These notes refer to the Capital Allowances Act 2001 (c.2) which received Royal Assent on 22nd March 2001

CAPITAL ALLOWANCES ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Glossary

Part 2: Plant and machinery allowances

Chapter 20: Supplementary provisions

Overview

899. This Chapter deals with partnerships and successions in the first six sections and miscellaneous plant and machinery provisions (rules for business entertaining, determination of questions about market value of property and shares in plant or machinery) in the final 3.

900. The partnerships and successions provisions in sections 263 to 268 are based on sections 65, 77 and 78 of CAA 1990.

901. The partnerships and successions provisions in sections 263 to 268 are related to provisions in Chapter 4 of Part 12, and section 343(2) of ICTA. They are also an exception to the general rule in section 15 that qualifying activities must be chargeable to tax.

902. Sections 558 and 559 provide similar rules to sections 263 and 265 for the rest of this Act except Part 6 (research and development).

903. For company reconstructions without a change in ownership section 343(2) of ICTA can apply.

904. Section 560 provides rules on the transfer of an insurance company business which affect all types of capital allowance including plant and machinery.

905. Section 561 deals with transfers of a UK trade between member states. It also applies to plant and machinery and takes priority over all other succession provisions.

Section 263: Qualifying activities carried on in partnership

906. This section is based on section 78(3) and (4) of CAA 1990. It maintains the entitlement to plant and machinery allowances (and liability to balancing charges) of the new partners after a partnership change.

Section 264: Partnership using property of a partner

907. This section is based on section 65(1) and (3) of CAA 1990.

908. Subsections (1) and (2) are based on section 65(1) of CAA 1990 and provide for plant and machinery allowances to be available to a partnership for property owned by one partner.

909. *Subsection (3)* is based on section 65(3) of CAA 1990 and provides an exception for assets leased to the partnership.

910. Section 61(2) stops transfers between partners being disposal events for plant and machinery and is based on section 65(2).

Section 265: Successions: general

911. This section is based on section 78(1) of CAA 1990. It deals with successions to trades which are deemed to be discontinued by either section 113(1) or 337(1) of ICTA.

912. It provides a general rule that if plant or machinery is transferred without sale on the succession to a trade which is deemed to discontinue under section 113(1) or 337(1) of ICTA, then the transfer will be at market value.

913. This rule is of little practical significance to the predecessor because, since 1994, section 113(1) of ICTA will deem there to be a discontinuance only if all the persons carrying on a trade change, so there will normally be an arm's length sale. If there is not a sale then there will be a permanent loss to the old partnership anyway and a disposal event because of section 61(1)(b). There will also be a disposal event because of section 61(1)(f) just because the trade is deemed to be permanently discontinued. Section 61(3) will substitute market value.

914. Similarly the company discontinuance rule in section 337(1) of ICTA will trigger a disposal event within section 61(1)(f).

915. The rule is useful to the successor however because it clarifies that the property is acquired at market value.

916. *Subsection (1)* states when the section applies and *subsection (2)* deals with the deemed sale at market value. It also clarifies that the successor is deemed to acquire the property at market value as the other leg of the deemed sale.

917. *Subsection (3)* defines "relevant property". Subsection (3)(a) requires that the property has to have been previously owned by the predecessor immediately before the succession. See *Change 30* in Annex 1.

918. *Subsection (4)* denies the successor any right to claim first-year allowances.

919. If the succession is between connected persons then an election to substitute a figure that will lead to no balancing allowance or charge may be available. See section 266 and paragraph 920 below.

Section 266: Election where predecessor and successor are connected persons

920. This section is based on section 77(3), (4), (5), (6) and (8) of CAA 1990. It provides for an election to be made if a trade is transferred between connected persons. The election has to be made by both of the parties to the transfer.

921. *Subsection (1)(b)* refers to "within the charge to tax" without the additional words "in the United Kingdom" used in section 77(3)(b) of CAA 1990. The words are not necessary. Omitting them brings this section into line with the wording used elsewhere in CAA 1990 and ICTA. See *Note 42* in Annex 2.

922. *Subsection (2)* provides for a predecessor and successor to "jointly elect". This is a change of wording from section 77 of CAA 1990. See *Note 43* in Annex 2.

Section 267: Effect of election

923. This section is based on section 77(4) and (7) of CAA 1990. It gives the effect of the election. The property is deemed to be transferred at a price which gives rise to neither a balancing charge nor a balancing allowance.

924. For the chargeable period in which a qualifying activity is discontinued (the "final chargeable period"), there can be no writing-down allowance (see section 55(4)) so this value will be the amount left in the pool at the end of the previous chargeable period. The predecessor will not get allowances for the period of transfer.

925. *Subsection (2)(a)* provides for a sale to be treated as occurring when the succession takes place. This is not explicit in section 77(4) of CAA 1990. See *Change 31* in Annex 1

Section 268: Successions by beneficiaries

926. This section is based on section 78(2) and (2A) of CAA 1990. It applies to a beneficiary of a deceased person who succeeds to a qualifying activity under a will or intestacy and acquires plant or machinery as part of the succession. It permits the beneficiary to make an election to treat the transfer as being at the lower of either market value or the amount left in the pool. It also treats the plant or machinery as if it was sold to the beneficiary when the succession takes place.

Section 269: Use of plant or machinery for business entertainment

927. This section is based on section 577 of ICTA. It prevents entitlement to plant and machinery allowances if an asset is used for business entertainment.

928. The section makes it explicit that the restriction applies to qualifying activities. Section 577 of ICTA applies to trades, and in CAA 1990 all types of qualifying activities are deemed to be trades. This is a consequence of the introduction of the term qualifying activity to replace deemed trades.

Section 270: Shares in plant or machinery

929. This section is based on section 83(4) of CAA 1990. It provides for plant and machinery allowances for shares in plant or machinery.