



# Capital Allowances Act 2001

## 2001 CHAPTER 2

### [<sup>F1</sup>PART 3

#### INDUSTRIAL BUILDINGS ALLOWANCES

#### CHAPTER 7

#### BALANCING ADJUSTMENTS

*[<sup>F1</sup> Balancing allowances restricted where sale subject to subordinate interest*

#### Textual Amendments

- F1** Pt. 3 omitted (with effect in relation to chargeable periods beginning on or after 1.4.2011 for corporation tax purposes and 6.4.2011 for income tax purposes in accordance with ss. 84(1)(3)(4), 85, 86 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), s. 84\(2\)](#) (with [Sch. 27](#))

### **325 Balancing allowances restricted where sale subject to subordinate interest**

- (1) This section applies if—
- the relevant interest in a building is sold subject to a subordinate interest,
  - the person entitled to the relevant interest immediately before the sale (“the former owner”) would, apart from this section, be entitled to a balancing allowance under this Chapter as a result of the sale, and
  - condition A or B is met.
- (2) Condition A is that—
- the former owner,
  - the person who acquires the relevant interest, and
  - the person to whom the subordinate interest was granted,
- or any two of them, are connected persons.

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*Changes to legislation: There are currently no known outstanding effects for the Capital Allowances Act 2001, Cross Heading: Balancing allowances restricted where sale subject to subordinate interest. (See end of Document for details)*

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- (3) Condition B is that it appears that the sole or main benefit which might have been expected to accrue to the parties or any of them from the sale or the grant, or transactions including the sale or grant, was the obtaining of an allowance under this Part.
- (4) For the purpose of deciding what balancing adjustment is to be made in a case to which this section applies, the net proceeds to the former owner of the sale are to be increased—
- (a) by an amount equal to any premium receivable by him for the grant of the subordinate interest, and
  - (b) if no rent, or no commercial rent, is payable in respect of the subordinate interest, by the amount by which the proceeds would have been greater if a commercial rent had been payable and the relevant interest had been sold in the open market.
- (5) But the net proceeds of the sale are not to be treated as being greater than the amount which secures that no balancing allowance is made.
- (6) If the terms on which a subordinate interest is granted are varied before the sale of the relevant interest—
- (a) any capital consideration for the variation is to be treated for the purposes of this section as a premium for the grant of the interest, and
  - (b) the question whether any, and if so what, rent is payable in respect of the interest is to be determined by reference to the terms in force immediately before the sale.
- (7) If this section applies in relation to a sale to deny or reduce a balancing allowance, the residue of qualifying expenditure immediately after the sale is nevertheless calculated as if the balancing allowance had been made or not reduced.]

### **326 Interpretation of section 325**

- (1) In section 325—

“commercial rent” means such rent as may reasonably be expected to have been required in respect of the subordinate interest (having regard to any premium payable for the grant of the interest) if the transaction had been at arm’s length;

“premium” includes any capital consideration, except so much of any sum as corresponds to [F<sup>2</sup>—]

- (a) [F<sup>3</sup>an amount brought into account as a receipt in calculating the profits of a property business under sections 217 to 221 of CTA 2009 that is calculated by reference to the sum, or]
- (b) [F<sup>4</sup>an amount brought into account as a receipt in calculating the profits of a UK property business under sections 277 to 281 of ITTOIA 2005 that is calculated by reference to the sum; ]

“subordinate interest” means an interest in or right over the building, whether granted by the former owner or anyone else.

- (2) In section 325 and this section—

“capital consideration” means consideration which consists of a capital sum or would be a capital sum if it had consisted of a money payment, and

“rent” includes any consideration which is not capital consideration.

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**Changes to legislation:** There are currently no known outstanding effects for the Capital Allowances Act 2001, Cross Heading: Balancing allowances restricted where sale subject to subordinate interest. (See end of Document for details)

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#### Textual Amendments

- F2** Words in s. 326(1) become para. (a) (with effect in accordance with s. 883(1) of the amending Act) by virtue of [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 553\(a\)](#) (with [Sch. 2](#))
- F3** Words in s. 326(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 499](#) (with [Sch. 2 Pts. 1, 2](#))
- F4** Words in s. 326(1) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 553\(b\)](#) (with [Sch. 2](#))

**Changes to legislation:**

There are currently no known outstanding effects for the Capital Allowances Act 2001, Cross  
Heading: Balancing allowances restricted where sale subject to subordinate interest.