



# Capital Allowances Act 1990

## 1990 CHAPTER 1

### PART III

#### DWELLING-HOUSES LET ON ASSURED TENANCIES

#### **84 Application of Part III**

- (1) Subject to subsection (2) below, this Part has effect to provide for reliefs in respect of expenditure incurred on the construction of buildings consisting of or including dwelling houses let on assured and certain other tenancies, but only where the expenditure concerned is incurred before 1st April 1992.
- (2) If the tenancy is an assured tenancy for the purposes of the Housing Act 1988, subsection (1) above shall not apply unless—
  - (a) the expenditure was incurred before 15th March 1988 or it consists of the payment of sums under a contract entered into before that date and (in either case) it was incurred—
    - (i) by an approved company, or
    - (ii) by a person who sells or sold the relevant interest in the building to an approved company before any of the dwelling-houses comprised in it are or were used; or
  - (b) the expenditure was incurred by an approved company which, before 15th March 1988, bought or contracted to buy the relevant interest in the building.
- (3) In this section, “approved company” means a company which was on 15th March 1988 an approved body.

#### **85 Writing-down allowances**

- (1) Subject to the provisions of this Part, where—
  - (a) an approved body or a body which has been an approved body is, at the end of a chargeable period or its basis period, entitled to an interest in a building, and

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- (b) at the end of that chargeable period or its basis period, the building is or includes a qualifying dwelling-house or two or more qualifying dwelling-houses, and
  - (c) that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building,
- an allowance (“a writing-down allowance”) shall be made to that body for that chargeable period in respect of the dwelling-house or, as the case may be, each dwelling-house falling within paragraph (b) above.
- (2) The writing-down allowance in respect of a dwelling-house shall be equal to one-twenty-fifth of the capital expenditure which is appropriate to that dwelling-house, except that for a chargeable period of less than a year that fraction shall be proportionately reduced.
  - (3) If, in the case of a building which is or includes a qualifying dwelling-house—
    - (a) the interest which is the relevant interest in relation to any expenditure is sold, and
    - (b) the sale is an event to which section 87(1) applies,
 then, subject to any further adjustment under this subsection on a later sale, the writing-down allowance in respect of that dwelling-house for any chargeable period, if that chargeable period or its basis period ends after the time of the sale, shall be the residue, as defined in section 90(1), of that expenditure immediately after the sale, reduced in the proportion (if it is less than one) which the length of the chargeable period bears to the part unexpired at the date of the sale of the period of 25 years beginning with the time when the building was first used.
  - (4) Notwithstanding anything in subsections (1) to (3) above, in no case shall the amount of a writing-down allowance made to a body for any chargeable period in respect of any expenditure exceed what, apart from the writing-off falling to be made by reason of the making of that allowance, would be the residue of that expenditure at the end of that chargeable period or its basis period.

## **86 Qualifying dwelling-houses**

- (1) In this Part “qualifying dwelling-house” means, subject to subsections (2) to (4) below, a dwelling-house let on a tenancy which is for the time being an assured tenancy.
- (2) A dwelling-house which has been a qualifying dwelling-house by virtue of subsection (1) above shall be regarded as a qualifying dwelling-house at any time when—
  - (a) it is for the time being subject to a regulated tenancy or a housing association tenancy; and
  - (b) the landlord under that tenancy either is an approved body or was an approved body but has ceased to be such for any reason.
- (3) Notwithstanding that a dwelling-house is let as mentioned in subsection (1) or (2) above, it is not a qualifying dwelling-house for the purposes of this Part—
  - (a) unless the landlord is a company and either is for the time being entitled to the relevant interest in the dwelling-house or is the person who incurred the capital expenditure on the construction of the building in which the dwelling-house is comprised; or

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- (b) if the landlord is a housing association which is approved for the purposes of section 488 of the principal Act or is a self-build society within the meaning of the Housing Associations Act 1985; or
- (c) if the landlord and the tenant are connected persons; or
- (d) if the tenant is a director of a company which is or is connected with the landlord; or
- (e) if the landlord is a close company and the tenant is, for the purposes of Part XI of the principal Act, a participator in that company or an associate of such a participator; or
- (f) if the tenancy is entered into as part of an arrangement between the landlords (or owners) of different dwelling-houses under which one landlord takes a person as a tenant in circumstances where, if that person was the tenant of a dwelling-house let by the other landlord, that dwelling-house would not be a qualifying dwelling-house by virtue of any of paragraphs (c) to (e) above;

and section 839 of the principal Act applies for the purposes of this subsection.

(4) In this section “regulated tenancy” and “housing association tenancy” have the same meaning as in the Rent Act 1977.

(5) Subsection (3)(a) shall have effect—

- (a) in relation to expenditure incurred before 5th May 1983 and expenditure incurred on or after that date pursuant to a contract entered into before that date, and
- (b) in any case where a person other than a company became entitled to the relevant interest before that date, and such a person has not become so entitled on or after that date,

with the omission of the words “is a company and either”.

## **87 Balancing allowances and charges and withdrawal of initial allowances in certain cases**

(1) Where any capital expenditure has been incurred on the construction of a building which is to be or include a qualifying dwelling-house and any of the following events occur while a dwelling-house comprised in that building is a qualifying dwelling-house, that is to say—

- (a) the relevant interest in the dwelling-house is sold, or
- (b) that interest, being a leasehold interest, comes to an end otherwise than on the person entitled to it acquiring the interest which is reversionary on it, or
- (c) the dwelling-house is demolished or destroyed or, without being demolished or destroyed, ceases altogether to be used,

then, subject to subsection (2) below, for the chargeable period related to that event an allowance or charge (a “balancing allowance” or a “balancing charge”) shall, in the circumstances mentioned below, be made to or, as the case may be, on the person entitled to the relevant interest immediately before that event occurs.

(2) No balancing allowance or balancing charge shall be made by reason of any event occurring more than 25 years after the dwelling-house was first used.

(3) Subject to section 88, where there are no sale, insurance, salvage or compensation moneys, or where the residue of the expenditure immediately before the event exceeds those moneys, a balancing allowance shall be made and the amount of it shall be the

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amount of that residue, or as the case may be, of the excess of that residue over those moneys.

- (4) Subject to section 88, if the sale, insurance, salvage or compensation moneys exceed the residue, if any, of the expenditure immediately before the event, a balancing charge shall be made, and the amount on which it is made shall be an equal amount to the excess or, where the residue is nil, to those moneys.
- (5) For the purposes of this Part, any transfer of the relevant interest in a dwelling-house, otherwise than by way of sale, shall be treated as a sale of that interest for a price other than that which it would have fetched if sold on the open market; and if sections 157 and 158 would not, apart from this subsection, have effect in relation to a transfer treated as a sale by virtue of this subsection, those sections shall have effect in relation to it as if it were a sale falling within section 157(1)(a).
- (6) Notwithstanding anything in subsections (1) to (5) above, or in section 88, 157 or 158, in no case shall the amount on which a balancing charge is made on any person in respect of any expenditure on the construction of a dwelling-house comprised in a building exceed the amount of the initial allowance, if any, made to him in respect of the expenditure appropriate to that dwelling-house together with the amount of any writing-down allowances made to him in respect of that expenditure for chargeable periods which end on or before the date of the event giving rise to the charge or of which the basis periods end on or before that date.
- (7) Notwithstanding the repeal by this Act of sub-paragraph (3) of paragraph 1 of Schedule 12 to the Finance Act 1982, where an initial allowance has been granted in respect of any expenditure relating to a dwelling-house which, when it comes to be used, is not a qualifying dwelling-house, all such assessments shall be made to secure that effect is given to the prohibition in that sub-paragraph on the making of an initial allowance in such a case.
- (8) In this section “initial allowance” means an initial allowance granted under paragraph 1 of Schedule 12 to the Finance Act 1982.

## **88 Dwelling-houses not continuously qualifying dwelling-houses**

- (1) If, in a case where section 87(1) applies, a dwelling-house which had been a qualifying dwelling-house was not, for any part of the relevant period, such a dwelling-house, the provisions of this section shall have effect instead of subsections (3) and (4) of that section.
- (2) Subject to subsection (4) below, where the sale, insurance, salvage or compensation moneys are not less than the capital expenditure appropriate to the dwelling-house, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the allowances given.
- (3) Subject to subsection (4) below, where there are no sale, insurance, salvage or compensation moneys or where those moneys are less than the capital expenditure appropriate to the dwelling-house, then—
  - (a) if the adjusted net cost of the dwelling-house exceeds the allowances given, a balancing allowance shall be made and the amount thereof shall be an amount equal to the excess;
  - (b) if the adjusted net cost of the dwelling-house is less than the allowances given, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the shortfall.

(4) No balancing charge or allowance shall be made under this section on the occasion of a sale if, by virtue of section 158, the dwelling-house is treated as having been sold for a sum equal to the residue of expenditure before the sale.

(5) In this section—

“the relevant period” means the period beginning at the time when the dwelling-house was first used for any purpose and ending with the event giving rise to the balancing allowance or charge, except that where there has been a sale of the dwelling-house after that time and before that event, the relevant period shall begin on the day following that sale or, if there has been more than one such sale, the last such sale;

“the capital expenditure” means—

- (a) where paragraph (b) of this definition does not apply, the capital expenditure incurred (or by virtue of section 91 deemed to have been incurred) on the construction of the dwelling-house;
- (b) where the person to or on whom the balancing allowance or charge falls to be made is not the person who incurred (or is deemed to have incurred) that expenditure, the residue of that expenditure at the beginning of the relevant period,

together (in either case) with any amount to be added to the residue of that expenditure by virtue of section 90(9);

“the allowances given” means the allowances referred to in section 87(6);

“the adjusted net cost” means—

- (a) where there are no sale, insurance, salvage or compensation moneys, the expenditure appropriate to the dwelling-house; and
- (b) where those moneys are less than that expenditure, the amount by which they are less,

reduced (in either case) in the proportion that the part, or the aggregate of the parts, of the relevant period for which the dwelling-house is a qualifying dwelling-house bears to the whole of that period.

## **89 Supplementary provisions where dwelling-house ceases to be a qualifying dwelling-house**

(1) If a dwelling-house ceases to be a qualifying dwelling-house otherwise than by reason of a sale or transfer of the relevant interest in it, that relevant interest shall be treated for the purposes of this Part as having been sold, at the time the dwelling-house ceases to be a qualifying dwelling-house, for the price which it would have fetched if sold in the open market.

(2) For the purposes of this Part, a dwelling-house shall not be regarded as ceasing altogether to be used by reason that it falls temporarily out of use, and where, immediately before any period of temporary disuse, it is a qualifying dwelling-house, it shall be regarded as continuing to be a qualifying dwelling-house during the period of temporary disuse.

## **90 Writing off of expenditure and meaning of “residue of expenditure”**

(1) Any expenditure appropriate to a qualifying dwelling-house shall be treated for the purposes of this Part as written off to the extent and as at the times specified below,

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and the references in this Part to the residue of any such expenditure shall be construed accordingly.

- (2) An initial allowance made under paragraph 1 of Schedule 12 to the Finance Act 1982 in respect of a qualifying dwelling-house shall be treated as written off as at the time when the qualifying dwelling-house is first used.
- (3) Where, by reason of the whole or part of a building being at any time a qualifying dwelling-house, a writing-down allowance is made for any chargeable period in respect of the expenditure, the amount of that allowance shall, subject to subsection (4) below, be treated as written off as at that time.
- (4) Where, at a time which is material for the purposes of subsection (3) above, an event occurs which gives rise or may give rise to a balancing allowance or a balancing charge, the amount directed to be treated as written off by that subsection as at that time shall be taken into account in computing the residue of that expenditure immediately before that event for the purpose of determining whether any and if so what balancing allowance or balancing charge is to be made.
- (5) If, for any period or periods between the time when the whole or part of a building was first used for any purpose and the time at which the residue of the expenditure falls to be ascertained, the building or part, as the case may be, has not been a qualifying dwelling-house, there shall in ascertaining that residue be treated as having been previously written off in respect of that period or those periods amounts equal to writing-down allowances made for chargeable periods of a total length equal thereto at such rate or rates as would have been appropriate having regard to any sale on which section 85(3) operated.
- (6) Where, on the occasion of a sale, a balancing allowance is made in respect of the expenditure, there shall be treated as written off as at the time of the sale the amount by which the residue of the expenditure before the sale exceeds the net proceeds of the sale.
- (7) Where, on the occasion of a sale, a balancing charge is made in respect of the expenditure, the residue of the expenditure shall be deemed for the purposes of this Part to be increased as at the time of the sale by the amount on which the charge is made.
- (8) Where, on the occasion of a sale, a balancing charge is made under section 88(3)(b) in respect of the expenditure and, apart from this subsection, the residue of the expenditure immediately after the sale would by virtue of subsection (7) above be deemed to be greater than the net proceeds of the sale, the residue immediately after the sale shall be deemed for the purposes of this Part to be equal to the net proceeds.
- (9) Where a dwelling-house is demolished, and the demolition gives rise, or might give rise, to a balancing allowance or charge under this Part to or on the person incurring the cost of demolition, the net cost to him of the demolition (that is to say, the excess, if any, of the cost of the demolition over any moneys received for the remains of the property) shall be added for the purposes of this Part to the residue, immediately before the demolition, of the expenditure appropriate to the dwelling-house; and if this subsection applies to the net cost to a person of the demolition of any property, the cost or net cost shall not be treated, for the purposes of this Part, as expenditure incurred in respect of any other property by which that property is replaced.

## **91 Buildings bought unused**

- (1) Subject to subsection (2) below, where expenditure is incurred on the construction of a building which is to be or include a qualifying dwelling-house and the relevant interest in the building is sold before any dwelling-house comprised in it is used—
  - (a) the expenditure actually incurred on the construction of the building shall be left out of account for the purposes of sections 85 to 90; but
  - (b) the person who buys that interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, expenditure on the construction of the building equal to the expenditure actually incurred or to the net price paid by him for that interest, whichever is the less.
- (2) Where the relevant interest in a building which is to be or include a qualifying dwelling-house is sold more than once before any dwelling-house comprised in it is used, the provisions of subsection (1)(b) above shall have effect only in relation to the last of those sales.
- (3) Where the expenditure incurred on the construction of a building which is to be or include a qualifying dwelling-house was incurred by a person carrying on a trade which consists, as to the whole or any part thereof, in the construction of buildings with a view to their sale, and, before any dwelling-house comprised in it is used, he sells the relevant interest in the building in the course of that trade, or, as the case may be, of that part of that trade, paragraph (b) of subsection (1) above shall have effect subject to the following modifications—
  - (a) if that sale is the only sale of the relevant interest before any dwelling-house comprised in the building is used that paragraph shall have effect as if the words “the expenditure actually incurred or to” and “whichever is the less” were omitted; and
  - (b) in any other case, that paragraph shall have effect as if the reference to the expenditure actually incurred on the construction of the building were a reference to the price paid on that sale.

## **92 Manner of making allowances and charges**

- (1) Any allowance under this Part shall be made to a person by way of discharge or repayment of tax and shall be available primarily against the following income, that is to say—
  - (a) income taxed under Schedule A in respect of any premises which at any time in the chargeable period consist of a qualifying dwelling-house; or
  - (b) income which is the subject of a balancing charge under this Part.
- (2) Effect shall be given to a balancing charge to be made on a person—
  - (a) if it is a charge to income tax, by making the charge under Case VI of Schedule D,
  - (b) if it is a charge to corporation tax, by treating the amount on which the charge is to be made as income of the description in subsection (1)(a) above.

## **93 Repairs, and double allowances**

- (1) This Part shall have effect in relation to capital expenditure incurred by a person on repairs to any part of a building as if it were capital expenditure incurred by him on the construction for the first time of that part of the building.

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- (2) No allowance shall be made under this Part in respect of any expenditure on a building or in respect of a dwelling-house if for the same or any other chargeable period an allowance is or can be made under any provisions of Part V in respect of that expenditure or that dwelling-house.
- (3) Subsection (2) above shall not have effect in relation to any chargeable period or its basis period ending after 26th July 1989.

#### **94 Holding over by lessees, etc**

- (1) Where the relevant interest in relation to the capital expenditure incurred on the construction of a building is an interest under a lease, this Part shall have effect subject to the following provisions of this section, and in those provisions—
  - (a) except in subsection (5), any reference to a lessor or lessee is a reference to the lessor or lessee under that lease; and
  - (b) in subsection (5) the reference to the first lease is a reference to that lease.
- (2) Where, with the consent of the lessor, a lessee of any building remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Part to continue so long as he remains in possession as aforesaid.
- (3) Where, on the termination of a lease, a new lease is granted to the lessee in pursuance of an option available to him under the terms of the first lease, the provisions of this Part shall have effect as if the second lease were a continuation of the first lease.
- (4) Where, on the termination of a lease, the lessor pays any sum to the lessee in respect of a building comprised in the lease, the provisions of this Part shall have effect as if the lease had come to an end by reason of the surrender thereof in consideration of the payment.
- (5) Where, on the termination of a lease, another lease is granted to a different lessee and, in connection with the transaction, that lessee pays a sum to the person who was the lessee under the first lease, the provisions of this Part shall have effect as if both leases were the same lease and there had been an assignment thereof by the lessee under the first lease to the lessee under the second lease in consideration of the payment.

#### **95 The relevant interest**

- (1) Subject to the provisions of this section, in this Part “the relevant interest” means—
  - (a) in relation to any expenditure incurred on the construction of a building, the interest in that building to which the person who incurred the expenditure was entitled when he incurred it; and
  - (b) in relation to a dwelling-house comprised in a building which is to be or include a qualifying dwelling-house, that interest, to the extent that it subsists in the dwelling-house, which is the relevant interest in relation to the capital expenditure incurred on the construction of that building.
- (2) Where, when it incurs expenditure on the construction of a building, a body is entitled to two or more interests in the building and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Part.



- (3) An interest shall not cease to be the relevant interest for the purposes of this Part by reason of the creation of any lease or other interest to which that interest is subject, and where the relevant interest is a leasehold interest and is extinguished by reason of the surrender thereof or on the body entitled thereto acquiring the interest which is reversionary on it, the interest into which that leasehold interest merges shall thereupon become the relevant interest.

## **96 The appropriate capital expenditure**

- (1) For the purposes of this Part the capital expenditure appropriate to a dwelling-house shall be determined as follows—

- (a) if the building concerned consists of a single qualifying dwelling-house, then, subject to the relevant limit, the whole of the capital expenditure on the construction of the building is appropriate to that dwelling-house; and
- (b) in the case of a dwelling-house which forms part of a building, the capital expenditure appropriate to it is, subject to the relevant limit, the aggregate of—
  - (i) that proportion of the capital expenditure on the construction of the building which is properly attributable to the construction of that dwelling-house; and
  - (ii) where there are common parts of the building, such proportion of the capital expenditure on those common parts as it is just and reasonable to attribute to the dwelling-house and as does not exceed one-tenth of that proportion of the capital expenditure referred to in sub-paragraph (i) above;

and in this section “the relevant limit” means £60,000 if the dwelling-house is in Greater London, and £40,000 if it is elsewhere.

- (2) In subsection (1) above “common parts”, in relation to a building, means common parts of the building which—

- (a) are not intended to be in separate occupation (whether for domestic, commercial or other purposes); and
- (b) are intended to be of benefit to some or all of the qualifying dwelling-houses included in the building;

and the capital expenditure on any such parts of the building is so much of the expenditure on the construction of the building as it is just and reasonable to attribute to those parts.

- (3) Capital expenditure is appropriate to a dwelling-house only if it was incurred after 9th March 1982 and before 1st April 1992 or is deemed to have been so incurred by virtue of section 91.

## **97 Interpretation**

- (1) In this Part, except where the context otherwise requires—

“approved body” has the meaning given by section 56(4) of the Housing Act 1980;

“assured tenancy” means a tenancy which is an assured tenancy within the meaning of section 56 of the Housing Act 1980, or a tenancy which for the purposes of the Housing Act 1988 is an assured tenancy but is not an assured shorthold tenancy;

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“building” includes part of a building;

“dwelling-house” has the same meaning as in the Rent Act 1977;

“expenditure appropriate to a dwelling-house” has the meaning given by section 96; and

“qualifying dwelling-house” has the meaning given by section 86.

- (2) References in this Part to expenditure incurred on the construction of a building do not include any expenditure incurred on the acquisition of, or of rights in or over, any land.
- (3) A person who has incurred expenditure on the construction of a building shall be deemed, for the purposes of any provision of this Part referring to his interest therein at the time when the expenditure was incurred, to have had the same interest therein as if the construction thereof had been completed at that time.
- (4) Without prejudice to any of the other provisions of this Part relating to the apportionment of the sale, insurance, salvage or compensation moneys, the sum paid on the sale of the relevant interest in a building or structure, or any other sale, insurance, salvage or compensation moneys payable in respect of any building or structure, shall for the purposes of this Part be deemed to be reduced by an amount equal to so much thereof as, on a just apportionment, is attributable to assets representing expenditure other than expenditure in respect of which an allowance can be made under this Part.