



# Capital Allowances Act 1990

## 1990 CHAPTER 1

### PART I

#### INDUSTRIAL BUILDINGS AND STRUCTURES

### 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.
- (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) 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 (as defined in section 8(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

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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.

#### **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,

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 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.
- (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 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;
  - (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—
- (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.

(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 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 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.

## **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.
- (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.

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- (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.

## 7 Other hotels

- (1) Subject to the following provisions of this section, this Part, except Chapter I, 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.