

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1945, EIGHTH SCHEDULE. (See end of Document for details)

EIGHTH SCHEDULE

Section 58.

AMENDMENTS AS TO EXCEPTIONAL DEPRECIATION ALLOWANCES.

Modifications etc. (not altering text)

- C1** Schedule 8 repealed so far as it relates to income tax by [Income Tax Act 1952 \(c. 10\)](#), s. 527, [Sch. 25](#)
- C2** The text of ss. 34, 35, 36, 38, 46, 47, 48, 50, 51, 58, 59, Schs. 5, 6, 8 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

Part I. Provisions Applicable to Excess Profits Tax and the National Defence Contribution.

- 1 In this Part of this Schedule the expression “exceptional depreciation allowance” means any allowance—
- (a) under paragraph 3 of Part I of the Seventh Schedule to the Finance (No. 2) Act, 1939 (hereinafter referred to as “the principal paragraph”) and subsection (1) of section thirty-three of the Finance Act, 1940; or
 - (b) under the principal paragraph and the said subsection (1) as applied in relation to to the national defence contribution by subsection (2) of section forty-three of the Finance Act, 1941,
- and any reference in this Part of this Schedule to the principal paragraph shall be construed as including a reference to that paragraph as extended by the said subsection (1) and as applied in relation to the national defence contribution.
- 2 An exceptional depreciation allowance shall be given notwithstanding that on the date determined by Parliament for the purposes of sub-paragraph (1) of the principal paragraph the buildings, plant or machinery have not become obsolete or ceased to be required, and accordingly, in the said sub-paragraph (1), for the words “the buildings, plant or machinery, have, wholly or partially, become obsolete or ceased to be required and the value thereof is less than the net cost thereof” there shall be substituted the words “the value of the buildings, plant or machinery, or, where the buildings, plant or machinery have ceased to exist as such, the value of the remains thereof, is less than the net cost thereof”.
- 3 (1) Where it is material for the purposes of sub-paragraph (1) of the principal paragraph to ascertain the value of any buildings, plant or machinery on the date determined by Parliament for the purposes of that sub-paragraph, that value shall be ascertained as if the buildings, plant or machinery were in a proper state of repair.
- (2) Where an allowance under the said sub-paragraph (1) is, or, but for the provisions of this paragraph, would be, made in respect of any buildings, plant or machinery by reference to the value thereof on the date determined by Parliament, and—
- (a) on that date the buildings, plant or machinery are not in a proper state of repair; and
 - (b) not later than six years after that date, the buildings, plant or machinery are sold by the person who is or would be entitled to the allowance before all the repairs have been made which are necessary to make good the disrepair existing on that date; and
 - (c) the net proceeds of the sale are less than the value as ascertained for the purposes of the said sub-paragraph (1),

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he may claim that the said value shall for those purposes be deemed to be reduced by such amount as may be just, having regard to the extent to which the said repairs have not been made good at the time of the sale:

Provided that the said value shall not be treated for the said purposes as having been reduced below the actual value of the buildings, plant or machinery in their actual state at the date determined by Parliament, or the net proceeds of the sale, whichever is the greater, plus any sums paid or payable to or for the benefit of the said person, under Part I or Part II of the War Damage Act, 1943, in respect of damage to the buildings, plant or machinery, being damage which has not been made good before the date determined by Parliament or, as the case may be, the date of the sale.

- (3) In this paragraph and in the said sub-paragraph (1), any reference to the value of buildings, plant or machinery shall be construed as a reference to the value thereof to the person carrying on the trade or business, or to the amount which could be obtained therefor in the open market, whichever is the higher.
- (4) Nothing in this paragraph shall apply in relation to any buildings, plant or machinery which, on the date determined by Parliament, are no longer in existence as such.
- 4 Paragraph (ii) of sub-paragraph (1) of the principal paragraph (which directs war damage payments to be taken into account in determining whether an exceptional depreciation allowance may be made, and, if so, the amount thereof) shall not apply in relation to any payments under Part I or Part II of the War Damage Act, 1943, in respect of any buildings, plant or machinery, unless—
- (a) the buildings, plant or machinery have been sold before the date determined by Parliament for the purposes of that sub-paragraph, or are at that date no longer in existence as such and
 - (b) the said payments have been or are to be made to or for the benefit of the person who is entitled to the allowance or would be entitled to the allowance if an allowance fell to be made.
- 5 (1) Any excess in respect of which an exceptional depreciation allowance falls to be made shall be deemed to have begun to accrue on the first day of April, nineteen hundred and thirty-nine, or on the date when the buildings, plant or machinery were provided, whichever is the later, and to have continued to accrue at an even rate until the date determined by Parliament, the date on which the buildings, plant or machinery were sold or the date on which the buildings, plant or machinery finally ceased to be used by the person to whom the allowance falls to be made, whichever is the earliest date, and the proportion of the excess properly attributable to any accounting period shall be determined accordingly:
- Provided that, in relation to a person to whom the buildings, plant or machinery have been transferred in such circumstances that they are deemed by virtue of subsection (1) of section thirty-three of the Finance Act, 1940, to have been provided by him, the reference in this paragraph to the date when the buildings, plant or machinery were provided shall be construed as a reference to the date of the transfer.
- (2) Where under the enactments relating to excess profits tax or the national defence contribution it is necessary to make any apportionment of the profits or losses of any accounting period which falls partly but not wholly after the thirty-first day of March, nineteen hundred and thirty-nine, then, notwithstanding any enactment relating to the principles upon which such apportionments are to be made, any exceptional depreciation allowance which falls to be taken into account in computing those profits or losses shall be attributed to that part only of that accounting period which falls after the said thirty-first day of March.

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- 6 (1) The provisions of this paragraph shall have effect where—
- (a) any buildings, plant or machinery are sold before, on, or not later than six years after, the date determined by Parliament for the purposes of sub-paragraph (1) of the principal paragraph; and
 - (b) the seller is a person to whom an exceptional depreciation allowance, or an allowance under section nineteen of the Finance Act, 1941, falls to be made in respect of the buildings, plant or machinery, whether by reason of the sale or otherwise; and
 - (c) at the time of the sale and, where the event giving rise to the allowance is not the sale, also at the time of the event, the buildings, plant or machinery are not in a proper state of repair; and
 - (d) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them.
- (2) In computing, for the purposes of excess profits tax or the national defence contribution, the profits of any trade or business carried on by the buyer,—
- (a) no deduction shall be allowed in respect of any expenditure incurred in making good the disrepair existing at the time of the event giving rise to the allowance; and
 - (b) where, in the case of plant or machinery, the said disrepair is such as to require the provision of new plant or machinery, no deduction shall be allowed in respect of the wear and tear of the new plant or machinery or in respect of the replacement of the new plant or machinery.
- (3) Where—
- (a) the buyer under such a sale as is mentioned in sub-paragraph (1) of this paragraph again sells the buildings, plant or machinery, or any part of them; and
 - (b) the second sale takes place before, on, or not later than six months after, the date determined by Parliament; and
 - (c) the second buyer is a body of persons over whom the first buyer has control, or the first buyer is a body of persons over whom the second buyer has control, or both the first buyer and the second buyer are bodies of persons and some other person has control over both of them,
- the provisions of the last preceding sub-paragraph shall, in relation to the computation of the profits of any trade or business carried on by the second buyer, have effect as if the second sale had been a sale by the first seller direct to the second buyer, and so on for any subsequent sales.
- (4) In this paragraph, references to the event giving rise to an exceptional depreciation allowance are references—
- (a) if the allowance is made because, on the date determined by Parliament, the value of the buildings, plant or machinery is less than the net cost thereof, to the occurrence of that date; and
 - (b) if the allowance is made because the buildings, plant or machinery are sold before the said date at a price which is less than the net cost thereof, to the sale.

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Part II Provisions applicable to Income Tax, Excess Profits Tax and the National Defence Contribution

7 In this Part of this Schedule, the expression “exceptional depreciation allowance” means an allowance under section nineteen of the Finance Act, 1941, or an exceptional depreciation allowance as defined in paragraph 1 of Part I of this Schedule, and the expression “the principal provisions” means the provisions of section nineteen of the Finance Act, 1941, and any enactments amending that section, and the principal paragraph as defined in paragraph 1 of Part I of this Schedule.

8 (1) This paragraph shall have effect in relation to the sale of buildings, machinery or plant where either—

- (a) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and buyer are bodies of persons and some other person has control over both of them; or
- (b) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from the provisions of this Schedule, might have been expected to accrue to the parties or any of them was the obtaining of any allowance or deduction for any of the purposes of the Income Tax Acts or of the enactments relating to excess profits tax or the national defence contribution.

(2) Where the buildings, machinery or plant are sold at a price other than the relevant price (as defined for the purposes of this paragraph), the like consequences shall ensue for the purposes of the principal provisions, in their application to all persons concerned, as would have ensued if the buildings, machinery or plant had been sold at the relevant price.

(3) In this paragraph the expression “the relevant price” means, in relation to any sale of buildings, machinery or plant, a price equal to—

- (a) the price which they would have fetched if sold in the open market; or
- (b) the net cost of the buildings, machinery or plant to the seller, whichever is the less.

For the purposes of this sub-paragraph, the said net cost shall be treated as reduced by the aggregate amount of any deductions for wear and tear or depreciation, other than exceptional depreciation allowances, allowed to the seller in respect of the buildings, machinery or plant for the purposes of income tax, excess profits tax or the national defence contribution, as the case may be:

Provided that the reference in this sub-paragraph to deductions for wear and tear or depreciation shall, in relation to income tax, be deemed to include a reference to any allowance made under Part I or Part II of the Income Tax Act, 1945, and shall, in relation to excess profits tax and the national defence contribution, be deemed to include a reference to the additional percentage for which provision is made by paragraph 2 of Part I of the Seventh Schedule to the Finance (No. 2) Act, 1939, and to the appropriate proportion of any deduction for wear and tear or depreciation given for income tax purposes for the year 1938-39 or any previous year of assessment.

9 Any reference in the provisions of this Schedule or in the principal provisions to the sale of any property includes a reference to the exchange of any property, and, in

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the case of a leasehold interest, to the surrender thereof for valuable consideration, and all the said provisions shall be construed accordingly with the necessary adaptations, and, in particular, with the adaptation that references to the net proceeds of the sale and to the price shall be construed as including references to the amount of the consideration for the exchange or surrender.

- 10 (1) Any reference in the provisions of this Schedule or of the principal provisions to the sale of any buildings, plant or machinery includes a reference to the sale thereof together with any property, and, where the buildings, plant or machinery are sold together with other property, so much of the price of the whole of the property sold as, on a just apportionment, is properly attributable to the buildings, plant or machinery in question, shall be deemed to be the price of the buildings, plant or machinery for the purposes of those provisions, and references to the cost of the provision of buildings, plant or machinery shall be construed accordingly.

For the purposes of this sub-paragraph, all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are or purport to be agreed for separate items of that property or that there are or purport to be separate sales of separate items of that property.

- (2) Where it is material, for the purposes of the principal provisions, to take account of any payment made or to be made in respect of buildings, plant or machinery under the War Damage Act, 1943, any payment made or to be made under that Act is properly attributable partly to the buildings, plant or machinery in question shall be taken into account for those purposes.
- 11 For the purposes of the principal provisions and the provisions of this Schedule, the sale of any buildings, plant or machinery shall be deemed to take place at the time of completion or the time when possession is given, whichever is the earlier.
- 12 References in this Schedule to a body of persons include references to a partnership.
- 13 In this Schedule, the expression “control”, in relation to a body corporate, means the power of a person to secure, by means of the holding of shares or the possession of voting power or in relation to that or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership.
- 14 In this Schedule, the expression “leasehold interest” includes the interest conferred by an agreement for a lease where the term to be covered by the lease has begun, and the interest conferred by any tenancy, but not the interest conferred by a mortgage: Provided that, in the application of this Schedule to Scotland, the said expression means the interest of a tenant in property subject to a lease.

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