
STATUTORY INSTRUMENTS

2019 No. 1087

The Capital Allowances (Structures and Buildings Allowances) Regulations 2019

Amendments to the Taxation of Chargeable Gains Act 1992

4.—(1) The Taxation of Chargeable Gains Act 1992(1) is amended as follows.

(2) In section 24 (disposal on destruction, extinction etc of asset), after subsection (3) insert—

“(3A) Subsection (3C) applies, for the purposes of this section, in relation to an asset which is a leasehold interest in a building or structure by reference to which a person is entitled to an allowance under Part 2A of CAA 2001 (structures and buildings allowances).

(3B) For the purposes of subsection (3A), “leasehold interest” is to be construed in accordance with section 270IH of CAA 2001.

(3C) Where this subsection applies—

- (a) the building or structure is to be regarded, for the purposes of this section, as an asset separate from the land on which it is situated, and
- (b) subsection (3) does not apply.

(3D) But subsection (3C) does not apply if the person deemed to make the disposal of the building or structure makes an election under this subsection.

(3E) An election under subsection (3D), in respect of a deemed disposal, must be made by a notice given to an officer of Revenue and Customs—

- (a) in the case of an election by a person within the charge to corporation tax, within the period of two years from the end of the accounting period in which the disposal is deemed to be made; and
- (b) in any other case, on or before the first anniversary of the 31 January following the year of assessment in which the disposal is deemed to be made.

(3F) An election under subsection (3D) is irrevocable.”.

(3) After section 24(2) insert—

“24A Structures and buildings contributions allowances: destruction of asset

(1) This section applies if—

- (a) there is a deemed disposal of an asset by a person (“P”) under section 24(1),
- (b) the asset is an interest in a building or structure which is “an interest in UK land” (as defined in section 1C) or an equivalent interest in land outside the United Kingdom,
- (c) a contribution allowance under Part 2A of CAA 2001 (see section 538A of that Act) has been made to another person (“C”) by reference to C’s contribution to expenditure in relation to the building or structure, and

(1) 1992 c. 12.

(2) Section 24 was amended by paragraph 4 of Schedule 39 to the Finance Act 1996 (c. 8), paragraph 3 of Schedule 2 to S.I. 2007/3186 and article 4 of S.I. 2009/730.

- (d) C does not have an interest in the building or structure which is “an interest in UK land” for the purposes of section 1C.
- (2) C may make a claim for this Act to have effect as if an allowable loss equal to the unclaimed allowance amount had accrued to C on the deemed disposal of the asset by P.
- (3) For the purposes of this section, the “unclaimed allowance amount” in relation to a contribution allowance under Part 2A of CAA 2001, is the amount of the difference between—
 - (a) the qualifying contribution amount, and
 - (b) the amount of the contribution allowance to which an entitlement arose (or would have arisen if the conditions in section 270AA(2) of that Act had been met at all times since an entitlement to the contribution allowance first arose) before the deemed disposal under section 24(1).
- (4) For the purposes of subsection (3), the “qualifying contribution amount” is the amount of C’s contribution to expenditure in respect of which the contribution allowance is available (see sections 270AA and 538A of that Act), if and to the extent that the expenditure is not allowable under section 38(3) as a deduction in computing the gain accruing to P on the deemed disposal.
- (5) A claim under this section must—
 - (a) include information identifying the building or structure by reference to which the contribution allowance was made, and
 - (b) specify the unclaimed allowance amount.”.
- (4) After section 37A(4) insert—

“37B Consideration on certain disposals: structures and buildings allowances

- (1) This section applies on the disposal of an asset by a person if—
 - (a) the asset is an interest in a building or structure which is “an interest in UK land” (as defined in section 1C) or an equivalent interest in land outside the United Kingdom,
 - (b) the person is, or has been, entitled to an allowance under Part 2A of CAA 2001 (“the structures and buildings allowance”) by reference to the building or structure, and
 - (c) the expenditure by reference to which the structures and buildings allowance has been made is allowable under section 38 as a deduction from the consideration in the computation of the gain on the disposal.
- (2) In determining the amount of any gain accruing to the person making the disposal (the “transferor”) the consideration for the disposal is treated as being increased by an amount equal to the amount of the structures and buildings allowance that has been made to the transferor.
- (3) If the disposal is—
 - (a) a disposal on which, by virtue of any of the no gain/no loss provisions, neither a gain nor a loss accrues to the person making the disposal,
 - (b) a disposal in respect of which section 162 (roll-over relief on transfer of business) applies for the purposes of computing the gain on the disposal, or
 - (c) a deemed disposal under section 579(4) of CTA 2010(5) (real estate investment trusts: cessation),

the person who acquires the asset (the “transferee”) is treated, for the purposes of determining the amount of the gain accruing on any subsequent disposal of the asset by the transferee, as

(3) Section 38 was amended by paragraph 5 of Schedule 18 to the Finance Act 2003 (c.14).

(4) Section 37A was inserted by paragraph 7 of Schedule 3 to the Taxation (International and Other Provisions) Act 2010 (c. 8).

(5) The Corporation Tax Act 2010 (c. 4).

if the amount of structures and buildings allowance made to the transferor (see subsection (2)) had been made to the transferee.

(4) Subsection (2)—

(a) is to be applied after the other provisions of this Act which apply for the purposes of determining the amount of the consideration deemed to be given for the disposal of assets, and

(b) is subject to subsections (5) to (7).

(5) If section 45(3) or 47(2) applies in relation to the disposal, subsection (2) applies in relation to the part of the consideration apportioned in the same proportion as the expenditure qualifying for capital allowances.

(6) Subsection (7) applies in relation to the disposal if the asset mentioned in subsection (1) is—

(a) a leasehold interest by reference to which section 270DD of CAA 2001 (leases granted for 35 years or more) applies, and

(b) a wasting asset for the purposes of this Act.

(7) For the purposes of subsection (2), the amount of the structures and buildings allowance is to be treated as if it were an amount of expenditure attributable to the asset under section 38(1) and, accordingly, as if it had been reduced at the same rate at which that expenditure is written off in accordance with paragraph 1(3) and (4) of Schedule 8 (leases of land as wasting assets).

(8) The reference in subsection (1)(b) to an allowance under Part 2A of CAA 2001 includes a reference to a contribution allowance made by reason of the application of sections 537 and 538A of that Act (contribution allowances: structures and buildings allowances).”.

(5) In section 39 (exclusion of expenditure by reference to tax on income) after subsection (3A) insert—

“(3B) This section is not to be taken as excluding, from the sums allowable under section 38 as a deduction in the computation of the gain, any expenditure in respect of which an allowance under Part 2A of CAA 2001 (structures and buildings allowances) is made.”.

(6) After section 39 insert—

“39A Exclusion of certain expenditure: structures and buildings allowances

(1) This section applies if—

(a) a person disposes of an asset to a connected person,

(b) the asset is, or is an interest in, a building or structure by reference to which an allowance under Part 2A of CAA 2001 (a “structures and buildings allowance”) has been made, and

(c) the person making the disposal is, or has been, a lessor in relation to a lease of the building or structure by reference to which section 270DD of CAA 2001 (leases granted for 35 years or more) applies.

(2) Any expenditure by reference to which a structures and buildings allowance has been made to a lessee in relation to the lease mentioned in subsection (1)(c) is to be excluded from the sums allowable under section 38 as a deduction in the computation of the gain.”.

(7) In section 41(6) (restriction of losses by reference to capital allowances etc), after subsection (4) insert—

(6) Section 41 was amended by paragraph 7 of Schedule 7 to the Finance Act 1998 (c. 36), paragraph 12 of Schedule 29 to the Finance Act 2000 (c. 17), paragraph 78 of Schedule 2 to the Capital Allowances Act 2001 (c. 2), paragraph 430 of Schedule 1

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“(4A) But references in this section to a capital allowance do not include references to an allowance under Part 2A of CAA 2001 (structures and buildings allowances).”.

(8) In section 52 (supplemental), at the end of subsection (5) insert “(and, except in section 41, references in this Chapter to a capital allowance include references to an allowance under Part 2A of CAA 2001 (structures and buildings allowances))”.

(9) In section 103D(7) (application of Act to tax transparent funds), after subsection (3) insert—

“(3A) But if a participant is entitled to an allowance under Part 2A of CAA 2001 (structures and buildings allowances) by reference to expenditure in relation to any fund property, the participant’s interest in the fund property is not to be disregarded under subsection (3) for the purposes of the application of section 37B (exclusion of certain expenditure: structures and buildings allowances) in relation to the disposal by the participant of units in the fund.”.

to the Income Tax (Trading and Other Income Act) 2005 (c. 5), paragraph 363 of Schedule 1, and Part 1 of Schedule 3, to the Corporation Tax Act 2009, section 73(3) of the Finance Act 2016 (c. 24) and paragraph 45 of Schedule 2 to the Finance (No. 2) Act 2017 (c. 32).

(7) Section 103D was inserted by regulation 3 of S.I. 2013/1400 and substituted by regulation 6 of S.I. 2017/1204.