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1990

VOLUME ONE

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CONTENTS

<i>Chronological Table</i>	page v
<i>Index of Short Titles</i>	vii

CHRONOLOGICAL TABLE

VOLUME ONE

VOLUME ONE

- c.1. Capital Allowances Act 1990
2. Civil Aviation Authority (Borrowing Powers) Act 1990
3. Coal Industry Act 1990
4. Consolidated Fund Act 1990
5. Criminal Justice (International Co-operation) Act 1990
6. Education (Student Loans) Act 1990
7. Pensions (Miscellaneous Provisions) Act 1990
8. Town and Country Planning Act 1990

CAPITAL ALLOWANCES ACT 1990*

(1990 c. 1)

A table showing the derivation of the provisions of this consolidation Act will be found at the end of the Act. The table has no official status.

ARRANGEMENT OF SECTIONS

PART I

INDUSTRIAL BUILDINGS AND STRUCTURES

CHAPTER I

INITIAL ALLOWANCES

SECT.

1. Buildings and structures in enterprise zones.
2. Transitional relief for regional projects.

CHAPTER II

WRITING-DOWN ALLOWANCES, BALANCING ALLOWANCES AND BALANCING CHARGES

3. Writing-down allowances.
4. Balancing allowances and balancing charges.
5. Restriction of balancing allowances on sale of industrial buildings or structures.
6. Buildings and structures (including hotels) in enterprise zones.
7. Other hotels.

CHAPTER III

PROVISIONS SUPPLEMENTARY TO CHAPTERS I AND II

8. Writing off of expenditure and meaning of "residue of expenditure".
9. Manner of making allowances and charges.
10. Purchases of buildings and structures.
11. Long leases.
12. Expenditure on repair of buildings.
13. Expenditure on sites for machinery and plant.
14. Sports pavilions.
15. Temporary disuse of industrial buildings or structures.
16. Requisitioned land, holding over of leased land and other special cases.
17. Mining structures etc.: balancing allowances carried back to earlier chargeable periods.
18. Definition of "industrial building or structure".
19. Meaning of "qualifying hotel".
20. Meaning of "the relevant interest".
21. Other interpretation of Part I.

PART II

MACHINERY AND PLANT

CHAPTER I

ALLOWANCES AND CHARGES: GENERAL PROVISIONS

22. First-year allowances: transitional relief for regional projects.
23. Information relating to first-year allowances.
24. Writing-down allowances and balancing adjustments.
25. Qualifying expenditure.

* Annotations by John W. Shock, M.A., F.C.A., Barrister.

SECT.

- 26. The disposal value.
- 27. Professions, employments, vocations etc.
- 28. Investment companies and life assurance companies.
- 29. Furnished holiday lettings.

CHAPTER II

SHIPS

- 30. First-year allowances.
- 31. Writing-down allowances.
- 32. Ships not used in the actual trade.
- 33. Exclusion of section 31.

CHAPTER III

EXPENSIVE MOTOR CARS

- 34. Writing-down allowances etc.
- 35. Contributions to expenditure, and hiring of cars.
- 36. Definition of "motor car", etc.

CHAPTER IV

SHORT-LIFE ASSETS

- 37. Election for certain machinery or plant to be treated as short-life assets.
- 38. Assets which cannot be treated as short-life assets.

CHAPTER V

LEASED ASSETS AND INEXPENSIVE CARS

- 39. Meaning of "qualifying purpose".
- 40. Meaning of "short-term leasing" and "the requisite period".
- 41. Writing-down allowances etc. for leased assets and inexpensive cars.
- 42. Assets leased outside the United Kingdom.
- 43. Joint lessees: new expenditure.
- 44. Further provisions relating to joint lessees in cases involving new expenditure.
- 45. Joint lessees: old expenditure.
- 46. Recovery of excess relief: new expenditure.
- 47. Recovery of excess relief: old expenditure.
- 48. Information relating to allowances made in respect of new expenditure.
- 49. Information relating to allowances made in respect of old expenditure.
- 50. Interpretation of Chapter V.

CHAPTER VI

FIXTURES

- 51. Application and interpretation of Chapter VI.
- 52. Expenditure incurred by holder of interest in land.
- 53. Expenditure incurred by equipment lessor.
- 54. Expenditure included in consideration for acquisition of existing interest in land.
- 55. Expenditure incurred by incoming lessee: transfer of allowances.
- 56. Expenditure incurred by incoming lessee: lessor not entitled to allowances.
- 57. Fixtures treated as ceasing to belong to particular persons.
- 58. Equipment lessors: special provisions.
- 59. Disposal value of fixtures in certain cases.

CHAPTER VII

MISCELLANEOUS EXPENDITURE

SECT.

- 60. Machinery and plant on hire-purchase etc.
- 61. Machinery and plant on lease.
- 62. Treatment of demolition costs.
- 63. Mineral extraction.
- 64. Transfers of interests in oil fields.
- 65. Partnership using property of a partner.
- 66. Building alterations connected with installation of machinery or plant.
- 67. Expenditure on thermal insulation.
- 68. Exclusion of certain expenditure relating to films, tapes and discs.
- 69. Expenditure on fire safety.
- 70. Expenditure on safety at sports grounds.
- 71. Security.
- 72. Security: supplementary.

CHAPTER VIII

SUPPLEMENTARY PROVISIONS

- 73. Manner of making allowances and charges.
- 74. Allowances not available: expenses of Members of Parliament.
- 75. Further restrictions on allowances.
- 76. Extension of section 75.
- 77. Successions to trades: connected persons.
- 78. Succession to trades where no election made under section 77.
- 79. Effect of use partly for trade etc. and partly for other purposes.
- 80. Effect of subsidies towards wear and tear.
- 81. Effect of use after user not attracting capital allowances, or after receipt by way of gift.
- 82. Capital expenditure to which this Part does not apply.
- 83. Other interpretative provisions.

PART III

DWELLING-HOUSES LET ON ASSURED TENANCIES

- 84. Application of Part III.
- 85. Writing-down allowances.
- 86. Qualifying dwelling-houses.
- 87. Balancing allowances and charges and withdrawal of initial allowances in certain cases.
- 88. Dwelling-houses not continuously qualifying dwelling-houses.
- 89. Supplementary provisions where dwelling-house ceases to be a qualifying dwelling-house.
- 90. Writing off of expenditure and meaning of "residue of expenditure".
- 91. Buildings bought unused.
- 92. Manner of making allowances and charges.
- 93. Repairs, and double allowances.
- 94. Holding over by lessees, etc.
- 95. The relevant interest.
- 96. The appropriate capital expenditure.
- 97. Interpretation.

PART IV

MINERAL EXTRACTION

CHAPTER I

ALLOWANCES AND CHARGES

- 98. Writing-down and balancing allowances.
- 99. Disposal receipts.

SECT.

- 100. Balancing charges: excess of allowances etc. over expenditure.
- 101. Occasions of balancing allowances.
- 102. Treatment of qualifying expenditure on mineral exploration and access.
- 103. Demolition costs.
- 104. Manner of making allowances and charges.

CHAPTER II

QUALIFYING EXPENDITURE

- 105. General provisions.
- 106. Pre-trading expenditure on machinery or plant which is sold etc.
- 107. Pre-trading exploration expenditure.
- 108. Contributions by mining concerns to public services etc. outside the United Kingdom.
- 109. Restoration expenditure.

CHAPTER III

LIMITATIONS ON QUALIFYING EXPENDITURE ETC.

- 110. Expenditure on the acquisition of land.
- 111. Reduction of qualifying expenditure for premium relief.
- 112. Restriction of disposal receipts.
- 113. Assets formerly owned by traders.
- 114. Assets previously acquired.
- 115. Expenditure partly attributable to mineral exploration and access.
- 116. Oil licences etc.
- 117. Transfer of mineral assets within a group.
- 118. Assets formerly owned by non-traders.

CHAPTER IV

SUPPLEMENTARY PROVISIONS

- 119. Transitional provisions relating to old expenditure.
- 120. Time when expenditure is incurred.
- 121. Interpretation of Part IV.

PART V

AGRICULTURAL BUILDINGS ETC.

CHAPTER I

AGRICULTURE

- 122. Allowances for expenditure incurred before 1st April 1986.
- 123. Allowances for expenditure incurred after 31st March 1986.
- 124. Expenditure qualifying for allowances.
- 125. Meaning of "major interest" and "the relevant interest".
- 126. Transfers of relevant interest.
- 127. Buildings etc. bought unused.
- 128. Balancing allowances and charges.
- 129. Balancing events.
- 130. Restriction of balancing allowances on sale of buildings.

CHAPTER II

FORESTRY

- 131. Forestry: transitional provisions.

CHAPTER III

SUPPLEMENTAL

SECT.

- 132. Manner of making allowances and charges.
- 133. Interpretation of Part V.

PART VI

DREDGING

- 134. Allowances for expenditure on dredging.
- 135. Interpretation of Part VI.

PART VII

SCIENTIFIC RESEARCH

- 136. Allowances for expenditure on scientific research not of a capital nature, and on payments to research associations, universities etc.
- 137. Allowances for capital expenditure on scientific research.
- 138. Assets ceasing to belong to traders.
- 139. Supplemental.

PART VIII

SUPPLEMENTARY PROVISIONS

- 140. Income tax allowances and charges in taxing a trade etc.
- 141. Other income tax allowances.
- 142. Restriction of set-off of allowances against general income.
- 143. Tax agreements.
- 144. Corporation tax allowances and charges in taxing a trade.
- 145. Other corporation tax allowances.
- 146. Writing-down allowances under Parts V and VI.
- 147. Exclusion of double allowances.
- 148. Double allowances; transitional provisions.
- 149. Companies not resident in the United Kingdom.
- 150. Apportionment of consideration, and exchanges and surrenders of leasehold interests.
- 151. Procedure on apportionments.
- 152. Succession to trades etc.
- 153. Subsidies, contributions etc.
- 154. Allowances in respect of contributions to capital expenditure.
- 155. Further provisions relating to capital contributions.
- 156. Meaning of "sale, insurance, salvage or compensation moneys".
- 157. Sales between connected persons etc.
- 158. Further provisions relating to sales without change of control or between connected persons.
- 159. Capital expenditure, capital sums and time when capital expenditure was incurred.
- 160. Meaning of "basis period".
- 161. Other interpretative provisions.
- 162. Application to Scotland.
- 163. Continuity and construction of enactments etc.
- 164. Commencement, amendments and repeals.
- 165. Short title.

SCHEDULES:

- Schedule 1—Consequential amendments.
- Schedule 2—Repeals.

An Act to consolidate certain enactments relating to capital allowances.
[19th March 1990]

PARLIAMENTARY DEBATES

Hansard, H.L. Vol. 513, col. 603; Vol. 515, cols. 11, 523; Vol. 516, cols. 11, 389; H.C. Vol. 169, col. 128.

The Bill was considered in Committee on January 31, 1990.

INTRODUCTION AND GENERAL NOTE

The law relating to capital allowances was last codified in the Capital Allowances Act 1968 but a new code relating to machinery and plant was introduced only three years later in the Finance Act 1971. Since then it has been substantially amended, almost every Finance Act amending it in some respect. Those listed below are only a few of the changes made.

The F.A. 1978 brought certain hotels and sports stadia (later extended to sports grounds) within the scope of the provisions. The F.A. 1980 introduced complex sections to limit capital allowances on machinery and plant provided for leasing as well as new provisions relating to enterprise zones and small workshops.

The F.A. 1982 extended the rules regarding leased assets in relation to assets leased overseas. The Act also brought in a category of "very small workshops" and introduced an allowance for dwelling-houses let on assured tenancies. The F.A. 1984 saw the beginning of the progressive withdrawal of initial and first-year allowances.

The F.A. 1985 created a new category of "short-life assets" as well as making a number of other changes.

The F.A. 1986 introduced entirely new codes relating to allowances connected with mineral extraction and agricultural land and buildings and further amended the rules relating to leased assets.

Finally, the F.A. 1989 introduced allowances on "security assets."

To discern a complete code of allowances it had become necessary to refer to no less than twenty-two different Acts. Consolidation is most welcome.

PART I

INDUSTRIAL BUILDINGS AND STRUCTURES

GENERAL NOTE

This part of the Act deals with allowances on industrial buildings and structures which are defined in s.17. There is no statutory definition of "building" or "structure" but the courts have considered their meanings in other contexts. Reference may be made as to buildings to the following cases:

(1) *R. v. Gregory* (1833) 5 B. & Ad. 555. A wall by itself is probably not a building.

(2) *Moir v. Williams* [1892] 1 Q.B. 264. A building is, in general terms, an enclosure of brick or stone-work with a roof (but see (3) below).

(3) *Waite's Executors v. I.R.C.* [1914] 3 K.B. 196. Earth embankments or sea walls were held not to be buildings or structures (see now *I.C.T.A.* 1988, s.30). It was said in the judgment that a building may be of wood as well as brick or stone and that a roof is not essential.

(4) *Morrison v. I.R.C.* [1915] 1 K.B. 716. This case was decided on its particular facts but it was said, in general terms, that the decision rests on the character of the erection, the nature of the property on which it stands and its function on that property.

(5) *Masonite (Africa) v. Estcourt* [1955] 3 S.A. 88 (SA). Roofless circular sedimentation tanks with concrete walls to which access was by an external ladder were held not to be buildings. No decision was made as to their being structures which they certainly would have been.

"Structure" has a wider meaning than building and in *I.R.C. v. Smyth* [1914] 3 K.B. 406, it was held that it might include a road. This judgment referred to the Finance (1909-10) Act 1910 and was not concerned with capital allowances.

In *I.R.C. v. Hunter* [1914] 3 K.B. 423 a structure was said to be "something artificially erected, constructed, put together, of a certain degree of size and permanence, which is still maintained as an artificial erection, or which, though not so maintained, has not become indistinguishable in bounds from the natural earth surrounding. What degree of size and permanence will do is a question of fact in every case".

In another context it was said in *London County Council v. Tann* [1954] 1 W.L.R. 371, that "structure" was not *eiusdem generis* with "building" and was wider in meaning. A common-sense approach was required.

The view of the Revenue, set out in Leaflet CA 2, is that "structure" embraces artificial works which could not properly be described as buildings. Examples given are walls, bridges, dams, roads, culverts and tunnels. It is stressed that the question is one of fact to be determined in each case.

As to the dividing line between plant and buildings, see Commentary to Part II.

In Part I, Chapter 1 deals with initial allowances which, except in relation to enterprise zones, were abolished in respect of expenditure incurred on or after April 1, 1986. The rate is 100 per cent. under s.1 or, in cases covered by s.2, 75 per cent.

The five sections of Chapter II contain the basis of the writing-down allowances and balancing allowances and charges with particular reference in ss.6 and 7 to enterprise zones and hotels.

Chapter III enlarges on and supplements the provisions set out in earlier sections. It includes, in s.18, the definition of an industrial building or structure and, in s.19, the definition of a qualifying hotel.

ABBREVIATIONS

C.G.T.A.	: Capital Gains Tax Act.
C.A.A.	: Capital Allowances Act.
F.A.	: Finance Act.
I.C.T.A.	: Income & Corporation Taxes Act.
T.M.A.	: Taxes Management Act.
QE	: Qualifying Expenditure.
DV	: Disposal Value.

CHAPTER I

INITIAL ALLOWANCES

Buildings and structures in enterprise zones

1.—(1) Subject to the provisions of this Act, in any case where—

- (a) a person incurs capital expenditure on the construction of a building or structure which is to be an industrial building or structure occupied for the purposes of a trade carried on either by that person or by such a lessee as is mentioned in subsection (3) below, and

- (b) the expenditure is incurred, or is incurred under a contract entered into, at a time when the site of the industrial building or structure is in an enterprise zone, being a time not more than 10 years after the site was first included in the zone,

there shall be made to the person who incurred the expenditure, for the chargeable period which is that related to the incurring of the expenditure, an allowance (“an initial allowance”) equal to 100 per cent. of the amount of that expenditure.

(2) In this section, and in Chapter III as it applies for the purposes of this section, any reference to an industrial building or structure shall include a reference to a commercial building or structure.

(3) The lessees mentioned in subsection (1) above are lessees occupying the building or structure on the construction of which the expenditure was incurred under a lease to which the relevant interest is reversionary.

(4) The reference in subsection (1) above to the occupation of a building or structure for the purposes of a trade carried on by the person who incurred the capital expenditure on the construction of that building or structure shall include a reference to the use of that building or structure for the purposes of a trade carried on by a licensee of that person or of a lessee of that person.

This subsection does not apply in relation to licences granted before 10th March 1982.

(5) A person making a claim by virtue of subsection (1) above as it applies for income tax purposes may require the initial allowance to be reduced to a specified amount; and a company may by notice given to the inspector not later than two years after the end of the chargeable period

for which the allowance falls to be made disclaim the initial allowance or require it to be reduced to a specified amount.

(6) Notwithstanding anything in subsection (1) above, no initial allowance shall be made in respect of any expenditure if, when the building or structure comes to be used, it is not an industrial building or structure, and where an initial allowance has been granted in respect of any expenditure otherwise than in accordance with the provisions of this section all such assessments shall be made as are necessary to secure that effect is given to those provisions.

(7) No initial allowance shall be made in respect of so much of any expenditure (or be made by virtue of section 154 in respect of a proportionate part of any contribution towards such expenditure) as is taken into account for the purposes of—

- (a) a grant made under section 32, 34 or 56(1), or a payment made under section 56(2), of the Transport Act 1968, or
- (b) a grant made under section 12 of the London Regional Transport Act 1984,

made towards that expenditure, being a grant or payment declared by the Treasury by order to be relevant for the purposes of the withholding of initial allowances.

(8) If any such grant or payment is made after the making of an initial allowance, that allowance shall to that extent be withdrawn; and where the amount of the grant or payment is repaid in whole or in part by the grantee to the grantor, then to the extent to which it has been so repaid it shall be deemed never to have been made.

(9) All such assessments or adjustments of assessments to tax shall be made as may be necessary in consequence of subsection (8) above and, notwithstanding any other provision, the time within which such an assessment or adjustment may be made shall not expire before the expiration of three years from the end of the chargeable period in which the grant, payment or repayment in question was made.

(10) Any expenditure incurred for the purposes of a trade by a person about to carry it on shall, for the purpose only of determining the chargeable period for which an allowance may be made in respect of that expenditure under subsection (1) above, be treated as if it had been incurred by that person on the first day on which he does carry it on, and, except for that purpose, expenditure shall not be treated as having been incurred after the date on which it was in fact incurred by virtue of section 10(1).

DEFINITIONS

- “capital expenditure”: s.159.
- “chargeable period”: s.161(2).
- “enterprise zone”: s.21(4).
- “expenditure on construction”: s.21(1).
- “industrial building or structure”: s.18.
- “relevant interest”: s.20.
- “trade”: I.C.T.A. 1988, s.832(1).

GENERAL NOTE

This section grants an initial allowance equal to the whole cost of construction of certain buildings and structures in enterprise zones. A number of qualifications must be complied with:

(a) The building (which hereinafter includes “structure”) must be one which is to be an industrial building (defined in s.18) or, by virtue of s.1(2), a commercial building (defined in s.21(5));

(b) The building must be intended for occupation for the purposes of a trade carried on either by: (i) the person incurring the expenditure; (ii) a lessee under a lease to which the “relevant interest” (see s.20) is reversionary; or (iii) by a licensee of either person mentioned in (i) and (ii) under a licence granted on or after March 10, 1982 (s.1(3), (4)). “Reversionary”

in (ii) probably does not mean "immediately reversionary". In the C.A.A. 1968, s.11(4), the operation of which is continued by s.20(4) of this Act, the words "immediately reversionary" are used. They are not used here and it is generally accepted that, for example, occupation by a sub-lessee is within this provision.

(c) At the time when the expenditure is incurred, or the contract to incur it is entered into, the site must have been in an enterprise zone for not more than 10 years (s.1(1)(b)).

If, under (a) above, the building is intended to be an industrial or commercial building but, in the event, it is used for some other purpose, no initial allowance is made and, if it has been granted, may be recovered by such assessments as are necessary (s.1(6)).

S.1(2) is to be amended to include a qualifying hotel. See F.Bill 1990, Sched. 10, para. 1(1).

Under s.1(5) an individual claiming the allowance for income tax may claim a specified reduced amount and a company may, for corporation tax, disclaim all or part of the full 100 per cent. allowance.

Ss.(7)–(9) of this section deal with the case where a grant towards expenditure is made under the specified provisions of the Transport Act 1968 or the London Regional Transport Act 1984. In such a case, part or all of the initial allowance ceases to be due. Provision is made for restoration of the allowance if the grant is repaid and for the making or adjustment of such assessments as may be necessary. Note should be made of the three-year time limit in subs. (9)).

Under subs. (10) expenditure is treated as incurred on the date of commencement of trading, where it is made earlier but for the purposes of that trade. (See also notes to s.10(1).)

Ss.12 ("Expenditure on repair of buildings"), 13 ("Expenditure on sites for machinery and plant") and 14 ("Sports pavilions") affect the operation and extent of this section.

It should be noted that under s.21(5) a "commercial building or structure" does not include a hotel or a dwelling-house but does include an office for whatever purpose used. As to hotels, see s.7.

There is no statutory definition of "building" or "structure" but see general commentary at head of Part I.

Transitional relief for regional projects

2.—(1) In relation to expenditure to which this section applies, section 1 shall have effect subject to the following modifications, that is to say—

(a) in subsection (1), paragraph (b) shall be omitted and for the reference to 100 per cent. there shall be substituted a reference to 75 per cent.; and

(b) subsection (2) shall be omitted.

(2) This section applies to so much of any expenditure as is certified by the Secretary of State for the purposes of this section to be expenditure which, in his opinion, qualifies for a regional development grant or a grant under Part IV of the relevant Order and consists of the payment of sums on a project—

(a) either in an area which on 13th March 1984 was a development area, within the meaning of the Industrial Development Act 1982, or in Northern Ireland; and

(b) in respect of which a written offer of financial assistance under section 7 or 8 of that Act was made on behalf of the Secretary of State in the period beginning on 1st April 1980 and ending on 13th March 1984 or in respect of which a written offer of financial assistance was made in that period by the Highlands and Islands Development Board.

(3) This section also applies to so much of any expenditure as is certified by the Department of Economic Development in Northern Ireland for the purposes of this section to be expenditure which, in the opinion of that Department, qualifies for a grant under Part IV of the relevant Order and consists of the payment of sums on a project—

(a) in Northern Ireland; and

(b) in respect of which a written offer of financial assistance under

Article 7 or 8 of the relevant Order was made on behalf of a Department of the Government of Northern Ireland, in the period beginning on 1st April 1980 and ending on 13th March 1984 or in respect of which a written offer of financial assistance was made in that period by the Local Enterprise Development Unit.

(4) In this section—

“regional development grant” means a grant under Part II of the Industrial Development Act 1982;

“the relevant Order” means the Industrial Development (Northern Ireland) Order 1982;

and any reference to a particular provision of that Act or Order includes a reference to the corresponding provision of any Act or Order which was in force before and repealed by the Industrial Development Act 1982 or the Industrial Development (Northern Ireland) Order 1982.

GENERAL NOTE

This section applies to expenditure certified by the Secretary of State as qualifying for a regional development or similar grant in the U.K. as set out in subss. (2)–(4). The project must be in an area which, on March 13, 1984, was a development area under the Industrial Development Act 1982 or in Northern Ireland.

Such expenditure qualifies for an initial allowance of 75 per cent. Commercial buildings and structures are not covered (subs. (1)(a), (b)).

CHAPTER II

WRITING-DOWN ALLOWANCES, BALANCING ALLOWANCES AND BALANCING CHARGES

Writing-down allowances

3.—(1) Subject to the provisions of this Act, where—

- (a) any person is, at the end of a chargeable period or its basis period, entitled to an interest in a building or structure, and
- (b) at the end of that chargeable period or its basis period, the building or structure is an industrial building or structure, and
- (c) that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure,

an allowance (“a writing-down allowance”) shall be made to him for that chargeable period.

(2) The writing-down allowance shall be equal to one-twentyfifth or, where the expenditure was incurred before 6th November 1962, one-fiftieth of the expenditure mentioned in subsection (1)(c) above, except that for a chargeable period of less than a year that fraction of one-twentyfifth or one-fiftieth shall be proportionately reduced.

(3) Where the interest in a building or structure which is the relevant interest in relation to any expenditure is sold and the sale is an event to which section 4(1) applies, then (subject to any further adjustment under this subsection on a later sale) the writing-down allowance for any chargeable period, if that chargeable period or its basis period ends after the time of the sale, shall be the residue (as defined in section 8(1)) of that expenditure immediately after the sale, reduced in the proportion (if it is less than one) which the length of the chargeable period bears to the part unexpired at the date of the sale of the period of 25 years or, where the expenditure was incurred before 6th November 1962, 50 years beginning with the time when the building or structure was first used.

(4) Notwithstanding anything in subsections (1) to (3) above, in no case shall the amount of a writing-down allowance made to a person for any

chargeable period in respect of any expenditure exceed what, apart from the writing off falling to be made by reason of the making of that allowance, would be the residue of that expenditure at the end of that chargeable period or its basis period.

DEFINITIONS

- “basis period”: s.160.
- “chargeable period”: s.161(2).
- “industrial building or structure”: s.18.
- “relevant interest”: s.20.
- “residue of expenditure”: s.8(1).

GENERAL NOTE

This section provides for the granting of a writing-down allowance, specifies the rate, deals with the position where a building or structure is sold and finally limits the total allowances to the amount of the capital expenditure.

By subs. (1) the allowance is made for a chargeable period to the person who, at the end of the chargeable period or its basis period (see s.161(2)), is entitled to the relevant interest in relation to the capital cost of construction (see s.20) if, at the end of such chargeable or basis period, the building is an industrial building or structure (as defined in s.18). See, however, s.6(4) as to buildings and structures in enterprise zones.

The annual rate of the allowance, set out in subs. (2), is one-twentyfifth of the capital expenditure (or one-fiftieth of expenditure incurred at any time before November 6, 1962). The allowance is proportionately reduced if the chargeable period is less than one year.

Where the relevant interest is sold and a balancing allowance or charge (see s.3) falls to be made, the writing-down allowance thereafter is a fraction of the residue of expenditure (*i.e.* the amount not yet written off: see s.8(1)) of which the numerator is the length of the chargeable period and the denominator is the length of that part of the period of twenty-five (or, for expenditure before November 6, 1962, fifty) years remaining unexpired after the building or structure was first used. This process is recalculated on any further sale of the relevant interest (subs. (3)).

Subs. (4) limits the writing-down allowances (together with the initial allowance) to the total capital expenditure.

Balancing allowances and balancing charges

4.—(1) Subject to section 5, where any capital expenditure has been incurred on the construction of a building or structure, and any of the following events occurs while the building is an industrial building or structure or after it has ceased to be one, that is to say—

- (a) the relevant interest in the building or structure is sold, or
- (b) that interest, being an interest depending on the duration of a foreign concession, comes to an end on the coming to an end of that concession, or
- (c) that interest, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon, or
- (d) the building or structure is demolished or destroyed or, without being demolished or destroyed, ceases altogether to be used,

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

(2) No balancing allowance or balancing charge shall be made by reason of any event occurring more than 25 years (or, where the expenditure was incurred before 6th November 1962, 50 years) after the building or structure was first used and where two or more events occur during a period when the building or structure is not an industrial building or structure no balancing allowance or balancing charge shall be made on the occurrence of any of those events except the first.