



Finance Act 1994

1994 CHAPTER 9

PART IV

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Capital allowances

VALID FROM 03/05/1994

120 Balancing charge on realisation of capital value.

(1) The Capital Allowances Act 1990 shall be amended as follows:

(2) In section 4 (balancing adjustments)—

(a) in subsection (1) (events giving rise to an adjustment), after “or” at the end of paragraph (d) there is inserted—

“(dd) any capital value is realised (within the meaning of section 4A), or”, and for “subsection (2)” there is substituted “subsections (2) and (9A)”, and

(b) after subsection (9) there is inserted—

“(9A) No balancing allowance shall be made by reason of any event falling within subsection (1)(dd) above; and (subject to that) in relation to such an event—

(a) this Part and (so far as relating to it) Part VIII shall have effect as if references to sale, insurance, salvage or

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compensation moneys were references to the capital value realised, and

- (b) subsections (5) to (7) and (9) above shall have effect as if immediately after the event the capital expenditure were reduced by the amount of the capital value realised”.

- (3) After that section there is inserted—

“4A Realisation of capital value.

- (1) Where any capital expenditure has been incurred on the construction of a building or structure and, while the building or structure is an industrial building or structure or after it has ceased to be one—
- (a) an amount of capital value is paid which is attributable to an interest in land (the “subordinate interest”) to which the relevant interest in the building or structure is or will be subject, and
 - (b) the payment is made not more than seven years after the agreement relating to the capital expenditure was entered into or (if the agreement was conditional) the time when the agreement became unconditional,
- capital value of that amount is realised for the purposes of this Part on making the payment.
- (2) For the purposes of this section, capital value is attributable to the subordinate interest if—
- (a) it is paid in consideration of the grant of the subordinate interest,
 - (b) it is paid in lieu of any rent payable by the person entitled to the subordinate interest or paid in consideration of the assignment of such rent, or
 - (c) it is paid in consideration of the surrender of the subordinate interest or the variation or waiver of any of the terms on which it was granted.
- (3) For the purposes of this section, “capital value”—
- (a) means any capital sum and includes what would have been a capital sum if it had taken the form of a money payment, and “payment” and “paid” shall be interpreted accordingly, but
 - (b) does not include 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, etc. treated as rent or Schedule D profits).
- (4) Where—
- (a) no premium is given in consideration of the grant of the subordinate interest or any premium given is less than the amount which would have been given by way of premium if the transaction had been at arm’s length, and
 - (b) no commercial rent is payable in respect of the subordinate interest,
- subsection (2) above shall have effect as if the amount referred to in paragraph (a) above (and not any premium actually given) were paid on and in consideration of the grant of the interest.

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- (5) Where—
- (a) any rent payable in respect of the subordinate interest is assigned, the subordinate interest is surrendered or any of the terms on which the subordinate interest was granted are varied or waived, but
 - (b) no value is given in consideration of the event concerned, or any value given in consideration of the event concerned is less than the amount that would have been given if the transaction had been at arm's length,
- subsection (2) above shall have effect as if that amount (and not any value actually given) were paid on and in consideration of the event concerned.
- (6) Where any value given in lieu of any rent payable by the person entitled to the subordinate interest is less than the amount that would have been given if the transaction had been at arm's length, subsection (2) above shall have effect as if that amount (and not any value actually given) had been paid.
- (7) This section shall apply with the omission of subsection (1)(b) above in any case where—
- (a) arrangements under which the person entitled to the relevant interest acquired it include provision in respect of the subsequent sale of the relevant interest, the subsequent grant out of the relevant interest of an interest in land or any other event on which capital value attributable to the subordinate interest would be, or be treated as, paid, and
 - (b) either the provision concerned requires such a sale, grant or other event to occur or such a sale, grant or other event is substantially more likely to occur than if the provision had not been made;
- and the reference to arrangements in paragraph (a) above includes any arrangements made in connection with the acquisition of the relevant interest.
- (8) This section does not apply to the grant of any interest in land to which an election under section 11 applies.
- (9) In this section “interest in land” means—
- (a) a leasehold estate in the land (whether in the nature of a head-lease, sub-lease or under-lease),
 - (b) an easement or servitude, and
 - (c) a licence to occupy land;
- and references to granting an interest in land include agreeing to grant any interest falling within paragraphs (a) to (c) above.
- (10) In this section “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 given in consideration of the grant of the interest) if the transaction had been at arm's length.
- (11) For the purposes of this section, where—
- (a) an agreement is made to pay in respect of any event an amount of capital value which would be attributable to the subordinate interest, and

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- (b) the agreement is made or (if the agreement is conditional) becomes unconditional before the expiry of the period of seven years referred to in subsection (1)(b) above, but the event occurs, or any payment in consideration of the event is made, afterwards,
 the event or payment shall be treated as occurring or made before the expiry of the period.
- (12) For the purposes of this section, an agreement relates to any capital expenditure referred to in subsection (1) above if—
- (a) it is the agreement under which the expenditure was incurred, or
 - (b) where the expenditure is deemed for the purposes of sections 1 to 8 to have been incurred by a person who acquired the relevant interest, it is the agreement under which he acquired the relevant interest.
- (13) In the application of this section to Scotland—
- (a) references to assignment shall be read as references to assignment, and
 - (b) references to a leasehold estate in land shall be read as references to a lease of land.”
- (4) In section 5 (restriction of balancing allowance where interest has been sold subject to subordinate interest), after subsection (2) there is inserted—
- “(2A) Where the net proceeds to the relevant person of the sale fall to be increased or determined under subsection (2) above, those proceeds as so increased or determined shall be taken to be reduced by the amount of any capital value realised before the sale”.
- (5) In section 6 (buildings, etc. in enterprise zones), in subsection (4), after “4(1)” there is inserted “ 4A(1) ”.
- (6) In section 8 (writing off expenditure)—
- (a) after subsection (12A) there is inserted—
- “(12B) Where any event occurs to which section 4(1)(dd) applies, there shall be treated as written off as at the time of the event an amount equal to the capital value realised”, and
- (b) in subsection (13), for “(12A)” there is substituted “ (12B) ”.
- (7) Subject to subsection (8) below, this section applies—
- (a) where capital expenditure has been incurred under a relevant contract, or
 - (b) where capital expenditure is deemed for the purposes of sections 1 to 8 to have been incurred by a person who under a relevant contract acquires the relevant interest;
- and “relevant contract” means a contract entered into on or after 13th January 1994 or a conditional contract entered into before that date which becomes unconditional after 25th February 1994.
- (8) This section applies to capital expenditure on the construction of a building or structure only if the expenditure, or, in the case of expenditure falling within subsection (7)(b) above, the actual expenditure on the construction of the building or structure to which the expenditure so falling relates, is incurred, or is incurred under a contract entered into, at a time when the site of the building or structure is wholly

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or mainly in an enterprise zone, being a time not more than 10 years after the site was first included in the zone.

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