



Capital Allowances Act 1990

1990 CHAPTER 1

PART I

INDUSTRIAL BUILDINGS AND STRUCTURES

CHAPTER II

WRITING-DOWN ALLOWANCES, BALANCING ALLOWANCES AND BALANCING CHARGES

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

Status: This is the original version (as it was originally enacted).

- (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.