



Capital Allowances Act 1990

1990 CHAPTER 1

PART IV

MINERAL EXTRACTION

CHAPTER III

LIMITATIONS ON QUALIFYING EXPENDITURE ETC.

110 Expenditure on the acquisition of land

- (1) In so far as capital expenditure falling within section 105(1)(b) consists of expenditure on the acquisition of an interest in land (whether in the United Kingdom or elsewhere) and that land includes a source of mineral deposits, so much of that expenditure as is equal to the undeveloped market value of the interest shall not constitute qualifying expenditure.
- (2) In relation to the acquisition of an interest in land, the undeveloped market value means the consideration which, at the time of the acquisition, the interest might reasonably be expected to fetch on a sale in the open market on the assumptions—
 - (a) that there is no source of mineral deposits on or in the land; and
 - (b) that it is and will continue to be unlawful to carry out any development of the land other than—
 - (i) development which, at the time of the acquisition, has been or had begun to be lawfully carried out; and
 - (ii) any other development for which planning permission is granted by a development order which has been made as a general development order and is in force at that time.
- (3) In the application of subsection (2) above to the acquisition of an interest in land outside the United Kingdom—

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- (a) any question whether development has been or is being lawfully carried out shall be determined in accordance with the law of the territory in which the land is situated; and
 - (b) any question whether development is of a character for which planning permission is granted by a general development order shall be determined as if the land were situated in England or Wales.
- (4) In any case where—
- (a) subsections (1) to (3) above have effect to limit the amount of expenditure falling within section 105(1)(b) which is qualifying expenditure, and
 - (b) the undeveloped market value of the interest in land in question includes the value of any buildings or other structures on the land, and
 - (c) at the time of the acquisition of the interest in land or at any time thereafter, those buildings or structures cease permanently to be used for any purpose,
- then at the time referred to in paragraph (c) above the person who incurred the expenditure referred to in paragraph (a) above shall be treated as having incurred qualifying expenditure falling within section 105(1)(b) equal to the unrelieved value of the buildings or structures referred to in paragraph (b) above.
- (5) In subsection (4) above “the unrelieved value” of buildings or structures falling within paragraph (b) of that subsection means the value of those buildings or structures determined as at the date of the acquisition of the interest in land (and without regard to any value properly attributable to the land on which the buildings or structures stand) less the excess of any allowances over balancing charges which the person treated by subsection (4) above as incurring expenditure has received in respect of buildings or structures or assets therein under this Act disregarding Part III and, in cases where the buildings or structures have ceased before 27th July 1989 permanently to be used for any purpose, Part V.
- (6) References in subsections (1) to (5) above to the time of the acquisition of an interest in land are not affected by section 120.

111 Reduction of qualifying expenditure for premium relief

In any case where—

- (a) a person incurs capital expenditure falling within section 105(1)(b) on the acquisition of an asset which is or includes an interest in land, and
- (b) for chargeable periods previous to the chargeable period for which he first becomes entitled in respect of the expenditure to an allowance under section 98, the person incurring the expenditure has been allowed, in respect of that land, any deductions under section 87 of the principal Act (deductions where premiums etc. taxable),

the expenditure shall be treated for the purposes of this Part as reduced by so much of those deductions as would have been excluded by subsection (7) of section 87 of the principal Act if the person concerned had been entitled to an allowance under section 98 of this Act (or, as the case may be, section 60 of the 1968 Act) for the previous chargeable periods referred to in paragraph (b) above.

112 Restriction of disposal receipts

- (1) Where a disposal receipt to be brought into account in respect of any expenditure for a chargeable period would, apart from this section, be the disposal value of an interest in

land (determined as mentioned in section 99(3)), only so much of that disposal value as exceeds the undeveloped market value of the interest shall constitute a disposal receipt for the purposes of Chapter I of this Part.

- (2) Section 110(2) and (3) shall apply to determine the undeveloped market value of an interest for the purposes of this section as they would apply in relation to an acquisition of that interest at the time the disposal value falls to be determined.

113 Assets formerly owned by traders

- (1) Subject to subsection (2) below, section 114 applies where a person carrying on a trade of mineral extraction (“the buyer”) incurs capital expenditure in acquiring an asset (“the purchased asset”) from another person in circumstances falling within subsection (3) below.
- (2) This section and section 114 have effect subject to section 116, and neither this section, section 114 nor section 116 applies if—
- (a) the purchased asset is a mineral asset situated in the United Kingdom; and
 - (b) the capital expenditure incurred by the buyer consists of the payment of sums under a contract entered into by him before 16th July 1985.
- (3) Subject to subsection (5) below, the circumstances referred to in subsection (1) above are that—
- (a) in connection with a trade of mineral extraction carried on by him, the other person referred to in subsection (1) above incurred expenditure on the acquisition or bringing into existence of the purchased asset; or
 - (b) that other person has not incurred expenditure as mentioned in paragraph (a) above but, at any time prior to the buyer’s acquisition, the purchased asset was owned by a person who, in connection with a trade of mineral extraction carried on by him, had incurred such expenditure as is mentioned in paragraph (a) above;

and, in a case where the purchased asset is a mineral asset situated in the United Kingdom, the reference in paragraph (b) above to a time prior to the buyer’s acquisition does not include any time earlier than 1st April 1986.

- (4) In this section “the previous trader” means—
- (a) where the circumstances are as mentioned in paragraph (a) of subsection (3) above, the person referred to in that paragraph; and
 - (b) where the circumstances are as mentioned in paragraph (b) of subsection (3) above, the last person who, prior to the buyer’s acquisition, incurred such expenditure as is mentioned in paragraph (a) of that subsection;

and, subject to subsections (5) and (6) below, any reference in section 114 to the previous trader’s qualifying expenditure is a reference to so much of the expenditure incurred by him on the acquisition or bringing into existence of the purchased asset as constituted his qualifying expenditure for the purposes of this Part.

- (5) Any reference in subsections (3) and (4) above to the purchased asset includes a reference—
- (a) to two or more assets which together make up the purchased asset; and
 - (b) to an asset from which or, as the case may be, to two or more assets from the combination of which the purchased asset is derived.

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- (6) Where the previous trader in fact incurred expenditure on the acquisition or bringing into existence of one or more assets from which the purchased asset is derived, so much of that expenditure as was qualifying expenditure of his for the purposes of this Part and as it is just and reasonable to attribute to the purchased asset shall be taken to be the previous trader's qualifying expenditure.

114 Assets previously acquired

- (1) In this section "the buyer's expenditure" means the capital expenditure incurred by him as mentioned in section 113(1), less any amount of that expenditure which, by virtue of section 110, does not constitute qualifying expenditure.
- (2) If the previous trader did not become entitled to an allowance or liable to a balancing charge in respect of his qualifying expenditure, so much of the buyer's expenditure as does not exceed the amount of the previous trader's qualifying expenditure shall be the buyer's qualifying expenditure in respect of the acquisition of the purchased asset.
- (3) If the previous trader became entitled to an allowance or liable to a balancing charge in respect of his qualifying expenditure, so much of the buyer's expenditure as does not exceed the residue of the previous trader's qualifying expenditure shall be the buyer's qualifying expenditure in respect of the acquisition of the purchased asset.
- (4) In relation to the previous trader's qualifying expenditure, the residue referred to in subsection (3) above is that expenditure—
- (a) less the total of all allowances made to him in respect of that expenditure; and
 - (b) plus the amount (if any) on which a balancing charge was made in respect of that expenditure.
- (5) For the purposes of subsection (4) above, where the previous trader's qualifying expenditure is an amount attributed to the purchased asset on a just and reasonable basis in accordance with section 113(6), any allowances and any balancing charge made by reference to a greater amount of expenditure shall be apportioned on the like basis.
- (6) In this section—
- "allowance" means an allowance under section 98;
 - "balancing charge" means a balancing charge under section 100; and
 - "the buyer", "the previous trader" and "the purchased asset" have the same meanings as in section 113.

115 Expenditure partly attributable to mineral exploration and access

- (1) This section applies where, in a case falling within section 113(1)—
- (a) the purchased asset is a mineral asset; and
 - (b) part of the value of that asset is attributable to expenditure incurred by the previous trader on mineral exploration and access.
- (2) Where this section applies—
- (a) such part of the buyer's expenditure as it is just and reasonable to attribute to the part of the value referred to in subsection (1)(b) above (being no greater than the amount of the previous trader's expenditure on mineral exploration and access which is properly attributable to that part of the value) shall be

treated for the purposes of Chapters I and II of this Part as expenditure on mineral exploration and access and the remainder shall be treated for those purposes as expenditure on the acquisition of a mineral asset; and

- (b) if under Part VII allowances were made to the previous trader in taxing his trade, the existence of these allowances shall not affect the question whether any of his expenditure on the purchased asset was qualifying expenditure.
- (3) In this section “the previous trader” and “the purchased asset” have the same meanings as in section 113 and “the buyer’s expenditure” has the same meaning as in section 114.

116 Oil licences etc

- (1) Where a person carrying on a trade of mineral extraction (“the buyer”) incurs capital expenditure falling within section 105(1)(b) in acquiring a Petroleum Act licence or any interest in such a licence, only so much of that expenditure as does not exceed the corresponding expenditure of the original licensee shall be the buyer’s qualifying expenditure.
- (2) In this section “a Petroleum Act licence” means a licence under the Petroleum (Production) Act 1934 or the Petroleum (Production) Act (Northern Ireland) 1964 authorising the winning of oil, as defined in section 1 of the Oil Taxation Act 1975; and in relation to such a licence “the original licensee” means the person to whom the licence was granted under the enactment in question.
- (3) In relation to the acquisition of a Petroleum Act licence “the corresponding expenditure” of the original licensee is the amount of the payment made by him (whenever made) to the Secretary of State or, in Northern Ireland, to the Department of Economic Development for the purpose of obtaining the licence, and, in relation to an interest in such a licence, that corresponding expenditure is such portion of the amount of that payment as it is just and reasonable to attribute to that interest.

117 Transfer of mineral assets within a group

- (1) Subject to subsection (2) below, this section applies where a company (“the transferee”) acquires a mineral asset from another company (“the transferor”) and either—
- (a) the transferor has control of the transferee or the transferee has control of the transferor, or
 - (b) both the transferor and the transferee are under the control of another person.
- (2) This section does not apply—
- (a) where the acquisition is a sale in respect of which an election is made under section 158; nor
 - (b) where the mineral asset in question is, or is an interest in, a Petroleum Act licence as defined in section 116;
- but, subject to paragraph (a) above, this section applies notwithstanding anything in section 157.
- (3) Subject to subsection (4) below, so much, if any, of the capital expenditure incurred by the transferee on the acquisition of the mineral asset as exceeds the capital expenditure incurred by the transferor on the acquisition of the mineral asset by him shall be left out of account for the purposes of this Part (and, accordingly, if the transferee is carrying on a trade of mineral extraction, shall not be qualifying expenditure).

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- (4) Where the mineral asset acquired by the transferee consists of an interest or right granted by the transferor in a mineral asset acquired by him, the reference in subsection (3) above to the capital expenditure incurred by the transferor on the acquisition of the mineral asset by him shall be construed as a reference to so much of that expenditure as, on a just apportionment, is referable to the interest or right granted by the transferor.
- (5) If the transferee is carrying on a trade of mineral extraction and the expenditure incurred by him on the acquisition of the mineral asset is expenditure falling within section 110, any reference in that section to the time of the acquisition of the interest in land is a reference to the time it was acquired by the transferor or, if there is a sequence of two or more acquisitions each of which falls within subsection (1) above, the time at which the interest was acquired by the company which was the transferor under the earliest of those acquisitions.
- (6) If, in a case where subsection (5) above applies, there is a sequence of two or more acquisitions each of which falls within subsection (1) above—
- (a) any expenditure which one of the companies involved in the sequence is treated as incurring under section 110(4) shall be treated as incurred by the company which is the transferee from that company and by any subsequent transferee company in the sequence; and
 - (b) the reference in section 110(5) to the person treated by subsection (4) of that section as incurring expenditure shall be construed as including a reference to any other company which, under paragraph (a) above, is treated as incurring that expenditure.

118 Assets formerly owned by non-traders

Where a person incurs expenditure on mineral exploration and access and, without having carried on a trade of mineral extraction, he sells any assets representing that expenditure, then, if the person who acquires the assets carries on such a trade, only so much of the price paid by him for the assets as does not exceed the amount of the seller's expenditure which is represented by the assets shall be qualifying expenditure for the purposes of this Part.