



Capital Allowances Act 2001

2001 CHAPTER 2

PART 3

INDUSTRIAL BUILDINGS ALLOWANCES

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.
- (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.

Status: Point in time view as at 14/08/2007.

Changes to legislation: There are currently no known outstanding effects for the Capital Allowances Act 2001, Chapter 7. (See end of Document for details)

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 (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.

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- (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—
- (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).

Status: Point in time view as at 14/08/2007.

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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.

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.

Status: Point in time view as at 14/08/2007.

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- (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—

$$(I + WDA + RDA) - B$$

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,
- (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.

Status: Point in time view as at 14/08/2007.

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

326 Interpretation of section 325

- (1) In section 325—

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

“premium” includes any capital consideration, except so much of any sum as corresponds to [F1—

- (a)] an amount of rent or profits falling to be calculated by reference to that sum under section 34 of ICTA; [F2, or
- (b) an amount brought into account as a receipt in calculating the profits of a UK property business under sections 277 to 281 of ITTOIA 2005 that is calculated by reference to the sum;]

an amount of rent or profits falling to be calculated by reference to that sum under section 34 of ICTA;

“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—

Status: Point in time view as at 14/08/2007.

Changes to legislation: There are currently no known outstanding effects for the Capital Allowances Act 2001, Chapter 7. (See end of Document for details)

“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.

Textual Amendments

- F1** Words in s. 326(1) become para. (a) (with effect in accordance with s. 883(1) of the amending Act) by virtue of [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 553\(a\)](#) (with [Sch. 2](#))
- F2** Words in s. 326(1) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 553\(b\)](#) (with [Sch. 2](#))

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.

Status: Point in time view as at 14/08/2007.

Changes to legislation: There are currently no known outstanding effects for the Capital Allowances Act 2001, Chapter 7. (See end of Document for details)

329 Capital value that is attributable to subordinate interest

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

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- (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
- (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 [F3—
 - (i)] an amount of rent or profits calculated by reference to that sum under section 34 of ICTA (premiums etc. treated as rent) [F4, or
 - (ii) an amount brought into account as a receipt in calculating the profits of a UK property business under sections 277 to 281 of ITTOIA 2005 that is calculated by reference to the sum.]

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.

Status: Point in time view as at 14/08/2007.

Changes to legislation: There are currently no known outstanding effects for the Capital Allowances Act 2001, Chapter 7. (See end of Document for details)

- (5) In the application of section 329 to Scotland, references to assignment are to be read as references to assignation.

Textual Amendments

- F3** Words in s. 331(1)(b) become s. 331(1)(b)(i) (with effect in accordance with s. 883(1) of the amending Act) by virtue of [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 554\(a\)](#) (with [Sch. 2](#))
- F4** S. 331(1)(b)(ii) and word inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 554\(b\)](#) (with [Sch. 2](#))

Status:

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Changes to legislation:

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