



# Capital Allowances Act 1990

## 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 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 as it applies for income tax purposes may require the initial allowance to be reduced to a 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.
- (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 Transport Act 1968, or
  - (b) a grant made under section 12 of the 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).

## 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; 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 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.
- (4) In this section—
- “regional development grant” means a grant under Part II of the Industrial Development Act 1982;
- “the relevant Order” means the 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.

## 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,

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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 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;

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(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.
- (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.



## 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.
- (2) Where an initial allowance is made in respect of the expenditure, the amount of that 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.
- (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 ceases to be used by the person in question for scientific research connected with the trade.
- (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—

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- (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.
- (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.
- (13) Where the Crown is at any time entitled to the relevant interest in a building or structure, subsections (1) to (12) 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 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.

## **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.

## **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

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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.
- (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.

## **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 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.
- (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”) —

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- (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 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.

## **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
  - (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

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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 section 394 of the principal Act (relief for terminal loss) 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 Taxes Management Act 1970 shall apply to any claim under this section.

## 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
  - (e) for the purposes of a trade which consists in the manufacture of goods or materials or the subjecting 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 by sea or air into any part of 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



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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 subsection 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 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—

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“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;

“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 the Water Act 1989;

“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 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.

## 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).

## **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.

## **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.
- (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 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 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.

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- (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 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.