



# Capital Allowances Act 2001

## 2001 CHAPTER 2

### PART 3

#### INDUSTRIAL BUILDINGS ALLOWANCES

##### **Modifications etc. (not altering text)**

- C2** Pt. 3 modified (24.2.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), s. 458(1), [Sch. 10 para. 18](#) (with [Sch. 10 para. 21](#)); [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 34) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

### CHAPTER 1

#### INTRODUCTION

#### **271 Industrial buildings allowances**

- (1) Allowances are available under this Part if—
- (a) expenditure has been incurred on the construction of a building or structure,
  - (b) the building or structure is (or, in the case of an initial allowance, is to be)—
    - (i) in use for the purposes of a qualifying trade,
    - (ii) a qualifying hotel,
    - (iii) a qualifying sports pavilion, or
    - (iv) in relation to qualifying enterprise zone expenditure, a commercial building or structure, and
  - (c) the expenditure incurred on the construction of the building or structure, or other expenditure, is qualifying expenditure.
- (2) In the rest of this Part—
- (a) “building” is short for “building or structure”, and

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- (b) “industrial building” means, subject to Chapter 2 (which defines terms used in subsection (1)(b) etc.), a building or structure which is within subsection (1) (b).
- (3) Allowances under this Part are made to the person who for the time being has the relevant interest in the building (see Chapter 3) in relation to the qualifying expenditure (see Chapter 4).

## **272 Expenditure on the construction of a building**

- (1) For the purposes of this Part, expenditure on the construction of a building does not include expenditure on the acquisition of land or rights in or over land.
- (2) This Part has effect in relation to capital expenditure incurred by a person on repairs to a part of a building as if it were capital expenditure on the construction of that part of the building for the first time.
- (3) For the purposes of subsection (2), expenditure incurred for the purposes of a trade on repairs to a building is to be treated as capital expenditure if it is not expenditure that would be allowed to be deducted in calculating the profits of the trade for tax purposes.

## **273 Preparation of sites for plant or machinery**

- (1) Subsection (2) applies if—
  - (a) capital expenditure is or has been incurred in preparing, cutting, tunnelling or levelling land for the purposes of preparing the land as a site for the installation of plant or machinery, and
  - (b) no allowance could (apart from this section) be made in respect of that expenditure under this Part or Part 2 (plant and machinery allowances).
- (2) This Part has effect in relation to the expenditure as if—
  - (a) the purpose of incurring the expenditure were to prepare the land as a site for the construction of a building, and
  - (b) the installed plant or machinery were a building.

## **CHAPTER 2**

### INDUSTRIAL BUILDINGS

#### *Buildings in use for the purposes of a qualifying trade*

## **274 Trades and undertakings which are “qualifying trades”**

- (1) “Qualifying trade” means—
  - (a) a trade of a kind described in Table A, or
  - (b) an undertaking of a kind described in Table B, if the undertaking is carried on by way of trade.

Table A

Trades which are “qualifying trades”

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1.	<i>Manufacturing</i>	A trade consisting of manufacturing goods or materials.
2.	<i>Processing</i>	A trade consisting of subjecting goods or materials to a process. This includes (subject to section 276(3)) maintaining or repairing goods or materials.
3.	<i>Storage</i>	A trade consisting of storing goods or materials— (a) which are to be used in the manufacture of other goods or materials, (b) which are to be subjected, in the course of a trade, to a process, (c) which, having been manufactured or produced or subjected, in the course of a trade, to a process, have not yet been delivered to any purchaser, or (d) on their arrival in the United Kingdom from a place outside the United Kingdom.
4.	<i>Agricultural contracting</i>	A trade consisting of— (a) ploughing or cultivating land occupied by another, (b) carrying out any other agricultural operation on land occupied by another, or (c) threshing another's crops. For this purpose "crops" includes vegetable produce.
5.	<i>Working foreign plantations</i>	A trade consisting of working land outside the United Kingdom used for— (a) growing and harvesting crops, (b) husbandry, or (c) forestry.

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		For this purpose “crops” includes vegetable produce and “harvesting crops” includes the collection of vegetable produce (however effected).
6.	<i>Fishing</i>	A trade consisting of catching or taking fish or shellfish.
7.	<i>Mineral extraction</i>	A trade consisting of working a source of mineral deposits. “Mineral deposits” includes any natural deposits capable of being lifted or extracted from the earth, and for this purpose geothermal energy is to be treated as a natural deposit. “Source of mineral deposits” includes a mine, an oil well and a source of geothermal energy.

Table B

Undertakings which are “qualifying trades” if carried on by way of trade

1.	<i>Electricity</i>	An undertaking for the generation, transformation, conversion, transmission or distribution of electrical energy.
2.	<i>Water</i>	An undertaking for the supply of water for public consumption.
3.	<i>Hydraulic power</i>	An undertaking for the supply of hydraulic power.
4.	<i>Sewerage</i>	An undertaking for the provision of sewerage services within the meaning of the Water Industry Act 1991 (c. 56).
5.	<i>Transport</i>	A transport undertaking.
6.	<i>Highway undertakings</i>	A highway undertaking, that is, so much of any undertaking relating to the design, building, financing

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		and operation of roads as is carried on— (a) for the purposes of, or (b) in connection with, the exploitation of highway concessions.
7.	<i>Tunnels</i>	A tunnel undertaking.
8.	<i>Bridges</i>	A bridge undertaking.
9.	<i>Inland navigation</i>	An inland navigation undertaking.
10.	<i>Docks</i>	A dock undertaking. A dock includes— (a) any harbour, and (b) any wharf, pier, jetty or other works in or at which vessels can ship or unship merchandise or passengers, other than a pier or jetty primarily used for recreation.

- (2) Item 6 of Table B needs to be read with Chapter 9 (application of this Part to highway undertakings).

### **275 Building used for welfare of workers**

A building is in use for the purposes of a qualifying trade if it is—

- (a) provided by the person carrying on the qualifying trade for the welfare of workers employed in that qualifying trade, and
- (b) in use for the welfare of such workers.

### **276 Parts of trades and undertakings**

- (1) Sections 274 and 275 apply in relation to part of a trade or undertaking as they apply in relation to a trade or undertaking.

But this is subject to subsections (2) and (3).

- (2) If—

- (a) a building is in use for the purpose of a trade or undertaking, and
- (b) part only of the trade or undertaking is a qualifying trade,

the building is in use for the purposes of the qualifying trade only if it is in use for the purposes of that part of the trade or undertaking.

- (3) Maintaining or repairing goods or materials is not a qualifying trade if—

- (a) the goods or materials are employed in a trade or undertaking,
- (b) the maintenance or repair is carried out by the person employing the goods or materials, and
- (c) the trade or undertaking is not itself a qualifying trade.

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## **277 Exclusion of dwelling-houses, retail shops, showrooms, hotels and offices etc.**

- (1) A building is not in use for the purposes of a qualifying trade if it is in use as, or as part of, or for any purpose ancillary to the purposes of—
- (a) a dwelling-house;
  - (b) a retail shop, or premises of a similar character where a retail trade or business (including repair work) is carried on;
  - (c) a showroom;
  - (d) a hotel;
  - (e) an office.
- (2) Subsection (3) is about buildings constructed for occupation by, or for the welfare of persons employed—
- (a) on, or in connection with, working land outside the United Kingdom which is used as described in item 5 of Table A in section 274 (foreign plantations), or
  - (b) at, or in connection with, working a source of mineral deposits as defined in item 7 of Table A (mineral extraction).
- (3) Subsection (1) does not apply to a building which this subsection is about if the building—
- (a) is likely to be of little or no value to the person carrying on the trade when the land or source is no longer worked, or
  - (b) will cease to be owned by that person on the ending of a foreign concession under which the land or source is worked.
- (4) “Foreign concession” means a right or privilege granted by the government of, or any municipality or other authority in, a territory outside the United Kingdom.
- (5) Subsection (1) is subject to section 283 (non-industrial part of building disregarded).

## **278 Building used by more than one licensee**

A building used by more than one licensee of the same person is not in use for the purposes of a qualifying trade unless each licensee uses it, or the part to which the licence relates, for the purposes of a qualifying trade.

### *Qualifying hotels and sports pavilions*

## **279 Qualifying hotels**

- (1) A hotel is a qualifying hotel if the following conditions are met—
- (a) the accommodation in the hotel is in a building of a permanent nature,
  - (b) the hotel is open for at least 4 months during April to October, and
  - (c) when the hotel is open during April to October—
    - (i) it has 10 or more letting bedrooms,
    - (ii) the sleeping accommodation it offers consists wholly or mainly of letting bedrooms, and
    - (iii) the services provided for guests normally include the provision of breakfast and an evening meal, the making of beds and the cleaning of rooms.

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- (2) Whether a hotel meets the conditions in subsection (1)(b) and (c) at any time in a chargeable period is to be determined by reference to the period given under subsections (3) to (5) (“the reference period”).
- (3) If the hotel was in use for the purposes of a trade carried on by—
- (a) the person claiming the allowance, or
  - (b) a lessee occupying the hotel under a lease to which the relevant interest is reversionary,
- throughout the 12 month period ending with the last day of the chargeable period, the reference period is that 12 month period.
- (4) If the hotel was first used for the purposes of a trade carried on as described in subsection (3) after the beginning of the 12 month period referred to there, the reference period is the 12 month period beginning with the date on which it was first so used.
- (5) If a hotel does not qualify under subsection (3) because it had fewer than 10 letting bedrooms until too late a date, the reference period is the 12 month period beginning with the date when it had 10 or more letting bedrooms.
- (6) A hotel is not to be treated as meeting the conditions in subsection (1)(b) and (c) at any time in a chargeable period after it has ceased altogether to be used.
- (7) A building (whether or not on the same site as any other part of the hotel) which is—
- (a) provided by the person carrying on the trade for the welfare of workers employed in the hotel, and
  - (b) in use for the welfare of such workers,
- is to be treated for the purposes of this section as part of the hotel.
- (8) If a qualifying hotel is carried on by an individual (alone or in partnership), accommodation which, when the hotel is open during April to October, is normally used as a dwelling by—
- (a) that individual, or
  - (b) a member of his family or household,
- is to be treated for the purposes of this section as not being part of the hotel.
- (9) In this section—
- “building” does not include a structure, and
  - “letting bedroom” means a private bedroom available for letting to the public generally and not normally in the same occupation for more than one month.

## **280 Qualifying sports pavilions**

A building is a qualifying sports pavilion if it is—

- (a) occupied by a person carrying on a trade, and
- (b) used as a sports pavilion for the welfare of all or any of the workers employed in that trade.

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### *Commercial buildings (enterprise zones)*

#### **281 Commercial buildings (enterprise zones)**

For the purposes of this Part as it applies in relation to qualifying enterprise zone expenditure, “commercial building” means a building which is used—

- (a) for the purposes of a trade, profession or vocation, or
- (b) as an office or offices (whether or not for the purposes of a trade, profession or vocation),

and which is not in use as, or as part of, a dwelling-house.

#### *Supplementary provisions*

#### **282 Buildings outside the United Kingdom**

A building outside the United Kingdom which is in use for the purposes of a trade is not an industrial building at any time when the profits of the trade are not assessable in accordance with the rules applicable to Case I of Schedule D.

#### **283 Non-industrial part of building disregarded**

- (1) This section applies if, apart from this section, but taking into account section 571 (parts of buildings etc.)—
  - (a) part of a building would be an industrial building, and
  - (b) part (“the non-industrial part”) would not.
- (2) If the qualifying expenditure relating to the non-industrial part is no more than 25% of the qualifying expenditure relating to the whole of the building, the whole of the building is an industrial building.

#### **284 Roads on industrial estates etc.**

- (1) A road on an industrial estate is an industrial building if the estate consists wholly or mainly of buildings that are treated under this Part as industrial buildings.
- (2) For the purposes of this Part as it applies in relation to qualifying enterprise zone expenditure, “industrial estate” includes an area (such as a business park) which consists wholly or mainly of commercial buildings.

#### **285 Cessation of use and temporary disuse of building**

For the purposes of this Part—

- (a) a building is not to be regarded as ceasing altogether to be used merely because it falls temporarily out of use, and
- (b) if a building is an industrial building immediately before a period of temporary disuse, it is to be treated as being an industrial building during the period of temporary disuse.



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## CHAPTER 3

### THE RELEVANT INTEREST IN THE BUILDING

#### **286 General rule as to what is the relevant interest**

- (1) The relevant interest in relation to any qualifying expenditure is the interest in the building to which the person who incurred the expenditure on the construction of the building was entitled when the expenditure was incurred.
- (2) Subsection (1) is subject to the following provisions of this Chapter and to sections 342 (highway undertakings) and 359 (provisions applying on termination of lease).
- (3) If—
  - (a) the person who incurred the expenditure on the construction of the building was entitled to more than one interest in the building when the expenditure was incurred, and
  - (b) one of those interests was reversionary on all the others,the reversionary interest is the relevant interest.

#### **287 Interest acquired on completion of construction**

For the purposes of determining the relevant interest, a person who—

- (a) incurs expenditure on the construction of a building, and
- (b) is entitled to an interest in the building on or as a result of the completion of the construction,

is treated as having had that interest when the expenditure was incurred.

#### **288 Effect of creation of subordinate interest**

- (1) An interest does not cease to be the relevant interest merely because of the creation of a lease or other interest to which that interest is subject.
- (2) This is subject to any election under section 290.

#### **289 Merger of leasehold interest**

If the relevant interest is a leasehold interest which is extinguished on—

- (a) being surrendered, or
- (b) the person entitled to the interest acquiring the interest which is reversionary on it,

the interest into which the leasehold interest merges becomes the relevant interest when the leasehold interest is extinguished.

#### **290 Election to treat grant of lease exceeding 50 years as sale**

- (1) Subsection (2) applies if—
  - (a) expenditure has been incurred on the construction of a building,
  - (b) a lease of the building is granted out of the interest which is the relevant interest in relation to the expenditure,
  - (c) the duration of the lease exceeds 50 years, and

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- (d) the lessor and the lessee elect for subsection (2) to apply.
- (2) This Part applies as if—
- (a) the grant of the lease were a sale of the relevant interest by the lessor to the lessee at the time when the lease takes effect,
  - (b) any capital sum paid by the lessee in consideration for the grant of the lease were the purchase price on the sale, and
  - (c) the interest out of which the lease was granted had at that time ceased to be, and the interest granted by the lease had at that time become, the relevant interest.
- (3) The election has effect in relation to all the expenditure—
- (a) in relation to which the interest out of which the lease is granted is the relevant interest, and
  - (b) which relates to the building (or buildings) that is (or are) the subject of the lease.

## **291 Supplementary provisions with respect to elections**

- (1) No election may be made under section 290 by a lessor and lessee who are connected persons unless—
  - (a) the lessor is a body discharging statutory functions, and
  - (b) the lessee is a company of which it has control.
- (2) No election may be made under section 290 if it appears that the sole or main benefit which may be expected to accrue to the lessor from the grant of the lease and the making of an election is obtaining a balancing allowance.
- (3) Whether the duration of a lease exceeds 50 years is to be determined—
  - (a) in accordance with section 38(1) to (4) and (6) of ICTA, and
  - (b) without regard to section 359(3) (new lease granted as a result of the exercise of an option treated as continuation of old lease).
- (4) An election under section 290 must be made by notice to the Inland Revenue within 2 years after the date on which the lease takes effect.
- (5) All such adjustments, by discharge or repayment of tax or otherwise, are to be made as are necessary to give effect to the election.

## **CHAPTER 4**

### QUALIFYING EXPENDITURE

#### *Introduction*

## **292 Meaning of “qualifying expenditure”**

In this Part “qualifying expenditure” means expenditure which is qualifying expenditure under—

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section 294	capital expenditure on construction of a building
section 295	purchase of unused building where developer not involved
section 296	purchase of building which has been sold unused by developer
section 301	qualifying expenditure on sale within 2 years of first use where all of expenditure is qualifying enterprise zone expenditure
section 303	qualifying expenditure on sale within 2 years of first use where part of expenditure is qualifying enterprise zone expenditure.

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### **293 Meaning of references to carrying on a trade as a developer**

For the purposes of this Chapter—

- (a) a developer is a person who carries on a trade which consists in whole or in part in the construction of buildings with a view to their sale, and
- (b) an interest in a building is sold by the developer in the course of the development trade if the developer sells it in the course of the trade or (as the case may be) that part of the trade that consists in the construction of buildings with a view to their sale.

#### *Qualifying expenditure*

### **294 Capital expenditure on construction of a building**

If—

- (a) capital expenditure is incurred on the construction of a building, and
- (b) the relevant interest in the building has not been sold or, if it has been sold, it has been sold only after the first use of the building,

the capital expenditure is qualifying expenditure.

### **295 Purchase of unused building where developer not involved**

(1) This section applies if—

- (a) expenditure is incurred on the construction of a building,
- (b) the relevant interest in the building is sold before the building is first used,
- (c) a capital sum is paid by the purchaser for the relevant interest, and
- (d) section 296 (purchase of building which has been sold unused by developer) does not apply.

(2) The lesser of—

- (a) the capital sum paid by the purchaser for the relevant interest, and
- (b) the expenditure incurred on the construction of the building,

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is qualifying expenditure.

- (3) The qualifying expenditure is to be treated as incurred by the purchaser when the capital sum became payable.
- (4) If the relevant interest is sold more than once before the building is first used, subsection (2) has effect only in relation to the last of those sales.

## **296 Purchase of building which has been sold unused by developer**

- (1) This section applies if—
  - (a) expenditure is incurred by a developer on the construction of a building, and
  - (b) the relevant interest in the building is sold by the developer in the course of the development trade before the building is first used.
- (2) If—
  - (a) the sale of the relevant interest by the developer was the only sale of that interest before the building is used, and
  - (b) a capital sum is paid by the purchaser for the relevant interest, the capital sum is qualifying expenditure.
- (3) If—
  - (a) the sale by the developer was not the only sale before the building is used, and
  - (b) a capital sum is paid by the purchaser for the relevant interest on the last sale, the lesser of that capital sum and the price paid for the relevant interest on its sale by the developer is qualifying expenditure.
- (4) The qualifying expenditure is to be treated as incurred by the purchaser when the capital sum referred to in subsection (2)(b) or (3)(b) became payable.

## **297 Purchase of used building from developer**

- (1) This section applies if—
  - (a) expenditure is incurred by a developer on the construction of a building, and
  - (b) the relevant interest is sold by the developer in the course of the development trade after the building has been used.
- (2) This Part has effect in relation to the person to whom the relevant interest is sold as if—
  - (a) the expenditure on the construction of the building had been qualifying expenditure,
  - (b) all appropriate writing-down allowances had been made to the developer, and
  - (c) any appropriate balancing adjustment had been made on the occasion of the sale.
- (3) This section is subject to sections 301 and 303 (purchase of building in enterprise zone within 2 years of first use).

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### *Qualifying enterprise zone expenditure*

#### **298 The time limit for qualifying enterprise zone expenditure**

- (1) For the purposes of sections 299 to 304, the time limit for expenditure on the construction of a building on a site in an enterprise zone is—
  - (a) 10 years after the site was first included in the zone, or
  - (b) if the expenditure is incurred under a contract entered into within those 10 years, 20 years after the site was first included in the zone.
- (2) In those sections “EZ building” is short for “building on a site in an enterprise zone”.
- (3) In this Part “enterprise zone” means an area designated as such by an order—
  - (a) made by the Secretary of State <sup>[<sup>F1</sup></sup>, the Scottish Ministers or the National Assembly for Wales,] under powers conferred by Schedule 32 to the Local Government, Planning and Land Act 1980 (c. 65), or
  - (b) in Northern Ireland, made by the Department of the Environment under Article 7 of the Enterprise Zones (Northern Ireland) Order 1981 (S.I.1981/607 (N.I.15)).

#### **Textual Amendments**

- F1** Words in s. 298(3) inserted (with effect as mentioned in s. 69(2) of the amending Act) by [Finance Act 2001 \(c. 9\)](#), s. 69(1), [Sch. 21 para. 5](#)

#### **299 Application of section 294**

If—

- (a) capital expenditure is incurred on the construction of an EZ building, and
- (b) the expenditure is incurred within the time limit,

the qualifying expenditure given by section 294 is qualifying enterprise zone expenditure.

#### **300 Application of sections 295 and 296**

If—

- (a) expenditure is incurred on the construction of an EZ building, and
- (b) all the expenditure is incurred within the time limit,

any qualifying expenditure given by sections 295 and 296 in relation to that expenditure is qualifying enterprise zone expenditure.

#### **301 Purchase of building within 2 years of first use**

- (1) This section applies if—

- (a) expenditure is incurred on the construction of an EZ building,
- (b) all the expenditure is incurred within the time limit,
- (c) the relevant interest in the building is sold—
  - (i) after the building has been used, but

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- (ii) within the period of 2 years beginning with the date on which the building was first used, and
  - (d) that sale (“the relevant sale”) is the first sale in that period after the building has been used.
- (2) If this section applies—
- (a) any balancing adjustment which falls to be made on the occasion of the relevant sale is to be made, and
  - (b) the residue of qualifying expenditure immediately after the relevant sale is to be disregarded for the purposes of this Part.
- (3) If a capital sum is paid by the purchaser for the relevant interest on the relevant sale—
- (a) the purchaser is to be treated as having incurred qualifying expenditure that is qualifying enterprise zone expenditure of an amount given in subsection (4), (6) or (7), and
  - (b) in relation to that qualifying enterprise zone expenditure, this Part applies as if the building had not been used before the date of the relevant sale.
- (4) Unless subsection (6) or (7) applies, the amount of the qualifying enterprise zone expenditure is the lesser of—
- (a) the capital sum paid by the purchaser for the relevant interest on the relevant sale, and
  - (b) the expenditure incurred on the construction of the building.
- (5) Subsections (6) and (7) apply if—
- (a) the expenditure incurred on the construction of the EZ building was incurred by a developer, and
  - (b) the relevant interest in the building has been sold by the developer in the course of the development trade.
- (6) If the sale by the developer is the relevant sale, the amount of the qualifying enterprise zone expenditure is the capital sum paid by the purchaser for the relevant interest on that sale.
- (7) If the sale by the developer is not the relevant sale, the amount of the qualifying enterprise zone expenditure is the lesser of—
- (a) the capital sum paid by the purchaser for the relevant interest on the relevant sale, and
  - (b) the price paid for the relevant interest on its sale by the developer.
- (8) The qualifying expenditure is to be treated as incurred when the capital sum on the relevant sale became payable.

*Part of expenditure within time limit for qualifying enterprise zone expenditure*

### **302 Qualifying enterprise zone expenditure where section 295 or 296 applies**

- (1) This section applies if—
- (a) expenditure is incurred on the construction of an EZ building,
  - (b) only a part of the expenditure is incurred within the time limit, and
  - (c) the circumstances are as described in—

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- (i) section 295(1) (purchase of unused building where developer not involved), or
  - (ii) section 296(1) (purchase of building which has been sold unused by developer).
- (2) Only a part of the qualifying expenditure given by section 295(2) or 296(2) or (3) (as the case may be) is qualifying enterprise zone expenditure.
- (3) The part of the qualifying expenditure that is qualifying enterprise zone expenditure is—

$$QE_x \frac{E}{T}$$

where—

QE is the qualifying expenditure,

E is the part of the expenditure on the construction of the EZ building that is incurred within the time limit, and

T is the total expenditure on the construction of the building.

### **303 Purchase of building within 2 years of first use**

- (1) This section applies if—
- (a) expenditure is incurred on the construction of an EZ building,
  - (b) only a part of the expenditure is incurred within the time limit,
  - (c) the relevant interest in the building is sold—
    - (i) after the building has been used, but
    - (ii) within the period of 2 years beginning with the date on which the building was first used, and
  - (d) that sale (“the relevant sale”) is the first sale in that period after the building has been used.
- (2) If this section applies—
- (a) any balancing adjustment which falls to be made on the occasion of the relevant sale is to be made, and
  - (b) the residue of qualifying expenditure immediately after the relevant sale is to be disregarded for the purposes of this Part.
- (3) If a capital sum is paid by the purchaser for the relevant interest on the relevant sale—
- (a) the purchaser is to be treated as having incurred qualifying expenditure—
    - (i) part of which is qualifying enterprise zone expenditure (“Z”), and
    - (ii) part of which is not (“N”), and
  - (b) in relation to that qualifying expenditure, this Part applies as if the building had not been used before the date of the relevant sale.
- (4) Unless section 304 (cases where developer involved) applies—

$$Z = L_x \frac{E}{T}$$

and

$$N = L - Z$$

L is the lesser of—

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- (a) the capital sum paid for the relevant interest on the relevant sale, and
- (b) the expenditure incurred on the construction of the building,

E is the part of the expenditure on the construction of the EZ building that is incurred within the time limit, and

T is the total expenditure on the construction of the building.

- (5) Any qualifying expenditure arising under this section or section 304 is to be treated as incurred when the capital sum on the relevant sale became payable.

### **304 Application of section 303 where developer involved**

- (1) This section applies if section 303 applies but—
  - (a) the expenditure on the construction of the building was incurred by a developer, and
  - (b) the relevant interest in the building has been sold by the developer in the course of the development trade;

and in this section Z, N, E and T have the same meaning as in section 303.

- (2) If the sale by the developer is the relevant sale—

$$Z = Cx \frac{E}{T}$$

and

$$N = L - Lx \frac{E}{T}$$

where—

C is the capital sum paid for the relevant interest by the purchaser, and

L is the lesser of—

- (a) the capital sum paid for the relevant interest on the relevant sale, and
- (b) the expenditure incurred on the construction of the building.

- (3) If the sale by the developer is not the relevant sale—

$$Z = Dx \frac{E}{T}$$

and

$$N = D - Z$$

where D is the lesser of—

- (a) the price paid for the relevant interest on its sale by the developer, and
- (b) the capital sum paid for the relevant interest on the relevant sale.



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## CHAPTER 5

### INITIAL ALLOWANCES

#### **305 Initial allowances for qualifying enterprise zone expenditure**

- (1) A person who has incurred qualifying enterprise zone expenditure is entitled to an initial allowance in respect of the expenditure if the building on which the expenditure is incurred is to be an industrial building—
  - (a) occupied by that person or a qualifying lessee, or
  - (b) used by a qualifying licensee.
- (2) In this section—
  - “qualifying lessee” means a lessee under a lease to which the relevant interest is reversionary, and
  - “qualifying licensee” means a licensee of—
    - (a) the person incurring the qualifying expenditure, or
    - (b) a lessee of the person incurring the qualifying expenditure.

#### **306 Amount of initial allowance and period for which allowance made**

- (1) The amount of the initial allowance is 100% of the qualifying enterprise zone expenditure.
- (2) A person claiming an initial allowance under this section may require the allowance to be reduced to a specified amount.
- (3) The initial allowance is made for the chargeable period in which the qualifying expenditure is incurred.
- (4) For the purposes of subsection (3), expenditure incurred for the purposes of a trade, profession or vocation by a person about to carry it on is to be treated as if it had been incurred on the first day on which the person carries on the trade, profession or vocation.

#### **307 Building not industrial building when first used etc.**

- (1) No initial allowance is to be made under section 305 if, when the building is first used, it is not an industrial building.
- (2) An initial allowance which has been made in respect of a building which is to be an industrial building is to be withdrawn if, when the building is first used, it is not an industrial building.
- (3) An initial allowance which has been made in respect of a building which has not been used is to be withdrawn if the person to whom the allowance was made sells the relevant interest before the building is first used.
- (4) All such assessments and adjustments of assessments are to be made as are necessary to give effect to this section.

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### **308 Grants affecting entitlement to initial allowances**

- (1) No initial allowance is to be made in respect of expenditure to the extent that it is taken into account for the purposes of a relevant grant or relevant payment made towards that expenditure.
- (2) A grant or payment is relevant if it is—
  - (a) a grant made under section 32, 34 or 56(1) of the Transport Act 1968 (c. 73),
  - (b) a payment made under section 56(2) of the Transport Act 1968, or
  - (c) a grant made under section 101 of the Greater London Authority Act 1999 (c. 29),
 which is declared by the Treasury by order to be relevant for the purposes of the withholding of initial allowances.
- (3) If a relevant grant or relevant payment towards the expenditure is made after the making of an initial allowance, the allowance is to be withdrawn to that extent.
- (4) If the amount of the grant or payment is repaid by the grantee to the grantor, in whole or in part, the grant or payment is treated, to that extent, as never having been made.
- (5) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (3) or (4).
- (6) Any such assessment or adjustment is not out of time if it is made within 3 years of the end of the chargeable period in which the grant, payment or repayment was made.

## **CHAPTER 6**

### WRITING-DOWN ALLOWANCES

#### **309 Entitlement to writing-down allowance**

- (1) A person is entitled to a writing-down allowance for a chargeable period if—
  - (a) qualifying expenditure has been incurred on a building,
  - (b) at the end of that chargeable period, the person is entitled to the relevant interest in the building in relation to that expenditure, and
  - (c) at the end of that chargeable period, the building is an industrial building.
- (2) A person claiming a writing-down allowance may require the allowance to be reduced to a specified amount.

#### **310 Basic rule for calculating amount of allowance**

- (1) The basic rule is that the writing-down allowance for a chargeable period is—
  - (a) in the case of qualifying enterprise zone expenditure, 25% of the expenditure, and
  - (b) in the case of other qualifying expenditure, 4% of the expenditure.
- (2) The allowance is proportionately increased or reduced if the chargeable period is more or less than a year.
- (3) This basic rule does not apply if section 311 applies.

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### **311 Calculation of allowance after sale of relevant interest**

- (1) If a relevant event occurs, the writing-down allowance for any chargeable period ending after the event is—

$$RQE \times \frac{A}{B}$$

where—

RQE is the amount of the residue of qualifying expenditure immediately after the event,

A is the length of the chargeable period, and

B is the length of the period from the date of the event to the end of the period of 25 years beginning with the day on which the building was first used.

- (2) On any later relevant event, the writing-down allowance is further adjusted in accordance with this section.
- (3) “Relevant event” means—
- (a) a sale of the relevant interest in the building which is a balancing event to which section 314 applies, or
  - (b) an event which is a relevant event for the purposes of this section under section 347 or 349 (additional VAT liabilities and rebates).

### **312 Allowance limited to residue of qualifying expenditure**

- (1) The amount of the writing-down allowance for a chargeable period is limited to the residue of qualifying expenditure.
- (2) For this purpose the residue is ascertained immediately before writing off the writing-down allowance at the end of the chargeable period.

### **313 Meaning of “the residue of qualifying expenditure”**

The residue of qualifying expenditure is the qualifying expenditure that has not yet been written off in accordance with Chapter 8.

## **CHAPTER 7**

### **BALANCING ADJUSTMENTS**

#### *General*

### **314 When balancing adjustments are made**

- (1) A balancing adjustment is made if—
- (a) qualifying expenditure has been incurred on a building, and
  - (b) a balancing event occurs while the building is an industrial building or after it has ceased to be an industrial building.
- (2) A balancing adjustment is either a balancing allowance or a balancing charge and is made for the chargeable period in which the balancing event occurs.

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- (3) A balancing allowance or balancing charge is made to or on the person entitled to the relevant interest in the building immediately before the balancing event.
- (4) No balancing adjustment is made if the balancing event occurs more than 25 years after the building was first used.
- (5) If more than one balancing event within section 315(1) occurs during a period when the building is not an industrial building, a balancing adjustment is made only on the first of them.

### **315 Main balancing events**

- (1) The following are balancing events for the purposes of this Part—
  - (a) the relevant interest in the building is sold;
  - (b) if the relevant interest is a lease, the lease ends otherwise than on the person entitled to it acquiring the interest reversionary on it;
  - (c) the building is demolished or destroyed;
  - (d) the building ceases altogether to be used (without being demolished or destroyed);
  - (e) if the relevant interest depends on the duration of a foreign concession, the concession ends.
- (2) “Foreign concession” means a right or privilege granted by the government of, or any municipality or other authority in, a territory outside the United Kingdom.
- (3) Other balancing events are provided for by—
  - section 328 (realisation of capital value where site of building is in enterprise zone);
  - section 343 (ending of highway concession);
  - section 350 (additional VAT rebates and balancing adjustments);
 and a balancing event under this section may also occur as a result of section 317 (hotel not qualifying hotel for 2 years).

### **316 Proceeds from main balancing events**

- (1) References in this Part to the proceeds from a balancing event within section 315(1) are to the amounts received or receivable in connection with the event, as shown in the Table—

Table

#### Balancing events and proceeds

<i>1. Balancing event</i>	<i>2. Proceeds from event</i>
1. The sale of the relevant interest.	The net proceeds of the sale.
2. The demolition or destruction of the building.	The net amount received for the remains of the building, together with— (a) any insurance money received in respect of the demolition or destruction, and

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|---|--|
|   | (b) any other compensation of any description so received, so far as it consists of capital sums.            |
| 3. The building ceases altogether to be used. | Any compensation of any description received in respect of the event, so far as it consists of capital sums. |
| 4. A foreign concession ends.                 | Any compensation payable in respect of the relevant interest.  |
- 
- (2) The amounts referred to in column 2 of the Table are those received or receivable by the person whose entitlement to a balancing allowance or liability to a balancing charge is in question.

### **317 Balancing event where hotel not qualifying hotel for 2 years**

- (1) This section applies if—
- (a) a building ceases to be a qualifying hotel otherwise than on the occurrence of a balancing event which is within section 315(1), and
  - (b) after the building ceases to be a qualifying hotel, a period of 2 years elapses—
    - (i) in which it is not a qualifying hotel, and
    - (ii) without the occurrence of a balancing event.
- (2) This Part has effect as if—
- (a) the relevant interest in the building had been sold at the end of the 2 year period, and
  - (b) the net proceeds of the sale were equal to the market value of that interest.
- (3) Subsection (2) does not affect section 285 (building treated as industrial building during period of temporary disuse).
- (4) But a building is not to be treated under section 285(b) as continuing to be a qualifying hotel for more than 2 years after the end of the chargeable period in which it falls temporarily out of use.
- (5) This section does not apply to qualifying enterprise zone expenditure.

#### *Calculation of balancing adjustments*

### **318 Building an industrial building etc. throughout**

- (1) This section provides for balancing adjustments where the building was—
- (a) an industrial building, or
  - (b) used for research and development,
- for the whole of the relevant period of ownership.
- (2) A balancing allowance is made if—
- (a) there are no proceeds from the balancing event, or
  - (b) the proceeds from the balancing event are less than the residue of qualifying expenditure immediately before the event.
- (3) The amount of the balancing allowance is the amount of—

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- (a) the residue (if there are no proceeds);
  - (b) the difference (if the proceeds are less than the residue).
- (4) A balancing charge is made if the proceeds from the balancing event are more than the residue, if any, of qualifying expenditure immediately before the event.
- (5) The amount of the balancing charge is the amount of—
- (a) the difference, or
  - (b) the proceeds (if the residue is nil).

### **319 Building not an industrial building etc. throughout**

- (1) This section provides for balancing adjustments where the building was not—
- (a) an industrial building, or
  - (b) used for research and development,
- for a part of the relevant period of ownership.
- (2) A balancing allowance is made if—
- (a) there are no proceeds from the balancing event or the proceeds are less than the starting expenditure, and
  - (b) the net allowances made are less than the adjusted net cost of the building.
- (3) The amount of the balancing allowance is the amount of the difference between the adjusted net cost of the building and the net allowances made.
- (4) A balancing charge is made if the proceeds from the balancing event are equal to or more than the starting expenditure.
- (5) The amount of the balancing charge is an amount equal to the net allowances made.
- (6) A balancing charge is also made if—
- (a) there are no proceeds from the balancing event or the proceeds are less than the starting expenditure, and
  - (b) the net allowances made are more than the adjusted net cost of the building.
- (7) The amount of the balancing charge is the amount of the difference between the net allowances made and the adjusted net cost of the building.

### **320 Overall limit on balancing charge**

The amount of a balancing charge made on a person must not exceed the amount of the net allowances made.

*Meaning of “the relevant period of ownership” etc.*

### **321 The relevant period of ownership**

The relevant period of ownership is the period beginning—

- (a) with the day on which the building was first used for any purpose, or
  - (b) if the relevant interest has been sold after that day, with the day following that on which the sale (or the last such sale) occurred,
- and ending with the day on which the balancing event occurs.

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### **322 Starting expenditure**

- (1) This section gives the starting expenditure for the purposes of this Chapter.
- (2) If the person to or on whom the balancing allowance or balancing charge falls to be made is the person who incurred the qualifying expenditure, that expenditure is the starting expenditure.
- (3) Otherwise, the starting expenditure is the residue of qualifying expenditure at the beginning of the relevant period of ownership.
- (4) If section 340 (treatment of demolition costs) applies, the starting expenditure is increased by an amount equal to the net cost of the demolition.

### **323 Adjusted net cost**

The amount of the adjusted net cost is—

$$(S - P) \times \frac{I}{R}$$

where—

S is the starting expenditure,

P is the amount of any proceeds from the balancing event,

I is the number of days in the relevant period of ownership on which the building was an industrial building or used for research and development, and

R is the number of days in the whole of the relevant period of ownership.

### **324 Net allowances**

For the purposes of this Chapter, the amount of the net allowances made, in relation to any qualifying expenditure, is—

$$(I + \text{WDA} + \text{RDA}) - B$$

where—

I is the amount of any initial allowances made to the person in relation to that qualifying expenditure,

WDA is the amount of any writing-down allowances made to the person for chargeable periods ending on or before the date of the balancing event giving rise to the balancing adjustment,

RDA is the amount of any allowances under Part 6 (research and development allowances) made to the person for such chargeable periods, and

B is the amount of any balancing charges made on the person for such chargeable periods.

*Balancing allowances restricted where sale subject to subordinate interest*

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

- (1) This section applies if—
  - (a) the relevant interest in a building is sold subject to a subordinate interest,

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- (b) 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
  - (c) condition A or B is met.
- (2) Condition A is that—
- (a) the former owner,
  - (b) the person who acquires the relevant interest, and
  - (c) the person to whom the subordinate interest was granted,
- or any two of them, are connected persons.
- (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 an amount of rent or profits falling to be calculated by reference to that sum under section 34 of ICTA;



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“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.

*Qualifying enterprise zone expenditure: effect of realising capital value*

### **327 Capital value provisions: application of provisions**

Sections 328 to 331 apply only if expenditure on the construction of a building has been incurred—

(a) at a time—

(i) when the site of the building was wholly or mainly in an enterprise zone, and

(ii) which was not more than 10 years after the site was first included in the zone, or

(b) under a contract entered into at such a time.

### **328 Balancing adjustment on realisation of capital value**

(1) There is a balancing event if, while the building is an industrial building or after it has ceased to be one, any capital value is realised.

(2) No balancing allowance is to be made because of a balancing event under this section.

(3) The amount of capital value realised is to be treated as the proceeds from the balancing event.

(4) If a balancing event under this section occurs—

(a) section 319 (balancing adjustment where building not an industrial building etc. throughout) has effect as if, immediately after the balancing event, the starting expenditure were reduced by the amount of capital value realised, and

(b) if the net proceeds of a sale of the relevant interest fall to be increased under section 325(4) (balancing allowances restricted where sale subject to subordinate interest), those proceeds as so increased are reduced by the amount of any capital value realised before the sale.

(5) Capital value is realised if 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 is or will be subject.

(6) The capital value is realised on the making of the payment.

(7) The amount of capital value realised is the amount of capital value that is attributable to the subordinate interest under section 329.

### **329 Capital value that is attributable to subordinate interest**

(1) Capital value is attributable to the subordinate interest if it is paid—

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- (a) in consideration of the grant of the subordinate interest,
  - (b) instead of any rent payable by the person entitled to the subordinate interest,
  - (c) in consideration of the assignment of such rent, or
  - (d) in consideration of—
    - (i) the surrender of the subordinate interest, or
    - (ii) the variation or waiver of any of the terms on which it was granted.
- (2) If—
- (a) no premium is given in consideration of the grant of the subordinate interest or any premium so given is less than the commercial premium, and
  - (b) no commercial rent is payable in respect of the subordinate interest,
- capital value is attributable under subsection (1)(a) as if the commercial premium had been paid on and in consideration of the grant of the subordinate interest.
- (3) If any value given instead of any rent payable by the person entitled to the subordinate interest is less than the commercial amount, capital value is attributable under subsection (1)(b) as if the commercial amount had been paid.
- (4) If—
- (a) any rent payable in respect of the subordinate interest is assigned, but
  - (b) no value is given in consideration of the assignment or any value so given is less than the commercial amount,
- capital value is attributable under subsection (1)(c) as if the commercial amount had been given on and in consideration of the assignment.
- (5) If—
- (a) 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 surrender, variation or waiver or any value so given is less than the commercial amount,
- capital value is attributable under subsection (1)(d) as if the commercial amount had been given on and in consideration of the surrender, variation or waiver.
- (6) Capital value is not attributable to the subordinate interest if it is paid in consideration of the grant of a lease to which an election under section 290 (treating grant of lease exceeding 50 years as sale) applies.

### **330 Exception for payments more than 7 years after agreement**

- (1) Capital value is not realised for the purposes of section 328 if the payment is made more than 7 years after—
- (a) the agreement under which the qualifying expenditure was incurred was entered into, or
  - (b) if that agreement was conditional, the time when the agreement became unconditional.
- (2) If 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—
- (a) the agreement is made, or if conditional becomes unconditional, before the end of the period of 7 years referred to in subsection (1), and

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- (b) the event occurs, or any payment in consideration of the event is made, after the end of that period,  
the event or payment is treated for the purposes of subsection (1) as occurring or made before the end of the 7 years.
- (3) Subsection (1) does not apply if arrangements—
  - (a) under which the person entitled to the relevant interest acquired it, or
  - (b) which were made in connection with its acquisition,include provision which requires, or makes substantially more likely, any of the events set out in subsection (4).
- (4) The events are—
  - (a) the subsequent sale of the relevant interest;
  - (b) the subsequent grant of an interest in land out of the relevant interest;
  - (c) any other event on which capital value attributable to the subordinate interest would be paid or treated as paid.

### **331 Capital value provisions: interpretation**

- (1) “Capital value” means any capital sum—
  - (a) including what would have been a capital sum if it had been a money payment (and references to payment are to be read accordingly), but
  - (b) excluding so much of any sum as corresponds to an amount of rent or profits calculated by reference to that sum under section 34 of ICTA (premiums etc. treated as rent).
- (2) “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;
  - (c) a licence to occupy land.
- (3) References to granting an interest in land include agreeing to grant any such interest.
- (4) In section 329—
  - “commercial amount” means the amount that would have been given if the transaction had been at arm’s length,
  - “commercial premium” means the premium that would have been given if the transaction had been at arm’s length, and
  - “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 paid in consideration of the grant of the interest) if the transaction had been at arm’s length.
- (5) In the application of section 329 to Scotland, references to assignment are to be read as references to assignation.

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## CHAPTER 8

### WRITING OFF QUALIFYING EXPENDITURE

#### 332 Introduction

For the purposes of this Part qualifying expenditure is written off to the extent and at the times specified in this Chapter.

#### 333 Writing off initial allowances

If an initial allowance is made in respect of the qualifying expenditure, the amount of the allowance is written off at the time when the building is first used.

#### 334 Writing off writing-down allowances

- (1) If a writing-down allowance is made in respect of the qualifying expenditure, the amount of the allowance is written off at the end of the chargeable period for which the allowance is made.
- (2) If a balancing event occurs at the end of the chargeable period referred to in subsection (1), the amount written off under that subsection is to be taken into account in calculating the residue of qualifying expenditure immediately before the event to determine what balancing adjustment (if any) is to be made.

#### 335 Writing off research and development allowances

- (1) If an allowance under Part 6 (research and development allowances) is made in respect of the qualifying expenditure, the amount of the allowance is written off at the end of the chargeable period for which the allowance is made.
- (2) If a balancing event occurs at the end of the chargeable period referred to in subsection (1), the amount written off under that subsection is to be taken into account in calculating the residue of qualifying expenditure immediately before that event to determine what balancing adjustment (if any) is to be made.

#### 336 Writing off expenditure when building not an industrial building

- (1) This section applies if for any period or periods between—
  - (a) the time when the building was first used for any purpose, and
  - (b) the time when the residue of qualifying expenditure falls to be ascertained, the building was not an industrial building.
- (2) An amount equal to the notional writing-down allowances for the period or periods is written off at the time when the residue falls to be ascertained.
- (3) The notional writing-down allowances are the allowances that would have been made for the period or periods in question (if the building had remained an industrial building), at such rate or rates as would have been appropriate having regard to any relevant sale.
- (4) In subsection (3) “relevant sale” means a sale of the relevant interest as a result of which a balancing adjustment falls to be made under section 314.

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### **337 Writing off or increase of expenditure where balancing adjustment made**

- (1) This section applies if the relevant interest in the building is sold.
- (2) If a balancing allowance is made, the amount by which the residue of qualifying expenditure before the sale exceeds the net proceeds of the sale is written off at the time of the sale.
- (3) If a balancing charge is made, the amount of the residue of qualifying expenditure is increased at the time of the sale by the amount of the charge.
- (4) But if the balancing charge is made under section 319(6) (difference between net allowances made and adjusted net cost), the residue of qualifying expenditure immediately after the sale is limited to the net proceeds of the sale.

### **338 Writing off capital value which has been realised**

If a balancing event within section 328 occurs (realisation of capital value), an amount equal to any capital value realised is written off at the time of the event.

### **339 Crown or other person not within the charge to tax entitled to the relevant interest**

- (1) This section applies if at any time—
  - (a) the Crown, or
  - (b) a person who is not within the charge to tax,  
("A") is entitled to the relevant interest in a building.
- (2) Sections 333 to 338 (writing off qualifying expenditure) have effect as if all writing-down allowances and balancing adjustments had been made as could have been made if—
  - (a) a person ("B") who—
    - (i) is not the Crown,
    - (ii) is within the charge to tax, and
    - (iii) is not a company,had been entitled to the relevant interest, and
  - (b) the other assumptions in subsection (3) had been made.
- (3) The assumptions are that—
  - (a) while A was entitled to the relevant interest, all things which were done in relation to the building—
    - (i) by or to A, or
    - (ii) by or to a person using the building under the authority of A,were done by or to B for the purposes of, and in the course of, a trade carried on by B,
  - (b) any sale of the relevant interest in the building by or on behalf of A was made in connection with the termination of the trade carried on by B, and
  - (c) B's periods of account for that trade had, in the case of each tax year, ended immediately before the beginning of the next tax year.

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### 340 Treatment of demolition costs

- (1) This section applies if—
  - (a) a building is demolished, and
  - (b) the person to or on whom any balancing allowance or balancing charge is or might be made is the person incurring the cost of the demolition.
- (2) The net cost of the demolition is added to the residue of qualifying expenditure immediately before the demolition.
- (3) “The net cost of the demolition” means the amount, if any, by which the cost of the demolition exceeds any money received for the remains of the property.
- (4) If this section applies, neither the cost of the demolition nor the net cost of the demolition is treated for the purposes of any Part of this Act other than Part 10 (assured tenancy allowances) as expenditure on any other property replacing the property demolished.

## CHAPTER 9

### HIGHWAY UNDERTAKINGS

### 341 Carrying on of highway undertakings

- (1) For the purposes of this Part the carrying on of a highway undertaking is to be treated as the carrying on of an undertaking by way of trade; and accordingly references in this Part (except sections 274 and 276) to a trade include a highway undertaking.
- (2) For the purposes of this Part a person carrying on a highway undertaking is to be treated as occupying, for the purposes of the undertaking, any road in relation to which it is carried on.
- (3) In this Chapter “highway undertaking” has the meaning given in item 6 of Table B in section 274.
- (4) In that item and this Chapter “highway concession”, in relation to a road, means—
  - (a) a right to receive sums from [<sup>F2</sup>the relevant authority] because the road is or will be used by the general public, or
  - (b) if the road is a toll road, the right to charge tolls in respect of the road.
- [<sup>F3</sup>(5) In subsection (4) “the relevant authority” means—
  - (a) the Secretary of State,
  - (b) the Scottish Ministers,
  - (c) the National Assembly for Wales, or
  - (d) the Department for Regional Development in Northern Ireland.]

#### Textual Amendments

**F2** Words in s. 341(4) substituted (with effect as mentioned in s. 69(2) of the amending Act) by [Finance Act 2001 \(c. 9\), s. 69\(1\), Sch. 21 para. 6\(1\)](#)

**F3** S. 341(5) inserted (with effect as mentioned in s. 69(2) of the amending Act) by [Finance Act 2001 \(c. 9\), s. 69\(1\), Sch. 21 para. 6\(2\)](#)

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### **342 The relevant interest**

- (1) For the purposes of Chapter 3 (the relevant interest in the building) as it applies to expenditure incurred on the construction of a road, a highway concession is not to be treated as an interest in the road.
- (2) But if the person who incurred the expenditure on the construction of the road—
  - (a) was not entitled to an interest in the road when he incurred the expenditure, but
  - (b) was at that time entitled to a highway concession in respect of the road,the highway concession is to be treated as the relevant interest in relation to that expenditure.
- (3) Any question as to what is the relevant interest is to be determined on the assumption that, if section 344 (renewed or new concession treated as extension of earlier concession) applies, the renewed or new concession is a continuation of the earlier concession.

### **343 Balancing adjustment on ending of concession**

- (1) If—
  - (a) the relevant interest is a highway concession, and
  - (b) the concession is brought to or comes to an end without being treated as extended under section 344,the ending of the concession is a balancing event.
- (2) The proceeds from such a balancing event are—
  - (a) any insurance money received by the person entitled to the highway concession in respect of any qualifying expenditure, and
  - (b) other compensation so received so far as it consists of capital sums.

### **344 Cases where highway concession is to be treated as extended**

- (1) A highway concession in respect of a road is to be treated as extended if—
  - (a) the person entitled to the concession takes up a renewed concession in respect of the whole or a part of the road, or
  - (b) that person or a person connected with him takes up a new concession in respect of—
    - (i) the whole or a part of the road, or
    - (ii) a road that includes the whole or a part of the road.
- (2) But the concession is to be treated as extended only—
  - (a) to the extent that the concession which has in fact ended, and the renewed or new concession, relate to the same road, and
  - (b) for the period of the renewed or new concession.
- (3) A person takes up a renewed or new concession if he is afforded, whether or not under legally enforceable arrangements, an opportunity to be granted the renewed or new concession and takes advantage of the opportunity.
- (4) For the purposes of subsection (3) it does not matter whether the renewed or new concession is on the same terms as the previous concession or on modified terms.
- (5) If—

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- (a) a highway concession is treated as extended under this section, and
  - (b) the period of the extension is different in relation to different parts of the road in relation to which the concession has been granted,
- such apportionments are to be made for the purposes of section 343 as are just and reasonable.

## CHAPTER 10

### ADDITIONAL VAT LIABILITIES AND REBATES

#### *Introduction*

#### **345 Introduction**

For the purposes of this Chapter—

- (a) “additional VAT liability” and “additional VAT rebate” have the meaning given by section 547,
- (b) the time when—
  - (i) a person incurs an additional VAT liability, or
  - (ii) an additional VAT rebate is made to a person,
 is given by section 548, and
- (c) the chargeable period in which, and the time when, an additional VAT liability or an additional VAT rebate accrues are given by section 549.

#### *Additional VAT liabilities*

#### **346 Additional VAT liabilities and initial allowances**

- (1) This section applies if—
  - (a) a person was entitled to an initial allowance in respect of qualifying enterprise zone expenditure,
  - (b) the person entitled to the relevant interest in relation to that expenditure incurs an additional VAT liability in respect of that expenditure,
  - (c) the additional VAT liability is incurred at a time when the building is, or is to be, an industrial building—
    - (i) occupied by the person entitled to the relevant interest or a qualifying lessee, or
    - (ii) used by a qualifying licensee, and
  - (d) the additional VAT liability is incurred not more than 10 years after the site of the building was first included in the enterprise zone.
- (2) If this section applies, the person entitled to the relevant interest is entitled to an initial allowance on the amount of the additional VAT liability.
- (3) The amount of the initial allowance is 100% of the amount of the additional VAT liability.
- (4) A person claiming an initial allowance under this section may require the allowance to be reduced to a specified amount.



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- (5) The allowance is made for the chargeable period in which the additional VAT liability accrues.
- (6) The persons mentioned in subsection (1)(a) and (b) need not be the same.

#### **347 Additional VAT liabilities and writing-down allowances**

- (1) This section applies if the person entitled to the relevant interest in relation to qualifying expenditure incurs an additional VAT liability in respect of that expenditure.
- (2) If this section applies—
  - (a) the additional VAT liability is treated as qualifying expenditure, and
  - (b) the amount of the residue of qualifying expenditure is accordingly increased at the time when the liability accrues by the amount of the liability.
- (3) The incurring of the additional VAT liability is a relevant event for the purposes of section 311 (calculation of writing-down allowances) that is to be treated as occurring at the time when the liability accrues.

#### **348 Additional VAT liabilities and writing off initial allowances**

If an initial allowance is made in respect of an additional VAT liability incurred after the building is first used, the amount of the allowance is written off at the time when the liability accrues.

#### *Additional VAT rebates*

#### **349 Additional VAT rebates and writing-down allowances**

- (1) This section applies if—
  - (a) an additional VAT rebate is made in respect of qualifying expenditure to the person entitled to the relevant interest in relation to that qualifying expenditure, and
  - (b) immediately before the rebate accrues, the residue of that qualifying expenditure is equal to, or greater than, the amount of the rebate.
- (2) The making of the additional VAT rebate is a relevant event for the purposes of section 311 (calculation of writing-down allowances) that is to be treated as occurring at the time when the rebate accrues.

#### **350 Additional VAT rebates and balancing adjustments**

- (1) If an additional VAT rebate is made in respect of qualifying expenditure to the person entitled to the relevant interest in relation to that qualifying expenditure—
  - (a) the making of the rebate is a balancing event for the purposes of this Part, but
  - (b) the making of balancing adjustments as a result of the event is subject to subsections (2) and (3).
- (2) No balancing allowance is to be made as a result of the event.
- (3) A balancing charge is not to be made as a result of the event unless—

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- (a) the amount of the additional VAT rebate is more than the amount of the residue of qualifying expenditure immediately before the time when the rebate accrues, or
  - (b) there is no such residue.
- (4) The amount of the balancing charge is—
- (a) the amount of the difference, or
  - (b) the amount of the rebate (if there is no residue).
- (5) If a balancing charge is made under this section, the starting expenditure is reduced by the amount of that charge in a case where section 322(2) applies (person subject to balancing adjustment is the person who incurred the qualifying expenditure).

### **351 Additional VAT rebates and writing off qualifying expenditure**

If an additional VAT rebate is made in respect of qualifying expenditure, an amount equal to the rebate is written off at the time when the rebate accrues.

## **CHAPTER 11**

### GIVING EFFECT TO ALLOWANCES AND CHARGES

### **352 Trades**

- (1) An allowance or charge to which a person is entitled or liable under this Part is to be given effect in calculating the profits of that person's trade, by treating—
- (a) the allowance as an expense of the trade, and
  - (b) the charge as a receipt of the trade.
- (2) In the case of a person who—
- (a) is entitled to an allowance or liable to a charge in respect of a commercial building, and
  - (b) occupies the building in the course of a profession or vocation,
- the references in subsection (1) to a trade are to be read as references to the profession or vocation.
- (3) Subsection (1) is subject to the following provisions of this Chapter.

### **353 Lessors and licensors**

- (1) This section applies if—
- (a) a person is entitled or liable to an allowance or charge for a chargeable period (“the relevant period”), but
  - (b) his interest in the building in question is or was subject to a lease or a licence at the relevant time.
- (2) If the person's interest in the building is an asset of a Schedule A business carried on by him at any time in the relevant period, the allowance or charge is to be given effect in calculating the profits of that business for the relevant period, by treating—
- (a) the allowance as an expense of that business, and
  - (b) the charge as a receipt of that business.

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- (3) If the person's interest in the building is an asset of an overseas property business carried on by him at any time in the relevant period, the allowance or charge is to be given effect in calculating the profits of the overseas property business for the relevant period, by treating—
  - (a) the allowance as an expense of that business, and
  - (b) the charge as a receipt of that business.
- (4) If the person's interest in the building is not an asset of any property business carried on by him at any time in the relevant period, the allowance or charge is to be given effect by treating him as if he had been carrying on a Schedule A business in that period and as if—
  - (a) the allowance were an expense of that business, and
  - (b) the charge were a receipt of that business.
- (5) In subsection (1) “the relevant time” means—
  - (a) in relation to an initial allowance, the time when the expenditure was incurred or any subsequent time before the building is used for any purpose;
  - (b) in relation to a writing-down allowance, the end of the relevant period;
  - (c) in relation to a balancing allowance or balancing charge, the time immediately before the event giving rise to the allowance or charge.

### **354 Buildings temporarily out of use**

- (1) This section applies if a person is entitled to an allowance or liable to a charge for a chargeable period during which the building is treated as an industrial building under section 285 (building still industrial building despite temporary disuse).
- (2) If, when the building was last in use as an industrial building—
  - (a) it was in use for the purposes of a trade which has since been permanently discontinued, or
  - (b) the relevant interest in the building was subject to a lease or a licence which has since come to an end,section 353(4) applies to the person as if the relevant interest were subject to a lease or licence at the relevant time.
- (3) If—
  - (a) the person is liable to a balancing charge, and
  - (b) when the building was last in use as an industrial building, it was in use as an industrial building for the purposes of a trade which was carried on by the person but which has since been permanently discontinued,the same deductions may be made from the amount of the balancing charge as may be made under section 105 of ICTA (deductions allowed in case of post-cessation receipts) from an amount chargeable to tax under section 103 or 104(1) of ICTA.
- (4) Subsection (3) does not affect the making of any deduction allowed under any other provision of the Tax Acts.
- (5) For the purposes of this section the permanent discontinuance of a trade does not include an event treated as a permanent discontinuance under section 113(1) or 337(1) of ICTA (change in persons carrying on a trade etc. and effect of company ceasing to trade etc.).

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- (6) In this section “trade”, in relation to a commercial building, includes a profession or vocation.

### **355 Buildings for miners etc.: carry-back of balancing allowances**

- (1) This section applies if—
- (a) a trade consists of or includes the working of a source of mineral deposits (within the meaning of item 7 of Table A in section 274),
  - (b) a balancing allowance falls to be made under this Part for the last chargeable period in which the trade is carried on,
  - (c) the event giving rise to the allowance is—
    - (i) the source of mineral deposits ceasing to be worked, or
    - (ii) the coming to an end of a foreign concession,
  - (d) the allowance is made for expenditure on a building which was constructed for occupation by, or for the welfare of, persons employed at or in connection with the working of the source of mineral deposits, and
  - (e) full effect cannot be given to the allowance because there are insufficient profits for that chargeable period.
- (2) If this section applies, the person entitled to the allowance may claim that the balance of the allowance is to be given for the last preceding chargeable period, and so on for other preceding chargeable periods.
- (3) But allowances are not to be given under subsection (2) for chargeable periods amounting in total to more than 5 years; but a proportionately reduced allowance may be given for a chargeable period of which part is required to make up the 5 years.
- (4) In counting the 5 years, include any period for which an allowance might be made but cannot be given effect because there are insufficient profits.
- (5) If this section applies to a company, no allowance may be given under this section so as to create or increase a loss in any accounting period.
- (6) If this section applies to a company and a claim is made both under this section and under section 393A(1) of ICTA (relief for company trading losses)—
- (a) effect is to be given to the claim under that section before this section is applied, and
  - (b) for the purposes of giving effect to the claim under that section, the allowance for which the claim under this section is made is to be disregarded.

## **CHAPTER 12**

### **SUPPLEMENTARY PROVISIONS**

### **356 Apportionment of sums partly referable to non-qualifying assets**

- (1) If the sum paid for the sale of the relevant interest in a building is attributable—
- (a) partly to assets representing expenditure for which an allowance can be made under this Part, and
  - (b) partly to assets representing other expenditure,

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only so much of the sum as on a just and reasonable apportionment is attributable to the assets referred to in paragraph (a) is to be taken into account for the purposes of this Part.

- (2) Subsection (1) applies to other proceeds from a balancing event in respect of a building as it applies to a sum given for the sale of the relevant interest in the building.
- (3) Subsection (1) does not affect any other provision of this Act requiring an apportionment of the proceeds of a balancing event.

### **357 Arrangements having an artificial effect on pricing**

- (1) If—
  - (a) the relevant interest in a building is sold,
  - (b) related arrangements have been entered into, at or before the time when the sale price is fixed, which had the effect at that time of enhancing the value of the relevant interest, and
  - (c) the arrangements contain a provision which has an artificial effect on pricing (see subsection (4)),

the sum paid on the sale of the relevant interest is to be treated for the purposes of arriving at qualifying expenditure as reduced to what it would have been if the arrangements had not contained the provision having that artificial effect.

- (2) If—
  - (a) qualifying expenditure is equal to a price paid on a sale of the relevant interest in a building,
  - (b) related arrangements have been entered into, at or before the time when the sale price is fixed, which had the effect at that time of enhancing the value of the relevant interest, and
  - (c) the arrangements contain a provision which has an artificial effect on pricing,the proceeds from any balancing event subsequently occurring in relation to the building are to be treated for the purposes of this Part as reduced to what they would have been if the arrangements had not contained the provision having that artificial effect.
- (3) “Related arrangements” means arrangements between two or more persons which relate—
  - (a) to an interest in or right over the building, or
  - (b) to other arrangements made with respect to such an interest or right;and for this purpose it is immaterial whether the interest or right in question is granted by the person entitled to the relevant interest or another person.
- (4) Arrangements contain a provision having an artificial effect on pricing to the extent that they go beyond what could reasonably have been regarded as required in comparable commercial transactions by the market conditions prevailing when the arrangements were entered into.
- (5) “Comparable commercial transactions” means transactions—
  - (a) involving interests in or rights over buildings of the same kind as (or of a similar kind to) the building to which the arrangements relate, and
  - (b) made by persons dealing with each other at arm’s length in the open market.

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### **358 Requisitioned land**

- (1) This section applies in relation to any period (“period of requisition”) for which compensation—
  - (a) is payable, or
  - (b) but for any agreement would be payable,
 under section 2(1)(a) of the Compensation (Defence) Act 1939 (c. 75).
- (2) This Part has effect in relation to the period of requisition as if the Crown had been in possession of the land for that period under a lease.
- (3) If a person carrying on a trade is authorised by the Crown to occupy the land (or part of it) during the whole or a part of the period of requisition, this Part has effect as if the Crown had granted a sub-lease of the land (or that part of it) to the occupier.
- (4) If subsection (2) or (3) applies, references in this Part to—
  - (a) the surrender of a leasehold interest,
  - (b) a leasehold interest being extinguished on the person entitled to it acquiring the interest which is reversionary on it, or
  - (c) the merger of a leasehold interest,
 apply (with the necessary modifications) in relation to the lease under subsection (2) or the sub-lease under subsection (3).
- (5) If the person who (subject to the rights of the Crown) is entitled to possession of the land pays any sum to—
  - (a) the Crown, or
  - (b) if subsection (3) applies, the occupier,
 in respect of a building constructed on the land during the period of requisition, the sum is to be treated for the purposes of this Part as paid in consideration of the surrender of the lease or sub-lease (as the case may be).

### **359 Provisions applying on termination of lease**

- (1) This section applies for the purposes of this Part if a lease is terminated.
- (2) If, with the consent of the lessor, the lessee of a building remains in possession of the building after the termination without a new lease being granted to him the lease is treated as continuing so long as the lessee remains in possession.
- (3) If on the termination a new lease is granted to the lessee as a result of the exercise of an option available to him under the terms of the first lease, the second lease is treated as a continuation of the first.
- (4) If on the termination the lessor pays a sum to the lessee in respect of a building comprised in the lease, the lease is treated as if it had come to an end by surrender in consideration of the payment.
- (5) If on the termination—
  - (a) another lease is granted to a different lessee, and
  - (b) in connection with the transaction that lessee pays a sum to the person who was the lessee under the first lease,

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the two leases are to be treated as if they were the same lease which had been assigned by the lessee under the first lease to the lessee under the second lease in consideration of the payment.

### **360 Meaning of “lease” etc.**

- (1) In this Part “lease” includes—
- (a) an agreement for a lease if the term to be covered by the lease has begun, and
  - (b) any tenancy,
- but does not include a mortgage (and “lessee”, “lessor” and “leasehold interest” are to be read accordingly).
- (2) In the application of this Part to Scotland—
- (a) “leasehold interest” (or “leasehold estate”) means the interest of a tenant in property subject to a lease, and
  - (b) any reference to an interest which is reversionary on a leasehold interest or on a lease is to be read as a reference to the interest of the landlord in the property subject to the leasehold interest or lease.

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