N, the writing-down allowance for that period is—

$$\frac{U-N}{Y}$$

where—

U is the unrelieved qualifying expenditure for the chargeable period,

N is the net proceeds of any sales of the patent rights which take place in the chargeable period (so far as those proceeds consist of capital sums), and

Y is the number of complete years of the writing-down period remaining at the beginning of the chargeable period.

(2) If an amount is calculated under sub-paragraph (1) for a chargeable period, that amount is also the amount of the writing-down allowance for subsequent chargeable periods until another sale in a period for which U is greater than N causes a fresh calculation to be made under sub-paragraph (1).

(3) If a chargeable period is more or less than a year, an allowance calculated under sub-paragraph (1) or (2) is proportionately increased or reduced.

Balancing allowance on sale or expiry of patent rights

99 (1) A person is entitled to a balancing allowance for a chargeable period in respect of qualifying expenditure if there is unrelieved qualifying expenditure for that period and any of the following occur in that period—

(a) the patent rights come to an end without subsequently being revived, or

(b) the person sells all of those rights, or so much of them as that person still owned at the beginning of the period.

This is subject to sub-paragraph (2).

(2) The person is not entitled to a balancing allowance unless—

(a) a writing-down allowance has been given in respect of the expenditure, or

(b) a writing-down allowance could, but for the rights coming to an end or being sold, have been given in respect of the expenditure.

(3) The amount of the balancing allowance is—

(a) in the case of a sale, equal to the unrelieved qualifying expenditure for the chargeable period, less the net proceeds of sales taking place in the chargeable period (so far as they consist of capital sums), and

(b) in any other case, equal to the unrelieved qualifying expenditure for the chargeable period.

Balancing charges

100 (1) A balancing charge is made on a person for a chargeable period in respect of qualifying expenditure if in that period—

(a) the person sells some or all of the patent rights, and

(b) the net proceeds of sale (so far as they consist of capital sums) from the sales in that period exceed any unrelieved qualifying expenditure for that period.

The charge is calculated in accordance with sub-paragraphs (2) to (5).

(2) If there is no unrelieved qualifying expenditure, the amount of the balancing charge is equal to the net proceeds of sale (so far as they consist of capital sums).

This is subject to sub-paragraphs (4) and (5).

(3) If there is some unrelieved qualifying expenditure, the amount of the balancing charge is equal to the amount by which the net proceeds of sale (so far as they consist of capital sums) exceed the unrelieved qualifying expenditure.

This is subject to sub-paragraphs (4) and (5).

(4) The total amount of the first balancing charge must not exceed the total writing-down allowances actually given in respect of the expenditure.

(5) The total amount on which a second or further balancing charge is made must not exceed the total writing-down allowances actually made in respect of the expenditure, less the amount of any earlier charge.

Giving effect to allowances and charges

101 (1) Sub-paragraph (2) applies if—

(a) a person is entitled to a writing-down allowance or a balancing allowance or liable to a balancing charge in respect of qualifying expenditure, and

(b) the trade use condition is met.

(2) The allowance or charge is to be given effect in calculating the profits of that person's trade, by treating—

(a) the allowance as an expense of the trade, and

(b) the charge as a receipt of the trade.

(3) Sub-paragraph (4) applies if—

(a) a person is entitled to a writing-down allowance or a balancing allowance or liable to a balancing charge in respect of qualifying expenditure, and

(b) the trade use condition is not met.

(4) Sections 479 and 480 apply in relation to giving effect to the allowance or charge referred to in sub-paragraph (3) as they apply in relation to giving effect to an allowance or charge under Chapter 3 of Part 8 in respect of qualifying non-trade expenditure.

(5) For the purposes of Part 8 a person's "income from patents" includes balancing charges to which the person is liable in respect of qualifying expenditure.

Supplementary provisions

Limit on qualifying expenditure

102 Section 481 does not apply to expenditure incurred before 1st April 1986, and subsections (5) and (6) of that section do not apply to expenditure incurred before 27th July 1989.