TAXREP 29/99

TAX LAW REWRITE
CAPITAL ALLOWANCES: PART 3

Memorandum submitted in October 1999 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales to the Inland Revenue in response to Exposure Draft 7 entitled: Capital Allowances: Part 3 issued in July 1999

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A. GENERAL COMMENTS

1. This exposure draft builds on the experience gained in the earlier ones, particularly the two on capital allowances, to produce a much more sensible structure and clearer wording than at present. We find there are certain exceptions to this, as will be seen. There are also occasions where the law has been changed in a significant way without apparent reason (2.10.11(3), dealing with balancing adjustments on the sale of plant subject to hire purchase type contracts, is the worst example). And we have a number of detailed points to make, which is hardly surprising given the length and complexity of the material. Nevertheless, the rewrite is a commendable achievement which will prove to be of considerable benefit to its users.

2. We have been asked to say if we agree with the approach taken in the rewrite on a number of specific issues. It will be seen that, with very few exceptions, we agree with the stance taken. In particular, the opportunity has been taken to make explicit a number of issues that were previously left open. Almost without exception, we find this to be an improvement to the usefulness of the legislation.

3. As a matter of policy, we would like to see greater consistency as to the use of terms in different parts of the legislation, such as the meaning of a car (see 2.11.2).

4. Clauses 2.9.13 to 20 have complicated provisions for working out whether a company or business is 'small' for the purposes of first year allowances. We would like to think these could be simplified if a political decision is made to extend the allowance further.

5. We have given some thought to the sections headed 'Index of defined expressions' and 'Minor definitions', as in 4.6.5 and 4. We wondered first whether they should be placed at the front of the relevant Part. Otherwise the reader may not be aware of their existence. We recognise, though, that the lay reader might be put off by such a legalistic approach. Secondly, given that the defined terms used in each section are cross-referenced at the end of the section, there may no actual need for the indexes. Of course, if the decision is made elsewhere that footnotes are not to be permitted in statute law as a matter of principle, the indexes will become valuable.

6. It will be seen that, for plant allowances, we find it very helpful to have it made explicit whether particular expenditure is treated on its own for capital allowance purposes, or as part of either a general pool or a specific pool. We feel that this could be made clearer for certain other allowances.

7. There are occasions where we have suggested inserting forward notes to other relevant sections. There are other occasions where we thought it might be helpful to have a forward note but not suggested it because too many such notes would clutter the legislation. The dividing line between the two is not easy to draw and, ultimately, is a subjective matter.

8. We have referred to occasions where the rewritten material is as opaque as the original, or has even reproduced the original subject to minor word changes that do not make it any easier to understand. If it is genuinely unclear what the original means, it should be dispensed with altogether. If it does have meaning, the rewrite should bring this out. Examples are clauses 2.9.14(4)(a), 4.2.5(5)(b) and 5.7.1(2) and (3), and there are others. As to the use of terms in different parts of the legislation, such as the meaning of a car, see 2.11.2.

9. Here (eg 4.5.16(2)), and in earlier capital allowance rewrites, the term 'net proceeds of sale' has been used. It would be helpful to have it made explicit what they are net of, for example, the land content, selling expenses, VAT. By contrast, we wonder if dropping the word 'net' is appropriate in 7.3.8(2)(a).

10. There is a complete chapter (Chapter 7.4) on VAT adjustments under the capital goods scheme for scientific research allowances but not for any other allowances. We would welcome clarification as to why SRA alone has been singled out for this treatment.

11. Although considerable strides have been made in having consistent time limits for claims (and indeed in eliminating the need for a claim) we would like this to be taken further. Clause 7.5.2 (an election for there to be a balancing adjustment on the sale of something qualifying for scientific research allowance) is a case in point: it is by reference to the date of sale rather than the end of the period.

12. A number of the Origins of subsections have been omitted or are incorrect, which has made it difficult for us to check the rewrite.

13. On a number of occasions (eg 5.2.2(2), dealing with 'just and reasonable' apportionments), there has been a change in the wording (eg from 'reasonable' or from 'proper') which could be regarded as significant. While we may agree with the change (as we do in the example quoted) we believe the change should have been flagged so that attention could have been focused on it.

B. SPECIFIC COMMENTS

In the left-hand column, subsidiary references in brackets are to subclauses; those not in brackets are to paragraphs of the Commentary.

2 Plant and machinery

2.7 Notification and qualifying expenditure

2.7.1 Requirements to notify expenditure

4 S118(6) is actually rewritten in 2.10.6(3), not 5. We understand the reason for separating the ownership and notification provisions but it would be helpful to have a forward note to 22.10.6(3).

9 We agree that it makes sense to have a single notification for FYAs and WDAs.

2.8 Pooling of qualifying expenditure

2.8.1 Pooling of qualifying expenditure

10 We agree that the identity of the pools should be made explicit. It would be a further improvement if it was made clear that where there is more than one activity, each has a separate main pool etc. Although 2.1.6 does indicate this, it is far removed from 2.8.1 which does not.

2.9 Qualification for FYAs

Overview We agree that ss22(2)-(3) and 23 can be dispensed with.

2.9.2 Conditions of entitlement

(2) We think it would be more accurate to say 'under *one or more of* subsections (3) to (5)'. Otherwise there is a presumption that they all have to be met.

(3)(b) No Origin is given for the exclusion for cars provided for hire, and we have been unable to check it.

(5) The restructuring of section 22 was much needed, but makes it difficult to map the new legislation against the old. It appears, however, that this subsection has reversed the structure of s22(6A), so as to produce a much more severe test. Under s22(6A), an FYA is denied only if all three tests are satisfied; 2.9.3(5) turns this round so as to express it as a condition on which FYA is granted but still requires all three tests (now expressed the other way round) to be satisfied. In order to reproduce the effect of the existing legislation, it should be sufficient to satisfy any one of the rewritten tests.

2.9.4 Qualifying categories: plant for leasing

As we read it, s22(5) is not relevant to 1992/93 expenditure and therefore should not have been rewritten as subclause (3). Subs (6A) deals with the exclusions for 1992/93 expenditure, and includes in paragraph (b)(ii) assets which would be covered by subs (4)(c), ie leased assets, *if it applied*. The fact that subs (5) says that subs (4)(c) does not actually apply in certain cases therefore seems to be irrelevant. The same may apply to the other exceptions for leased assets (s22(6) and (11)), rewritten as 2.9.4(4) and (5)), though this is

less clear because they do not in terms operate by saying that subsection(4)(c) shall not apply.

That said, we appreciate that any change is in favour of the taxpayer, and the question is essentially a matter of history.

(2) No Origin is given for 'leased cars', and we have not been able to check this part.

(3)(b) Similarly, the Origin for 'leased cars' is not s22(b) as given, and we have not been able to check this part.

2.9.12 Excluded expenditure: general

(2)-(9) We are uncomfortable with these eight subsections starting, repetitively, with 'The first case is' etc. We would prefer subs (1) to refer to 'the following cases' and the remaining subsections to be numbered subparagraphs starting with 'where the expenditure' etc.

(9) The Origin for this seems wrong, so we have not been able to check this section.

4 We agree that it is useful to introduce the concept of excluded expenditure.

2.9.13 Meaning of small company

(1) 'Small or medium-sized' needs defining for a single company. Subs (5) only defines it for a group.

(6) Not knowing which 'each of those' provisions is, we find this subsection difficult to check. We would welcome clarifcation of whether it refers to (5)(a) and (b) or to something else?

2.9.14 Meaning of small business

(4)(a) Like the original, this reads strangely. We would like its meaning to be brought out.

3 We agree that 'the *first* trade' is unnecessary. In fact it is misleading.

2.9.15 Interpretation of 2.9.13 and 14

Defined terms 'Parent company', 'parent undertaking' etc would ideally be defined in the tax legislation unless that would be unduly long.

2.10 Allowances and charges: overview

9 We agree with the approach adopted, viz (a) to set out the way FYAs can be used, (b) to dispense with formal claims where less than the full entitlement is taken and (c) to set out the steps for calculating the entitlement to allowances and charges.

2.10.1 First year allowances

10 We agree s22(8) should be omitted.

2.10.3 Determination of entitlement or liability

7 We agree both that the labels are useful and that the treatment of separate pools should be made explicit. However, it is easy to lose sight of the second paragraph of 2.10.3(1) so, in at least some of the following sections, it would be helpful to have a reminder that calculations are done on a pool basis rather than per asset.

2.10.6 Meaning of new available qualifying expenditure

8 Where FYAs are not taken, we have no strong preference between (a) having a WDA (but it can be disclaimed) and (b) not having a WDA (but it can be claimed). Either way, the taxpayer needs to review the position, and we doubt if there will be a preponderance of experience one way or the other.

2.10.7 Meaning of unrelieved qualifying expenditure

(1) Instead of the linear algebra followed by an explanation of the symbols it might be preferable to have a vertical one defining unrelieved qualifying expenditure for the period on the lines of:

Available qualifying expenditure …	a
Plus unrelieved first year …	b
Less any disposal receipts …	-c
Less any writing down allowances …	-d

(1)(a) We believe it should be '*new* available qualifying expenditure'.

(1)(b) We think item UFYQE should be the *residue* of the previous year's first-year qualifying expenditure, ie net of any FYA actually taken. Alternatively, and probably easier to draft, the last item in the formula should be the total allowances for the previous period, not just the WDA.

General We find the concepts of available qualifying expenditure, new available qualifying expenditure and unrelieved first year qualifying expenditure for each year, and how what is carried forward relates to the expenditure for the year, quite difficult to grasp. Perhaps a flowchart would help.

2.10.8 Meaning of disposal receipt

5 We agree that, in order to avoid any doubt, it should be made clear that there is no disposal receipt where no allowances have been taken.

There may be some ambiguity in the phrase ‘no part of that expenditure *has been* taken into account’. It would probably be better to spell out more fully that the requirement is that the expenditure should not have been included in the AQE for the chargeable period in which the disposal receipt arises or for any earlier period.

2.10.11 Cessation of entitlement to contract

(1)(a) The clarity would be improved if something like ‘so as to have been eligible for capital allowances’ were added at the end.

(3) There are two major differences between s60(2) and this subsection in the disposal value (or disposal receipt) to be taken into the calculation of the balancing adjustment where the hire purchase type contract is terminated early. Each amounts to a change in the law.

First, s60(2) brings in (I) the total cash price originally payable under the contract and (ii) any compensation etc received for (eg) breach of contract *plus* the balance of the cash price that has not been incurred. Under the rewrite (b) is the same as (i) above but (a) is simply the compensation etc received so it leaves out from (ii) above the balance of the cash price.

Secondly, (i) and (ii) of s60(2) provide a ceiling (the lesser of the two items) but (a) and (b) provides a floor (the greater of the two items).

Apart from these points, this may be a calculation that is at least as deserving of an algebraic formula as others that have been treated in this way.

6 We agree that the treatment of abortive HP-type contracts should be made explicit.

2.10.12 Amount of disposal value

(3)(b)(i) This would read much better if it began 'is not qualifying expenditure ..', rather than 'cannot be qualifying expenditure …'. The use of 'cannot be' implies that one has to consider a range of circumstances, and conclude that in none of them would the expenditure be qualifying expenditure - which leaves the reader wondering what these circumstance might be. Similarly with 'can be' in para (ii).

The problem partly arises because the existing statutory wording has been turned round so as to express subclause (3) as a positive condition instead of a negative one. The same has not been done in 4.5.17, and it would be preferable at least to be consistent.

2.10.13 General limit on disposal value

2 It is suggested that this might be included in the VAT chapter. No doubt this refers only to the VAT content of this section. Otherwise a crucial part of the structure of the allowance would be lost.

2.11 Special provisions relating to expensive cars

2.11.2 Meaning of car and expensive car

We agree with the approach of defining cars in general and then excluding hire cars. Paragraphs 4 and 7 of the Commentary suggest that cars for the disabled are a separate category when in fact they are a variant on hire cars.

Making it explicit that motor cycles can be 'expensive cars' is a new interpretation, probably unrecognised by most readers, but worth bringing out.

We would have thought it would be better to adopt a consistent definition of 'car' throughout the tax code. It is easy enough then to add motor cycles in one place or exclude them in another, if policy so requires, but there seems to be no policy reason why goods vehicles, for example, are excluded in rather different terms in 2.11.2 and in 4.8.2. And while we accept that there are some expressions which have such weight of case law attached to them that it would be difficult to change them now, it is surely going too far to say that there can never be a change of wording on which there has been judicial guidance.

2.11.7 Use partly for other purposes

General This is one of a number of occasions where the legislation has been much improved by dropping the concept of a notional trade

(1) In conjunction with subsection (4), which continues the treatment in subsequent periods, the words '*begins* to be used' have the same effect as s34(5), which simply has the words '*is* used'. We do not know why the position has been complicated in this way.

(2) S79(1) uses the prospective term 'likely to be used' whereas the rewrite has the retrospective 'was used'. In fact we prefer the latter though we think it might have been flagged.

There is no antecedent for the reference to 'that chargeable period'. This could be dealt with by moving subclause (4) up, to become subclause (2), which would be an improvement in any case.

(3),6 There does not seem to be any basis in the existing legislation for this subclause, and we doubt if it is even logically correct (as illustrated by the example below). We do not think it 'makes explicit' something in the existing law.

We suspect that the original draftsman deliberately omitted to say anything about the calculation of the written down value carried forward because it is unnecessary to do so, and very difficult to do it properly.

It is unnecessary because once the car has been subject to mixed use the allowances for all subsequent periods will have to be calculated on a just and reasonable basis, and that necessarily implies making a just and reasonable assumption about the pool balance treated as being brought forward. By introducing the 'just and reasonable' concept the draftsman has conceded that it is impracticable to set out a precise set of rules for the calculation of the allowance in these cases; and, that being so, there is no point in trying to set out a precise rule for one particular step in the process.

It is in any case far more difficult to say what should be done than subclause (3) recognises, because in principle what one has to do is to reduce the pool by the actual WDA given, plus a notional WDA attributable to the non-business use, but not by the element of the normal WDA which has been excluded by reference to the £3,000 limit (because non-business use results in a permanent restriction of the allowances, but s35 is intended to produce only a timing effect). Subclause (3) does not bring out this distinction, let alone define how one actually would separate the permanent and temporary components in practice.

As an example of the difficulty, suppose the car costs £40,000 and is used 75% for business. It seems reasonably clear that the first year's WDA should be limited to £2,250. But has the prima facie allowance of £10,000 been reduced by £2,500 for non-business use and then by £5,250 under s35, or has it been reduced by £7,000 under s35 and then by £750 for non-business use? The problem will be even worse if one has to start with an overall reduction which has itself been arrived at on a subjective 'just and reasonable' basis for which there is no precise logical justification.

The same applies to 2.11.8(3).

2.11.9 Disposal events where s75 applies

(1)(b) The phrase 'a sale [or contract] of a description referred to in …' does not simplify the legislation to any great extent. It would be better to eliminate the reference to s75 and instead import the necessary wording in full. There would be some risk of changing the law, if only because this approach should eliminate some ambiguity in the existing s34(4) (we would welcome clarification of what exactly it does cover, in the context of HP contracts). But any change would have little practical impact and should be acceptable if duly flagged.

If the cross-reference to s75 is to remain, it is not very helpful to describe it as 'anti-avoidance: connected persons', since s75 applies in three situations of which connected-party transactions are only one.

In a similar vein, a thumbnail sketch of s75, rather than just 'S.75', would ideally be included in the heading, but it may then be difficult to keep the heading short.

(2)(b) It would be helpful to signpost the deeming provisions which are relevant in relation to the phrase 'or treated as incurred' in subclause (2)(b).

4 Mineral extraction allowances

4.1 Mineral extraction allowances: introduction

General This chapter has a large number of very short sections. Unless it would upset the symmetry of the layout with other chapters, we would prefer some of them to be combined, especially the exclusions in 4.1.7-11.

4.1.1 Mineral extraction allowances

4 We find the label 'mineral extraction allowances' a useful one, particularly as it is the term normally used.

4.1. 2 Mineral extraction trade

3 We also find the label 'mineral extraction trade' a useful one, but do not regard using different words for a definition a 'change of approach'.

4.1.3 Meaning of mineral deposits and source of mineral deposits

(2) We question whether the concept of mineral deposits *wasting* is appropriate, here or in the original. The deposits themselves do not usually waste when in the ground. It is their extraction which makes them waste.

6 We agree that there is no need to refer to acquifers and hot dry rocks when they clearly fall within the general definition.

4.1.7 Expenditure otherwise deductible

(2) We wonder if it is really necessary to define 'taxable activity' at all, here and in 5.2.4, 7.2.5 and 9.6.4. If the definition were omitted the only possible ambiguity would seem to be whether 'taxable' could include liability to foreign tax, and if that is the concern it could have been dealt with more explicitly. The definition does exclude activities taxable under Case VI, but presumably only because technically no deductions are allowed from Case VI profits: to the extent that the definition implies that there could actually be double relief in such a case it is misleading.

4.1.10 Excluded expenditure: buildings for occupation by workers

- As we have said in our response on IBAs, we find the reference to the welfare of 'workers' redolent of cloth caps and unsuited to modern legislation.

4.2 Qualifying expenditure: exploration and access

4.2.3 Qualifying expenditure on exploration and access

5 We agree that the restrictions should be spelt out in this way.

4.2.5 Pre-trading exploration expenditure

General Rather than dealing separately with the cases where exploration and access is or is not still continuing at the time when the trade begins, it might have been neater and more consistent to follow the same pattern as 4.2.6(3).

(3),(4) 'Source' seems an inappropriate word to use, as it is used in 4.2.5 and 6, to

include an area where exploration has been carried on but from which no minerals have yet been produced, and indeed where no minerals may ever be found.

One might think that subclause (3) needs to say that the expenditure is deemed to be incurred on the first day of trading, as subclause (4) does. The existing legislation covers the point in s120(2), but that has not been rewritten.

(5)(b) It is disappointing that s107(4)(b) has been adopted almost word for word from the original. Neither is at all intelligible.

4.2.7 Acquisition of asset with exploration value

(2) In the second paragraph, and also at the corresponding point in clause 4.3.2(2), the limitation is presumably intended to be by reference to the seller's expenditure on mineral expenditure and access which is represented by the asset. It would be as well to spell this out, as in 4.3.3(2).

4.3 Qualifying expenditure: mineral asset

4.3.2 Acquisition of mineral asset from non-trader

8 We find the clarification of the rules a great improvement.

4.3.3 Value attributable to expenditure by previous trader

(1) S113(1) starts by referring to expenditure by a person carrying on a trade of mineral exploration. We think that this should be brought in here or elsewhere in this section.

(1)(c) Presumably this includes value attributable to expenditure which the 'previous trader' is deemed to have incurred on mineral exploration and access by virtue of a previous application either of this clause or of 4.3.2. Since the rewrite is assuming a readership which is not particularly comfortable with deeming provisions, we think this should be spelled out.

(2) We would welcome clarification of why 'just and reasonable' is needed here but not in 4.2.7 or 4.3.2.

4.3.4 Mineral asset expenditure that is qualifying expenditure

4 We find it helpful to have the restrictions summarised in this way.

4.3.5 Exclusion of undeveloped market value of land

9 Making explicit that s158 has priority is worth doing.

4.3.6 Buildings or structures ceasing to be used

(1)(c),(2) It is unclear, here and in the original, whether this section is triggered whenever *any* building or structure ceases to be used or only when that happens to the *last* of them. As a matter of construction it is probably the latter, but it should be made explicit.

(2) This additional qualifying expenditure is no doubt subject to an immediate balancing adjustment because the buildings or structures are no longer in use. It would be helpful to make this clear.

This also raises a general issue: how does the reader know if there is any pooling for mineral extraction allowances or if they are calculated on a per-asset basis, in which case what is a single asset? 4.5.1 says it is on a per-asset basis, but this is not easy to discover. An early explanation would help.

(3) In '**A**', the words 'assets in the building or structures' are as vague as in the

original. We would welcome clarification of whether they include any asset, such as a table for instance. Is there any Revenue practice which it might be suitable to apply here?

7 We agree that references to Part V (pre-1989 cessations) can be omitted.

4.3.8 Qualifying expenditure limited to licence payment

7 We agree the interaction between the clauses should be made explicit.

4.3.9 Limit on expenditure taken into account

(1),(4) We like the use of the term 'group company' and its brief definition. So far as we are aware it has not been used in the rewrite before. Perhaps it can also be used when earlier drafts are reviewed, as well as in future ones.

(1) We regard it as an improvement that the provision now looks back to the first group owner rather than applying stage-by-stage through intermediate owners. We note that the group relationship is determined at the time of the acquisition of the asset. Though this is not stated in s117(1), we do not think there can be any doubt on the point.

(2) It seems to us that if A buys a mineral asset for 100 and sells it to B for 80, and B sells it to C for 120 (all three companies being under common control), then under the existing legislation C's qualifying expenditure is limited to 80 while under the rewrite it is limited to 100. The change is in the taxpayer's favour, and the result is both simpler and more logical, but it is surprising that there is no comment on it.

(6) It seems far from obvious that this is implicit in the existing legislation. The distinction from the similar point covered in 4.3.8(4) is that s117(3) limits the transferee's (total) capital expenditure, whereas s116 limits his 'capital expenditure falling within s105(1)(b)' - which corresponds to what is now being called mineral asset expenditure. However the change, if there is one, seems to be in the taxpayer's favour.

4.3.10 Meaning of first group owner and earlier owner

General Despite subsection 2, we find it difficult to follow what happens if (say) the asset acquired by Company C from Company B was acquired by Company B in two parts: one from Company A and the other on the market. Is 4.3.9 applied to one asset or two?

(2) Reference to a *purchased* asset tends to confuse because 4.3.9 and 10 are written in terms of *acquisitions*. A normal transfer between group companies probably involves a purchase, but a gift or a transfer arising on a reconstruction would not. In any case, 'purchased asset' is not fully defined. Perhaps subsection (2) should be extended to include a suitable definition.

4.4 Qualifying expenditure: other

4.4.2 Contributions to works for benefit of employees

(1) A single contribution appears not to qualify, either here or in the original. We imagine that it would qualify in practice, in which case the reference to 'contributions' could reasonably be altered.

(1)(b) These days, telecommunication supplies can be regarded as essential utilities alongside water, gas and electricity. As a relatively minor policy change, we suggest that they should be made to qualify.

4.4.3 Site restoration

(1)(a) The reference to planning conditions is rather odd. This subsection is not expressed as an exhaustive definition of 'restoration' and it does not actually say that restoration works which are not required as a condition of planning permission do not qualify. If that is the intention, it should be stated explicitly. The thinking may be that restoration costs can be regarded as a cost of winning access if and only if they are required under the planning consent, but if so the restriction is a consequence of subsection (2)(c) rather than being a separate condition.

(2)(b), (5)(a) There is an element of uncertainty here. Under subs (2)(b), any expenditure which *has* been deducted in arriving at *profits* of any trade does not qualify for capital allowances here. Under subs (5)(a), none of the expenditure which qualifies for capital allowances here *may be* deducted in arriving at *income*. This gives rise to the following questions:

* at what point is the expenditure regarded as having been deducted in arriving at the trading profit? What if there is an allowable provision in the accounts of the final period, made after the end of the period?
* if revenue expenditure is not regarded as having been deducted in arriving at the trading profit because the cut-off falls the wrong way, it qualifies for capital allowances under 4.4.3. It cannot instead qualify as a trading deduction, as otherwise it should, because it cannot be deducted in arriving at any *income*. Is this right?

This may not matter as a practical issue since the whole of the allowance is given as a balancing allowance in the final period. Nevertheless, uncertainty is created.

(2)(c) It is not obvious that restoration expenditure would be qualifying expenditure even if incurred while the trade is still carried on, as required by this subsection. The same is true in the existing legislation (and is perhaps more a defect in s105 than s109), but we would like the point to be clarified.

4.5 Allowances and charges

4.5.1 Determination of entitlement or liability

(1) We note that each *item* of expenditure is correctly stated to constitute what is effectively a separate pool. In practice, of course, items are lumped together, though this cannot be recognised in the legislation.

4.5.4 Entitlement to balancing allowance

(1) This is much more explicit than the existing legislation, and as such is an improvement. However it remains unclear, what if any disposal proceeds are to be taken into account in computing the balancing allowance in these circumstances. The answer seems to be nil, but that is curious in the case of pre-trading expenditure on plant used for exploration which is still being carried on when the trade begins.

(2) This introduces six short sections giving balancing events. We considered whether some of them might be grouped but found there was no natural pattern

to enable this to be done.

4.5.6 Ceasing to work mineral deposits

(3) We do not find the meaning easy to understand.

4.5.7 Disposal of asset etc

- Since a part disposal is in practice accepted as a balancing event, it would be helpful to legislate this practice (CA 3854, noted in Butterworths' footnote to s101).

4.5.8 Giving up exploration etc

(2) Both here and in the original, there is a problem if a mineral extraction trade is carried on 'subsequently'. How long does the trader wait? Six years? And how is the balancing adjustment rectified?

4.5.14 Disposal receipt on commencing development

(1) This says that the disposal value must be brought into account as a disposal receipt. This means that it is deducted from the available qualifying expenditure under 4.5.2. It is not clear, however, what happens if it exceeds the AQE. There is seemingly no balancing allowance on the excess as there is no balancing event under 4.5.5-10. The same point arises under 4.5.15.

7 Given the uncertainty following Welsh devolution, it seems reasonable to apply English law to land outside the UK.

4.5.16 Disposal value to be brought into account

General We are in favour of bringing this material into Part 4, in so far as it is relevant there. However it seems at least debatable whether the existing legislation actually does import all this material from s26. S99(3) applies to determine the disposal value ‘of any asset falling within subsection (1) above’ which prima facie means only assets which are disposed of or permanently cease to be used for the purpose of the mineral extraction trade, and not those which are lost or destroyed.

We are not sure that it actually makes any difference to the end result, since if assets lost or destroyed are not within s99(3) any scrap or insurance proceeds will still be caught by s99(4), but it would be good to have some assurance that all this had been thought through and that the rewrite team are satisfied that they have reproduced the effect of the existing legislation, no more and no less.

(2) Here and elsewhere (eg 2.10.12), we find it difficult to know what the 'net' proceeds of sale are. Are they net of transaction costs or what?

Step 5 As with 'subsequently' in 4.5.8, there are problems in dealing with a discontinuance 'before' the disposal event.

7 We agree that all disposal values should be set out here

4.5.18 General limit on disposal value

The change of approach mentioned in notes 2 and 3 of the Commentary on page 212 seems to have a knock-on effect here. Under the existing legislation each company in a chain of intragroup transfers will be deemed to acquire the asset at its original group cost, or the actual transfer price if lower. ‘… the greatest such expenditure’ in 4.5.18(2) can therefore never exceed the original group cost. Under the rewrite, if the asset passes through the hands of a group company which is not a mineral trader, that company's acquisition cost is not

adjusted by clause 4.3.9 and may be taken into account as CE in clause 4.5.18 even if it exceeds the group cost.

However this clause seems in any event to have little if any practical relevance, since clause 4.5.11(1)(b) will generally produce the same result. Perhaps it is only here because the original draftsman thought it simpler to import the whole of s26, by reference, rather than carving out the parts that he actually needed. If so, that reasoning no longer applies under the approach adopted for the rewrite. We would like confirmation, therefore, that the clause is still thought to have some effect.

4.6 Supplementary provisions

4.6.1 Expenditure incurred before trade carried on

2 We do not understand the reason given for not rewriting s120(2), which does not appear to be a transitional provision. The effect of s120(2) is duplicated in s106(2) and s107(3) - rewritten as 4.2.6(2) and 4.2.5(4) - but not, as noted above, in s107(2) rewritten as clause 4.2.5(3).

4.6.2 Asset formerly owned by previous trader

(6) As we are unable to find the source for the second paragraph, we are unable to review the wording.

5 Agricultural buildings

5.1.1 Agricultural buildings allowances

6 The label 'agricultural buildings allowances' is welcome, and matches practice.

5.1.2 Meaning of agricultural building

(1) We agree that there is no point in singling out fences among other works. The term 'works' is somewhat vague, however.

6 Likewise, we agree with the term agricultural building.

5.1.3 Husbandry and agricultural land

(1) & 7 We agree that ‘husbandry’ is archaic. We would prefer the use of the expression ‘agriculture’, partcularily as the Courts (Lord Clyde in the 1925 Court of Session case Dean and Dickson v Bell 10 TC 341) have defined husbandry as the exploiting of the fruits of the land which seems to define agriculture. The definitions in 5.1.3 and clause 3.6a.1 in ED Trading Income of Individuals: Part 2 should be consistent. We suggest therefore that the definition in both clauses be expressed as including the items in 3.6a.1(2) and 5.1.3(a).

7 We believe the reference to houses and other buildings should be reinstated. Part of the purpose of the rewrite is that readers should not need to be familiar with, for example, the Interpretation Act before they can understand the tax legislation.

5.2 Qualifying expenditure

5.2.1 Meaning of qualifying expenditure

7 We agree with the terms ‘qualifying expenditure’ and ‘related agricultural land’.

5.2.2 Apportionment of expenditure

(2) Here, and in many other sections, 'just' or 'proper' has become 'just and

reasonable'. Although we have not been asked to comment on these changes, we find them acceptable as they add to the consistency of the rewrite without obviously changing the meaning.

5 We agree that the rule about apportionment where one person holds separate interests in different parts of the land should be made explicit, and that section 122 can be omitted from the rewrite.

5.2.4 Expenditure otherwise deductible

6 We are happy for section 124(3) to be omitted so long as the effect of section 147 is brought in.

5.2.6 Transfer before first use

(1) It appears strange at this stage that, after 5.2.1 has said that allowances are given on the *construction* of a building, someone who *buys* the building should have qualifying expenditure. Perhaps a forward note is needed to 5.3.1 to show that an allowance is due to whoever holds the relevant interest at the time. Alternatively, the effect of 5.4.1 might be brought in here. See also our comments on 5.3.1.

6 Subject to our comments under subs (1), we agree in principle to the reduction in deeming and to the references to the building becoming references to the land. The second leads to consistency within ABA, and accords with land law, even if it is strictly a change in the tax law. However, it leads to the question whether a similar change should be made under IBA.

5.2.7 Apportionment where transfer before first use

6 We agree with the new apportionment rule, though we are not convinced it is a change in approach rather than in the underlying law. It is arguable that s127 simply does not apply to part-transfers.

5.3 The relevant interest

5.3.1 Meaning of relevant interest

(1) In the light of our comments under 5.2.6(1), we would be happier if the legislation, or a note, made it clear that the holder of the relevant interest is entitled to the allowance even if he did not incur the construction expenditure.

5 We agree to the merging of 'major interest' and 'relevant interest' and also to it being made explicit that ABAs are made to the person entitled to the relevant interest.

5.3.2 General rule about relevant interest

(3) We are not sure if it is possible for there to be *no* interest that is reversionary on all the others. For instance, if lease B commences on the expiry of lease A, is lease B reversionary on lease A? Lease B is referred to as a reversionary lease, but this may not be the same thing.

7 We agree to referring to a *right* under an agreement as being an interest in land. Despite what is said about a possible review of Scottish property law, though, we would prefer on the grounds of consistency that a *right* under an agreement should also be brought into subs (2)(b).

5.3 5 Merger of leasehold interests

(3) We note that ‘sale’ in s150(4) has been replaced by ‘transfer’. We would

appreciate confirmation that the rewrite team has checked that, when one takes into account the extended definitions in both the old and the new legislation, the law has not actually been changed.

5.3 6 Terminations of leases

8 We agree to the reference to the whole or part of the related agricultural land.

However we do not think either the new version or the old deals adequately with the case where a new lease is granted of only part of the related agricultural land. In that situation the new lease becomes the relevant interest, but presumably only in the part of the land which it covers. One would expect the relevant interest in the remainder of the land to revert to the lessor under subclause (4) but this seems not to happen, because the partial reletting means that the transaction is not 'any other termination of the lease'.

5.3.7 Acquisition of freehold under agreement

3 We agree that the freehold should become the relevant interest when it is acquired under a right which is the relevant interest.

Possibly the converse situation needs to be covered as well, to provide that where the relevant interest is a freehold, and the holder agrees to sell it, the purchaser's rights under the sale agreement become the relevant interest. We do not know whether in practice ownership of the relevant interest is regarded as passing on contract or on completion.

5.4 Writing down allowances

5.4.1 Entitlement to writing down allowance

(1) We think this section (and probably also 5.4.3) needs at least a signpost to 5.6.3, which tells you what happens if the person is entitled to the relevant interest in only part of the related agricultural land.

5.4.2 Meaning of writing down period

(1),(2) The original had 'the first day of' the chargeable period'. Without this it will be difficult to know when the 25 years come to an end where there has been a change of accounting date.

5.4.3 Basic rule for calculating amount of allowance

(5) 5.6.3 should also be mentioned as it is in the similar context of 5.6.2(5).

5.4.4 Withdrawal of provisional allowance

(1)(a) The existing legislation referred to under Origin deals with sales, transfers and exchanges whereas the rewrite deals more broadly with the entitlement to the interest coming to an end. It is possible that (say) a farmer's lease might have come to an end and a new lease granted to him before he first farmed the land.

5.4.5 Claim for reduced WDA

3 We welcome the recognition that less than the full amount of the WDA needs be taken but wonder whether a 'claim' to reduce it is appropriate, given that it should be sufficient simply to show the lower figure in the tax return.

5.5 Balancing adjustments

5.5.2 Balancing events

(1) We are not sure whether the surrender of a lease for no consideration is in practice treated as a potential balancing event under the existing ABA

legislation. On balance we think it probably would not qualify, since the lessor does not actually acquire the lessee's interest, and s125(4) does not seem to deem him to do so: rather, it deems the interest which he already has to become the relevant one. However. if that is right it contrasts strangely with a surrender for £1 (which is deemed to be a sale), and with the position on expiration of the lease, when s126(5)(c) undoubtedly does deem the relevant interest to be acquired by the lessor. The rewrite seems to replicate all the relevant provisions faithfully, and therefore contains the same ambiguity. In a sense that is what it should do, but if in reality there is a generally accepted answer to the question it would probably be better to clarify it.

(2) We believe the third word should be 'means', not 'includes', to reproduce the effect of s129(1)(a). The same applies in 5.5.3(8).

5.5.3 Election for event to be balancing event

(2) The limit should be '*on or* before' 31st January. This sentence is also not particularly easy to read.

5.5.5 Residue of qualifying expenditure

- We feel that the calculation has been made to look more complicated than it actually is. We suggest (1) qualifying expenditure, less (2) allowances given, plus charges made. An alternative would be to have a formula.

5 We agree both that balancing charges should explicitly be brought into the calculation and that the material relating to initial allowances can be omitted. However, Step 2 needs to exclude any allowances which have subsequently been withdrawn as a result of a transfer of the relevant interest before first use.

5.5.9 Transfers subject to subordinate interest

(6) We doubt if 'or Schedule D profits' is required, even though it is in the original. So far as we can see, s34 is concerned with notional rents alone.

7 We do not understand the reason given for not rewriting the rule that the reduction cannot be greater than that which will reduce the balancing allowance to nil. We think this still needs to be said, if only for the avoidance of doubt.

More importantly, rewriting s130 in terms of a reduction in the balancing allowance rather than a reduction in the proceeds seems to produce the wrong result in a case where the proceeds would also be restricted by clause 5.5.7 (proceeds only partly attributable to qualifying expenditure).

9 We are happy for the relevant interest to be in the land, not the building.

5.6 Further rules about allowances and charges

5.6.2 Calculating allowance after balancing event

(1) It would make this section easier to understand if it was made clear that it related to allowances made on the transferee.

5.6.3 Acquisition of interest in part of land

(3)(d) Again, the use of the words 'just and reasonable' is fair, in the interests of consistency, but the change from 'properly attributable' should have been flagged. The same applies in 5.6.4. The point recurs elsewhere in scientific research allowances. We will not continue to draw attention to it.

6 We agree that the apportionment rules should be so widened.

5.6.4 Partial destruction of building

(2),5 In para (b) 'that proportion' seems to mean the same proportion as the one used in para (a). We would have thought that both proportions needed to be separately determined on a just and reasonable basis. For example if one half of the building has previously been destroyed, and that was treated as a balancing event, then when the second half is destroyed one would attribute to it one-half of the original expenditure but none of the previous balancing allowance. Alternatively, the less explicit approach in the existing legislation actually seems quite adequate.

5.6.6 Final writing down allowance

7 We agree with the new approach to the limiting of the final allowance

5.7 Supplementary provisions

5.7.1 Manner of making allowances and charges

(2),(3) These subsections are no doubt intended to say that, where the activity carried on is not a trade, the allowance (or charge) is made as though the activity was a trade. The rewrite repeats the wording of the original, which is difficult to follow, and takes a crablike approach. Where the activity is neither a trade nor a property business, there does not seem to be any point in giving the allowance as if the activity was a property business so that, in turn the allowance can be given as though the activity were a trade.

5.7.5 Minor definitions

3 We agree that the definition of construction should be so extended.

5.7.5 & 6 We suggest that definitions be placed at the start rather than the end of the chapter.

7 Scientific research

7.1 Introduction

7.1.2 Meaning of activities

(2) We wonder whether it is possible to simplify this subsection by excluding 'or constituted' and 'or was'. It is arguable that 'activities' and 'an asset' imply their state at the time that is relevant for the point needing to be determined. If these past tenses can be eliminated, there are many other places in the rewrite project undertaken so far where a similar simplification could be made.

7.2. Qualifying expenditure

7.2.1 Qualifying expenditure

7 We approve of the terms 'qualifying expenditure', 'capital expenditure' and 'relevant trade'.

7.2.2 Expenditure incurred on scientific research

7 We approve of (a) the term 'carrying out' and (b) the omission of expenditure before 26 July 1989.

7.2.3, 4 Excluded expenditure: land and dwellings.

3,5 We prefer the approach now adopted, viz to say that the expenditure on land

and dwellings respectively is not qualifying expenditure.

7.2.6 Demolition cost

(1) It may be worth having a forward note to 7.3.9. Without one it is unclear at this stage what happens to the insurance proceeds etc

(3) The interaction between the various capital allowances is a very difficult area, most of which has not yet been rewritten. It remains to be seen therefore whether subs (3) will need some further signposting to help the reader understand when it is likely to be relevant - or indeed whether it would be better moved elsewhere so as to bring all the rules of this sort together. Similarly with 7.3.4(2), 7.4.5(2) and 7.5.2(6)(b).

8 Treating demolition costs as qualifying expenditure is certainly an improvement over the present convoluted structure of s138(5). We do not feel strongly about whether scrap proceeds should be treated as reducing the demolition costs or as a separate disposal receipt, but hope that the same approach is taken for all the various allowances.

Even now, the treatment of pre-trading demolition costs does not seem to be particularly explicit, though the assurance in the Commentary that allowances are intended to be given is welcome. In fact the new wording suffers the same defect as the old, in that the use of the phrase 'the person carrying on the trade' in 7.2.6(1) arguably implies that the clause only operates if the person is trading at the time when the demolition is carried out.

7.3 Allowances and charges

7.3.2 Chargeable period for which allowance available

6 Although s138(3) was introduced to deal with the situation under the prior-year basis, it does also appear to have the effect of accelerating the relief for the net cost of an asset which is sold in a period prior to the one in which the expenditure would otherwise have qualified for SRA. As the Commentary on the following clause says, this is an unusual situation but not impossible. The proposed omission of s138(3), together with the explicit timing rule in 7.3.3(1), does therefore seem to involve a change in the law, though not one we would oppose.

7.3.3 Amount of allowance

(1) QE is the qualifying expenditure incurred *in* the chargeable period. This appears to conflict with 7.3.2(2) which gives an allowance in the first period of trading for expenditure incurred before the trade starts.

6 We approve of the change which takes into account disposal receipts in prior periods. However, we do not see how the existing legislation produces a balancing charge in the earlier period, in the situation described in para 3 of the Commentary.

7.3.5 When balancing charge made

3 We agree that it is better to relate balancing charges to a period than to a specific time.

7.3.6 Amount of balancing charge

(1),(2) We are not sure it is possible to have unrelieved capital expenditure, given that the a balancing charge can only arise in periods after the one in which SRA

was given. If it is not possible, the reference to it is confusing. We doubt if the possibility that the allowance might in future be reduced to less than 100% is sufficient reason for keeping it. The whole of this part is drafted on the assumption of a 100% allowance, and would need rewriting if that changed.

7.3.7 Meaning of disposal receipt

(1) Is it not necessary also to include the requirement to bring in a disposal receipt under 7.4.5 (VAT rebates)?

7.3.8 Disposal receipt: ceasing to own an asset

(2)(a) In many cases the term 'net proceeds' of sale is used. (Our doubt as to its precise meaning is something that we have raised elsewhere in our responses.) Although the rewrite here reflects the original by referring to 'the proceeds' of sale, would it not be better to use consistent wording? Compare 7.3.9(2)(a).

6 We agree that, as elsewhere in the rewrite, 'own' is better than 'belong'. We also think it right to bring in receipts before the start of a trade (the same goes for para 6 of the Commentary to 7.3.9).

7.3.9 Disposal receipt: demolition or destruction

6 We have no problem with this change, apart from the question of consistency mentioned above under 7.2.6 (para 8 of the Commentary).

7.3.10 Disposal receipt: interest in oil licence

7 We have not reviewed this clause.

7.4 Special provisions relating to VAT

7.4 Overview

2 We wonder why it was thought necessary to have what appears to be a complete code for VAT adjustments here when only a limited number of the provisions specifically affect SRAs. Are there no other allowances for which there are specific measures for VAT adjustment needing a repetition of the code? The reason was not made clear in the Commentary.

7.4.2 Additional VAT liability treated as additional expenditure

2 Although the last sentence appears correct, 7.4.4(5) suggests that the contrary was intended, and the rewrite has at the least failed to make the position clear.

Part of the problem is that there is no way of applying that sentence because there is no general rule to say when an additional VAT liability is deemed to be incurred. If anything, one would infer from 7.4.2 that it is deemed to be incurred at the same time as the underlying expenditure. The rule in s159A(1) applies 'for the purposes of this Act', but its rewritten equivalent in 7.4.1(4) is applied only for the purposes of 7.4.1(3).

7.4.4 When allowance made for additional VAT liability

6 We agree, here and in 7.4.6, that VAT adjustments should be brought in where they are made before the underlying expenditure is incurred.

7.4.6 When receipt to be brought into account

(4) We are not sure that 'repayable' here (and in the existing legislation) adequately covers the case of an assessment in which the rebate is offset against amounts due to Customs.

5 We agree that s138(2A) can be omitted.

7.5 Supplementary provisions

7.5.2 Election regarding sale consideration

(3) The time limit for the election, two years after the sale, is inconsistent with the standardised approach of relating the time limit to an accounting period or tax year. We prefer the standardised basis, and hope a change is within the remit of the rewrite project.

(4)(b) It is difficult to see what either this subsection or s158(3)(a) is trying to say. Can its meaning be brought out? If the real target is parties outside the charge to UK tax it would be simpler just to say so, as in s129(5).

(6)(b) Similarly, we would like it clarified in what respects a sale might be 'material' to ABAs.

7.5.3 Effect of election

(3) We wonder if there any circumstances in which an allowance would not be given. Under the existing legislation s138(3) might have been one such case, but that is not being rewritten since it is regarded as spent (see Commentary on clause 7.3.2). Under 7.3.3(1) the allowance might be nil if the disposal value is at least equal to the expenditure, but one cannot take that into account for the purposes of 7.5.3 (which determines what the disposal value is) without getting into a logical circularity.

3 We agree that the reference to deductions rather than allowances should be omitted, but the same would seem to apply to 7.5.4(3), and possibly elsewhere.

7.5.6 Minor definitions

(6) There seems to be some inconsistency at present as to where ‘property business’ is to be defined, if at all. Part 7 has its own definition, clauses 5.2.4 and 5.5.10 assume the definition will be in Part 12, and the otherwise similar clauses 4.1.7 and 9.6.4 avoid the problem by referring in full to a Schedule A business or an overseas property business.

C. DETAILED COMMENTS ON DRAFTING

In the left-hand column, subsidiary references in brackets are to subclauses; those not in brackets are to paragraphs of the Commentary.

2	**Plant and machinery**
2.8	**Pooling of qualifying expenditure**
2.8.1	***Pooling of qualifying expenditure***
(2)	The reference should be just to s79(2), without adding (a) to it.
2.9	**Qualification for FYAs**
2.9.1	***Entitlement to FYA***
(1)	There seems no need to add 'relevant' to the 'special conditions' as defined.
(3)	It is fairly obvious what '1992-93 cases' etc mean, but they really need defining, or referring to a definition. A similar point arises elsewhere, eg in 2.9.13.
(3)(b),(c)& (d)	The sections referred to are of course 2.9.5-7, not 6-8.
7	So far as it may be relevant, we would point out that ‘first-year allowances qualifying expenditure’ does not contain the word ‘allowances’ in the actual text.
2.9.2	***Conditions of employment***
(1)	This appears circular. We suggest using the phrase ‘is as set out in … below’.
6	The reference should be to page 125
2.9.3	***Conditions: plant for leasing***
(3)	'Is to be or is leased' does not read very well. We would prefer 'is leased or is to be leased'.
2.9.8	***Further categories of excluded expenditure***
(6)(b)	We appreciate that less changes may have been made in rewriting the FYA provisions because they are not due to continue for very long (though they will still be relevant for calculating balancing adjustments), but at least the 'typo' in the original ('use' for 'used') might be corrected.
2.9.11	***Disclosure of information***
	(2)(a) Unlike the Department in (b), the Inland Revenue does not strictly have functions 'under' 2.9.7. Perhaps 'relating to' would be better.
2.9.12	***Excluded expenditure: general***
Defined terms	2.7.5 etc should be 2.8.5. etc.
2.9.13	***Meaning of small company***
(4)(a),(b)	These could easily be merged. Perhaps a less artificial way can be found to split up an otherwise long sentence.
(5)	We suggest 'group' would read better than 'group's'.
Defined	'1997-98 cases' and '1998-00 cases' should be shown. But see our comments

terms	under 2.9.1 for certain difficulties about these cases.
2.9.15	***Interpretation of ss 2.9.13 and 14***
(2)	Like the original, 'business means an individual' contorts language. We suggest either adding 'one carried on by' after 'means' or using the term ‘business entity'.
2.10	**Allowances and charges: overview**
2.10.1	***FYAs***
5	The reference should of course be to 2.10.6(4).
2.10.2	***Amount of FYA***
Defined terms	Again, a reference is needed to a definition of '1992-93 case' etc (but see our comment on 2 9.1(3).
2.10.3	***Determination of entitlement or liability***
Defined terms	A reference is needed to 2.8.1 for pools.
2.10.4	***WDAs and Bas***
(1)	This subsection lacks context. We suggest 'under section 2.10.3(2)' should be inserted after 'Entitlement'.
(4)	In the second line, 'at the end of it' is perhaps unnecessary.
Defined terms	A definition is needed for 'long-life assets', used in subsection (4).
Origin	None of the Origins for Subsection (3) seem appropriate. We suggest s24(6).
2.10.5	***Meaning of available qualifying expenditure***
2)(b)	As we have said in earlier drafts, items are usually *carried* forward from one period and *brought* forward into the next one, at least for accountants. The same point arises in 2.10.7.
2.10.7	***Meaning of unrelieved qualifying expenditure***
1)(b)	This could perhaps be written more simply as 'any first-year allowance taken for that period'. This would also match ‘**WDA**’.
2.10.9	***Disposal receipt: disposal events***
Defined terms	'Disposal receipt' comes from 2.10.8, not 6.
2.10.10	***No disposal receipt needed***
(1),(2)	The opening words of these two subsections appear to have the same meaning but are written differently. This might give the impression that the meaning is not the same.
2.10.16	***Amount of balancing allowance***
-	A reference back to 2.10.4 would be helpful, as a reminder that this is only relevant in the period of cessation; or else say ‘the final chargeable period’ instead of ‘a chargeable period’. Likewise in 2.10.17.
2.10.17	***Amount of balancing charge***
-	It might be worth referring to 2.10.13 (balancing charge capped by expenditure incurred) by way of note.
2.11	**Special provisions relating to expensive cars**

2.11.6 ***Limit where part of expenditure met by another person***

(1) The two phrases ‘by the person carrying on the qualifying activity’ and ‘on the provision of an expensive car’ would be better the other way round.

2.11.9 ***Disposal events where CAA s75 applies***

Defined terms The definition of disposal receipt is in 2.10 8.

4 Mineral extraction allowances

4.1 Introduction

4.1.7 ***Expenditure otherwise deductible***

(2) Presumably "Schedule A business and "overseas property business" will be acknowledged as defined terms in the final version.

4.2 Qualifying expenditure: exploration and access

4.2.1 ***Meaning of mineral exploration and access***

(1)(a) As with the original, we find the phrase 'mineral deposits of a source' strange: a source of what? Adding 'of such deposits' after it would avoid any possible ambiguity. The same point arises in 4.2.5(1)(a).

(3) The reader is left wondering what happens if planning permission *is* granted. Presumably the point is that the costs are actually intended to be qualifying expenditure whether or not the application is successful, but it is only in the case of an unsuccessful application (when there will be no actual exploration or access) that it is thought necessary for the legislation to say so. If so, it might be better to say that expenditure on seeking planning permission qualifies whether or not the permission is granted, even if this does involve some element of redundancy.

4.2.4 ***Restrictions on pre-trading expenditure***

Defined terms The reference for capital expenditure could be 4.1.7(1) rather than s149, as in 4.2.3. The same point arises in 4.2.5.

The reference for mineral extraction trade should be 4.1.2.

4.2.7 ***Acquisition of asset with exploration value***

Defined terms The definition of mineral exploration and access is in 4.2.1.

4.3 Qualifying expenditure: mineral asset

4.3.3 ***Value attributable to expenditure by previous trader***

(4)(a) This could be more simply written as 'one or more assets from which the purchased asset is derived'. We doubt if this would lose any accuracy.

Defined terms 'Buyer' and 'seller' should be included, by reference to 4.3.1.

Origin S115(2) does not appear relevant as an origin of subsection (6).

4.3.4 ***Mineral asset expenditure that is qualifying expenditure***

(2) The reference for the fourth indented item should be 4.3.9, not 10.

4.3.5 ***Exclusion of undeveloped market value of land***

Note As we said in our responses on the previous CA rewrite, we think that the Note should be in a separate box. Most people will not refer to the Defined terms

and Origins and may therefore miss the Note. The same point arises elsewhere in this rewrite.

4.3.7 ***Premium relief previously allowed***

Defined terms — The reference for qualifying expenditure is of course 4.1.4.

4.3.8 ***Qualifying expenditure limited to licence payment***

(2)(b) — We suggest omitting the word 'UK', and possibly 'oil' as well. It detracts from the emphasis on an *interest* in a licence. It has already been established in (1) that the subject matter is UK oil licences.

(4) — Since subs (2) applies the restriction only to mineral asset expenditure, we would have thought it went without saying that it does not apply to expenditure which is treated as expenditure on mineral exploration and access. If it needs saying here, something similar should presumably also be stated in 4.3.7 where the same principle seems to apply.

4.4 **Qualifying expenditure: other**

4.4.3 ***Site restoration***

Origin — A rogue ‘a’ has crept in after ‘subs.(3)’.

4.5 **Allowances and charges**

4.5.1 ***Determination of entitlement or liability***

(1) — It might be better to say that *allowances and balancing charges* are determined separately for each item of qualifying expenditure. As it stands, These’ appears just to mean AQE and TDR, leaving it open whether having determined those for each item of expenditure they are then to be aggregated to arrive at an overall allowance or charge.

Defined terms — The references are of course 4.5.2 and 4.5.12.

4.5.2 ***Available qualifying expenditure***

(1) — We are uncomfortable with the 'or' linking (a) and (b). Both expenditure in the period and unrelieved expenditure of the previous period may qualify. We would in any case suggest it would be more logical to start with the latter.

As we have said previously, we prefer 'brought forward from'.

4.5.5 ***Discontinuance of trade***

Origin — The reference to 161(2) to a 'chargeable event related to' is not understood, even if 'period' is substituted for 'event'.

4.5.9 ***Ceasing to use building or works***

Heading — It would be helpful to add 'outside the UK' to the title.

\- — ‘Permanently ceasing to use …’ is not a satisfactory phrase to have here, since the taxpayer himself would not generally have been the user of the works in question.

4.5.11 ***Balancing charges***

(1)(a) — We suggest that it should be either 'total *of the* disposal receipts' or (singular) 'exceed'.

4.5.13 ***Disposal receipt on ceasing to use asset***

Defined terms — The reference for disposal value is 4.5.18.

4.5.14 ***Disposal receipt on commencing development***

(3) — Commas after 'been' and 'be' would help here and in (4)(a).

(4)(b) — We find the omissions of the words 'development is of a character for which' after 'development' makes the meaning of the sentence a little difficult to follow. The same point arises in 4.5.19 and elsewhere.

Defined terms — There needs to be a reference to 4.6.4 for the definition of ‘development’.

‘General development order’ is defined in 4.6.4 not 12.x.2.

4.5.16 ***Disposal value to be brought into account***

(2) — The syntax of 'The proceeds to ... the person concerned' would be improved by inserting 'paid' after 'proceeds'. More to the point, ‘proceeds [paid] to' does not seem to add anything to 'amount received by'. It does not appear either in the original or in 2.10.12.

'Market value' has been used in 2.10.12, in place of the much longer wording in Steps 2 and 6. To avoid people looking for non-existent reasons for the difference, it would be better to be consistent.

4.6 **Supplementary provisions**

4.6.1 ***Expenditure before trade carried on***

- — Here and in the original, 'about' to carry on a trade suggests being on the point of doing so. Since there is presumably a six-year leeway, we feel that 'before' in the heading is more apt.

4.6.2 ***Asset formerly owned by previous trader***

(1)(b) — This is another example of inconsistency, this time with 4.3.3, where 'was' is used rather than 'has'. There are other such occasions in 4.6.2.

(4) — We imagine the reference in the third indent should be to 4.3.5.

(6) — 'In fact' appears to add nothing here or in the original.

4.6.3 ***Demolition costs***

(3) — We doubt if *'other* asset' is needed in the context of 'replaces'.

Defined terms — The reference for balancing charge is 4.5.11.

4.6.4 ***Minor definitions***

‘Qualifying expenditure’ hardly ranks as a ‘minor definition’.

Origin — 'General development order' is not included in s121.

4.6.5 ***Index of defined expressions***

- — 'Buyer' is presumably for the purposes of Chapter 4.6.
'Group company' is not in 4.2.7.
'Mineral extraction trade' is in 4.1.2.
It should be 'pre-trading machinery and plant expenditure'.
'Restoration' is not in 4.3.3.

5 Agricultural buildings

5.1 Introduction

Overview — A comma after 'works' in the second paragraph would help.

5.2 Qualifying expenditure

5.2.1 ***Meaning of qualifying expenditure***

Defined terms — 'Relevant interest - Chapter 5' needs including.

Origin — S127(2)(c) is not relevant here.

2 — At the end of this paragraph, the reference should be to 5.2.6.

5.2.2 ***Apportionment of expenditure***

Defined terms — The reference for agricultural land should be 5.1.3(2).

5.2.6 ***Transfer before first use***

(1),(2) — We are not particularly happy with the term 'capital acquisition expenditure' if it is meant to do duty for 'capital expenditure on acquiring that interest' without being defined as such.

Defined terms — Here and in many other sections, the reference for related agricultural land should be 5.2.1(1).

Origin — SS 133(8) (twice) and 150(4)(a) do not appear relevant here.

5.2.7 ***Apportionment where transfer before first use***

Origin — S129(3)(b) does not appear relevant here.

5.2.8 ***Expenditure before 1 April 1986***

4 — We agree that section 122 and all references to it can be omitted.

Defined terms — A reference is needed for Qualifying expenditure - 5.2.1.

5.3 The relevant interest

5.3.2 ***General rule about relevant interest***

(1) — 'The following sections' are so short that they could reasonably be brought into this section.

5.3.5 ***Merger of leasehold interest***

(1) — 'Lease' and 'leasehold interest' appear to be interchangeable terms, so we suggest that 'lease' should be used throughout (including 'leases' in the heading). S125(4) uses 'lease', though the original does use 'leasehold interest' elsewhere.

5.3 6 ***Terminations of leases***

(2) — This would probably read better if ‘relevant’ where omitted in the last line but one.

Origin — S127(2)(c) does not appear relevant here.

5.4.3 ***Basic rule for calculating WDA***

Defined terms — We doubt if a reference for a qualifying event is needed seeing that the term appears only in a brief description of a section.

6	In line eight, it should of course be 50% of the period. 2% is the effective rate of allowance.
5.4.4	***Withdrawal of provisional allowance***
(1)(a)	Adding 'whether by sale or otherwise' could add a useful steer.
Defined terms	The reference to husbandry should be 5.1.3 and that for relevant interest Chapter 5.3.
Origin	Only the first origin for subs (3) should be there, as the others deal with sales.
5.5	**Balancing adjustments: overview**
Para 3	In the second sentence, the operative part 'is set out in section 5.5.4' is far adrift from the opening part 'The basic rule'.
Para 4	A space is needed before the bracketed part.
5.5.2	***Balancing events***
(1)	Saying that the following are balancing events 'if an election is made …' leaves open the question what might be balancing events if no election is made. Perhaps it would be better to say at the end of the subsection something like 'But they are only balancing events if an election is made …'.
5.5.3	**Election for balancing event**
(4)-(6)	We are not particularly happy with an election 'about' a transfer or the destruction. We would suggest 'relating to'.
(4)	We do not know why 'the former owner' has become complicated as 'the person entitled to it immediately before the transfer'.
5.5.4	***Calculation of balancing adjustment***
(2)	Despite subs (4), it would be helpful to have a reference to the limitation of the balancing charge by reference to the original expenditure in 5.5.8.
Note	It would be better if the description of 5.6.3 was identical here and in the Note to 5.5.5.
Note	It is actually destruction (as in the Note to 5.5.4), not demolition, that is included in the heading to 5.6.4.
5.5.6	***Meaning of proceeds from balancing event***
(2)	There needs to be at least a footnote reference to the definition of 'transfer' in 5.3.5(3), which is presumably intended to apply here. We do, however find it confusing to have the use of the same word with two different artificial meanings in close proximity (the other is in 5.5.2 and 5.5.3).
General	We also think that the effects of 5.7.2 to 5.7.4 (particularly 5.7.3) are sufficiently far-reaching that there should be a signpost in the clause itself, not just in a footnote.
5.5.7	***Exclusion of portion of proceeds***
(2)	There is another apportionment provision relevant to balancing events, in s128(7), which has been rewritten in clause 5.6.3. It needs at least a signpost here.
(3)	Should 'applies' in the second line perhaps be 'applied'?
5.5.8	***Overall limit on balancing charge***

Defined terms	'Balancing event' has of course been duplicated.
5.5.9	***Transfer subject to subordinate interest***
(2)	We wonder if 'transferor' and 'transferee' might be easier terms.
(6)	Part of the Commentary has strayed into the text.
Origin	A space is missing after the dash following subs (6).
5.6	**Further rules about allowances and charges**
5.6.6	***Final writing down allowance***
Defined terms	The residue of qualifying expenditure is found in 5.5.5.
5.7	**Supplementary provisions**
5.7.1	***Manner of making allowances and charges***
(1)	It would be more consistent with the approach adopted elsewhere to state the effect of s140(2) and s144(2) here, rather than using cross-references.
(3)	'Carrying on' should go before 'neither'.
5.7.2	***Sale, exchange or surrender between connected persons***
(1)(d)	We think that 'otherwise' should be inserted before 'connected', since (a) to (c) also relate to connected persons.
Origin	The origin of subs (1) should include s157(2) (partnerships).
5.7.3	***Other kinds of transfer taken to be at market value***
-	We suggest that 'by way of' should be inserted in front of 'surrender'. Otherwise 'for valuable consideration' could be regarded as qualifying sale or exchange as well as surrender. Compare 5.7.2 where the distinction is clearly made.
5.7.4	***Transactions to obtain tax advantage***
Defined terms	5.7.3 does not define 'sale'. Nor is it needed here, as an exchange and a surrender for valuable consideration are already treated as a sale under 5.7.4(3).
Origin	Similarly, S157(4) is not needed as a reference for either subs (1) or (2).
5.7.5	***Minor definitions***
Origin	S137(7) does not appear to be relevant to the definition of 'market value'.
5.7.6	***Index of defined expressions***
	The reference for 'related agricultural land' should be 5.2.1.
	We would welcome clarification of the references given for 'sale (of relevant interest)'.
7	**Scientific research**
7.2.	**Qualifying expenditure**
7.2.6	***Demolition costs***
Origin	S138(7) deals with events before 26 July 1989, and does not need to be included here.
7.3	**Allowances and charges**

7.3	***Overview***
-	In the third paragraph, the reference should of course be to 7.3.4 to 6, and '(7.3.7.to 7.3.10)' should be added at the end.
7.3.1, 2	***Entitlement to allowance and period for which available***
-	7.3.1 is so short that it could usefully be combined with 7.3.2
7.3.3	***Amount of allowance***
Origin	S138(2) does not appear to be needed as the origin for subs (1).
7.3.4	***Liability to balancing charge***
(1)(b)	This refers to when a person 'has to' bring in a disposal receipt. 7.3.6 and 7 repeat this or use similar wording. It is not till 7.3.8-10 that it is clear when receipts *have* to be brought in. A forward note to these would be helpful in 7.3.4.
7.3.8	***Disposal receipt: ceasing to own an asset***
(1)	'Taken' or ‘brought’ is of course missing as the second word in line 3.
7.3.10	***Disposal receipt: interest in oil licence***
(1)(b)	It is pointed out in para 2 of the Commentary that the allowable exploration expenditure is given in 7.3.3 and 7.3.6(3). It would be helpful to say so in this subsection too.
Note	As we have pointed out elsewhere, a Note is liable to be missed if it is lumped in with the Defined terms and Origins.
7.4	**Special provisions relating to VAT**
7.4.1	***Circumstances in which this Chapter applies***
Origin	A rogue full stop has crept in before 138(2A).
7.4.8	***Meaning of additional liability and rebate***
(2)(a)	This 76-word sentence would be better if broken up.
(3)	Perhaps 'specified' instead of 'mentioned' would fit the wording of (2)(a) even better.
7.5	**Supplementary provisions**
7.5	***Overview***
Para 2	In the second line it should of course be 'connected'.
7.5.3	***Effect of election***
Origin	The origin for subs (2) and (3) should include s158(1)(a) as well, bringing in market value if lower.
7.5.5	***Contributions and grants***
(1)	'Sums paid by' seems an unnecessary addition to (a).
	Nor does 'other than the person incurring it' seem necessary, seeing that a person cannot pay a sum to himself.
	We are not sure if (b) and (c) are needed, since (a) (any person) is sufficiently broad to encompass the Crown etc.
7.5.6	***Minor definitions***
(3)(b)	We have questioned earlier whether 'leasehold interest' is needed in place of 'lease'.
Origin	The origin for subs (1) is s139(1)(e), not (a).

12 Supplementary provisions

12.x.3 ***Meaning of licensed area and licensee***

(2)(b), (3)(b)(i) We are not sure why it was found necessary to lengthen the wording of the original.

12.x.4 ***Meaning of oil licence relating to undeveloped area***

(2) We appreciate that the style is to economise on commas, but feel that it would be helpful to have a comma after '1964' in the last line but one.

Origin The origin for subs (2) should include s196(3).

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