TAXREP 31/00

TAX LAW REWRITE
DRAFT CAPITAL ALLOWANCES BILL

Memorandum submitted in October 2000 to the Revenue by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to the Draft Capital Allowances Bill issued in July 2000

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DRAFT CAPITAL ALLOWANCES BILL

A GENERAL POINTS

Introduction

1. We welcome the opportunity to comment on the draft Capital Allowances Bill. Although further work remains to be done, the draft Bill is an impressive achievement by the Tax Law Rewrite team and we congratulate everyone involved. The Capital Allowances Act 2001 will demonstrate clearly the value of the tax law rewrite process in improving the intelligibility of the tax legislation.

2. We commented upon a number of general and specific aspects of the draft Bill, as it then stood, in section A of our response to Exposure Draft 9 ('ED9'), published as TAXREP 16/00, to which we also refer you. We focus in this response upon detailed constructive criticism of the Bill's revised contents. We aim to respond so far as possible separately to those further amendments still to be made to the Bill before its introduction to Parliament, although this will prove increasingly difficult as the timescale shortens.

Comments on the Bill

3. The Bill is a substantial document. The imposed reduction in white space and the closer text, compared to the ED9 draft, unfortunately makes it more intimidating to the reader; but this does not detract from the value of the enhanced intelligibility of its contents.

4. The Bill is well structured, with the more commonly-met plant and machinery, industrial buildings and agricultural buildings allowances Parts dealt with early on, before the more specialist Parts 5-8 and the less frequently encountered Parts 9 and 10, followed by the more general Part 11 on contributions and the miscellany in Part 12.

5. There are sections where the text is still difficult to understand (in particular 5.4.6 Transfers of mineral assets within group) and we draw attention to these below. It is otherwise logically structured, and the effort to break down large chunks of dense original legislation into intelligible more manageable sections is rewarded in the end product. The use of Tables, formulae and signposting within the Bill works well, as does the mixed treatment of definitions mainly within Schedule 1 but also where specifically relevant to them within the Parts themselves as in 2.11.1 and 2.11.2 (Overseas leasing – basic terms).

6. The weeding out of unnecessary material and the other proposed rewrite changes, subject to our comments in B, are welcome; but are of course no substitute for simplification of the law itself, a cause which we continue to strongly support.

Structural changes

7. The major structural changes since ED9 have been made in Part 2 (plant and machinery allowances). Our specific comments on these are as follows.

8. We agree that it is appropriate to place 2.1.3 and 2.1.4 in the Chapter 2.1 Introduction section (4.37 Commentary).

9. Chapter 2.3 (qualifying expenditure) is, unavoidably, an assembly of provisions which variously treat capital expenditure as wholly, partly or not at all eligible for plant and machinery allowances. The Chapter begins with a disconcerting negativity in 2.3.1 and 2.3.2 with the focus on buildings and structures, etc which are ineligible for such allowances. Then, through exceptions, it begins in 2.3.3 to identify expenditure which either may be or is eligible. There is then a reversion in 2.3.4 to the ineligibility of expenditure on interests in land; followed by eligible building alterations in 2.3.5, eligible demolition costs in 2.3.6 and then specific types of eligible expenditure in 2.3.7 to 2.3.13. This is followed by 2.3.14, which doesn't clearly make the necessary point that expenditure on films treated on election as capital expenditure then becomes qualifying expenditure. The Chapter reverts finally to a series of types of ineligible expenditure in 2.3.15 – 2.3.19, although including 2.3.17 which deals rather with the strict definition of qualifying expenditure in the case of an employment or office than ineligibility.

10. The contents of Chapter 2.3 are necessary and correct; but the reader gains the impression that it is something of a jumble. It might be appropriate to move 2.1.1(4) and (5) out of 2.1.1 and into Chapter 2.3 as its introduction, with appropriate amendment to the wording of 2.1.1(5). In the truncated 2.1.1, subsection (2) might then be expanded by adding '"Qualifying expenditure" has the meaning given by Chapter 2.3' as a second sentence.

11. We would also prefer to see 2.4.12 (time when expenditure is incurred) located after 2.4.1 in the General section of Chapter 2.4, as an earlier alert to the reader before considering sections 2.4.2, 2.4.6 or 2.4.7.

12. We do not object to removing the provisions for 1992-93 and 1997-98 expenditure from Chapter 2.4 into Schedule 3 (paragraphs 59-63) for the reasons set out in Commentary 4.66 – 4.68. However the continued relevance of this legislation should be made clearer, by including a reference to Schedule 3 (paragraphs 59-63) in the list in 2.4.1. In addition in 2.18.3(1)(a) after 'expenditure' in line 18 it would be helpful to insert '(including first-year qualifying expenditure within Schedule 3 paragraphs 60-63)'.

13. For the purposes of Chapter 2.4 it is now necessary to distinguish small, medium and large enterprises. The approach is to identify only those which are small or medium, the remainder being large by deduction. The word 'enterprise' is adopted as a useful designation to cover both companies and unincorporated businesses. The Finance Act 2000 extension of 40% first-year allowances from small enterprises to medium-sized enterprises has added the complication of identifying medium-sized enterprises as well as small companies, which is neatly

done by reference to the company law criteria. Whilst the approach of merging sections 22A and 22AA CAA 90 is logical, a somewhat confusing distinction between 'small or medium-sized' enterprises and 'small' enterprises results. The small enterprises are the same small enterprises whether they fall under either heading, and it would have improved the reader's understanding had the rewrite set out to distinguish small from medium companies and businesses.

14. We support the approach in Chapter 2.5 (allowances and charges) of dealing both with pooling and the calculation of allowances or charges for pools. With reference to Commentary 4.110 we see no need to define what is meant by a 'pool'. Although a central concept, this is not difficult for a reader to understand from the rewritten text.

15. We also support the combining of 2.10.18 to 2.10.21 of ED9 and introducing these earlier in 2.5.5 as predominantly a statement of the amount of writing-down allowances available.

Content

16. Certain of the Chapters, in particular 2.11 (Overseas leasing), 2.12 (Ships) and 2.14 (Fixtures) are unavoidably long and remain complex. Whilst the Chapter contents are logically structured, the reader may still struggle to fully understand them in view of their complexity. Wherever possible the inclusion of further guidance would be helpful (see, for example, our comments on Chapter 2.14 below).

17. In Chapter 2.12 (Ships) for example it is still difficult to discern how the deferment of balancing charges works. It appears that an *amount equal to* the balancing charge otherwise arising in the appropriate non-ship pool is to be treated under 2.12.11 as expenditure offsetting the balancing charge in that pool, which then presumably ends. The balancing charge itself is attributed to an amount of anticipated qualifying expenditure (within the six year scope). When that expenditure is actually incurred, in a new single ship pool, the balancing charge is 'resurrected' and set against it in that single ship pool. The overall effect is that the original balancing charge does not become part of taxable profits; but at the cost of no capital allowances on the equivalent new expenditure in the new single ship pool. Any later disposal event affecting the new ship will then in principle give rise to a correspondingly greater balancing charge (subject to any further deferral). It is not at all easy to appreciate this from a first reading of Chapter 2.12.

18. The revised Chapter 2.14 (Fixtures) is clearer to follow than Chapter 2.17 in ED9; but it is nevertheless a long Chapter and it might help the reader's understanding if 2.14.5 – 2.14.13 were still introduced by something similar to 2.17.4 (Introduction) in ED9. 2.14.14 – 2.14.16 (restrictions on amount of qualifying expenditure) might also benefit from an introduction, distinguishing them as exceptions (albeit frequent exceptions in practice) from the normal expectation that the full amount of capital expenditure incurred will attract allowances. At present they appear rather abrupt and negative following 2.14.13.

19. In Part 3 (Industrial buildings allowances) it is still not brought out clearly enough in 3.1.1 or 3.6.3 that someone buying a second-hand as well as a newly constructed building may be entitled to allowances. This can of course be deduced if the reader studies 3.1.1 and 3.6.3 carefully, but with so fundamental a matter it ought to be easier for the reader to answer his query 'can you get an allowance for a second-hand building?'. A similar criticism arises in respect of agricultural buildings allowances, and we refer you to our general comments on the structure of Part 4 in D (Detailed comments on drafting).

Explanatory notes

20. As regards the explanatory Notes to accompany the Capital Allowances Bill when it is introduced, we consider that their expected contents as set out in 2.24 (in particular the fourth bullet point) in Part 2 of Volume 1 (Introduction and Commentary) will be essential. The reader is still going to need this guidance, particularly with the more complex chapters (for example, those on Overseas leasing (2.11), Ships (2.12) and Fixtures (2.14)).

21. In this context there are a number of cross-referencing and typing errors in the Volume 1 Commentary. These mainly relate to cross-references to earlier exposure drafts, and we have not listed them; but can provide details if required. These errors made our review of the draft Bill more difficult, but we appreciate that the rewrite team is working under pressure.

Structure of our response

22. We have divided the remainder of our responses into three parts:
B - answers to questions we have been asked in the Commentary to address;
C - specific comments on matters of principle; and
D - detailed comments on drafting
and we have also commented on Schedules 1 and 3.

23. Our statutory references (e.g. s 47) are to the existing legislation in the Capital Allowances Act 1990 except where otherwise stated. References to 'Commentary' are to the Commentary in the Draft Capital Allowances Bill Volume 1: Introduction and Commentary (July 2000), and to the paragraphs in that Commentary.

B QUESTIONS

We have been invited to answer a number of questions in the Commentary. Except where we have commented specifically in the list below, we agree with the decision taken by the Revenue.

Page	*Para*	*Comment*
34	4.88	PRC 14 – We do not understand Commentary 4.87. Why is there a change in the law, and why does this in principle make the scope of 2.4.8 narrower than the scope of s 22(6C)? Nevertheless, for the reasons given in Commentary 4.85 and 4.86 we agree the retention of the words "trade or business" from s 22(6C).
39	4.119	'Available qualifying expenditure' is a key feature of the legislation, and we consider that 2.5.6 does add significant value through ensuring that its definition is comprehensive. Within the confines of the Act it should not prove difficult to ensure that the list of provisions involved is and remains complete, and it should not mislead the competent reader.
40	4.124	PRC 16 – We assume that the reference to 'subsection (1)' in the first bullet point in Commentary 4.123 should in fact be to 2.5.7(4). We support the proposed rewrite change on the grounds of caution to make explicit that qualifying expenditure can be added to a pool or not as the taxpayer wishes. The negative approach in 2.5.7(1)-(5), however, reduces the reader's comprehension of this. The choice would be clearer if 2.5.7(4) were reworded as 'Qualifying expenditure can be allocated wholly or partly to a pool for a chargeable period subsequent to that in which the expenditure is incurred but only if the person owns the plant or machinery at some time in that period'. The choice provided in 2.5.7(6) might also become more obvious if 'for that or any later chargeable period' was substituted for 'for any chargeable period' in line 36 (2.5.7(3) would prevent allocation to any earlier period).
41	4.128	PRC 18 – We support the intention of the PRC. However, 2.5.7(7) and (8) are drafted on the basis that, where a first-year allowance has been claimed, the plant or machinery concerned must effectively be allocated to a pool in the chargeable period in which a disposal event occurs. In consequence of including the plant or machinery concerned in a pool in this way, the disposal events regime in 2.5.9 – 2.5.13 can then apply and a disposal value be brought into account. Should the proposed rewrite change therefore be refocussed to require the allocation in the chargeable period in which a disposal event occurs of the balance of the first-year qualifying expenditure (even if zero) to a pool, where a first-year allowance has been made, rather than to make

explicit that a disposal value must be brought into account (this purpose being achieved instead as a consequence)?

44 4.147 PRC 21 – We support the proposed rewrite change. However, abandonment of plant or machinery implies that the owner knows where it is and might perhaps at some future stage access or recover it if within his legal rights, whereas permanent loss of possession effectively removes its ownership from him. In the case of abandonment, might it not still be possible in some cases to realise a net amount for the remains of the plant or machinery? If this is valid, the disposal value in column 2 of the Table (Item 5) ought perhaps to also include 'any net amount received for the remains of the plant or machinery'.

46 4.160 PRC 22 – On the basis that the distinctions between nil and no disposal value in the various provisions considered in the Commentary on 2.5.12 are for no clear reason, we consider it preferable to standardise on one of them and support the proposal to provide for nil disposal values for gifts of plant or machinery to employees, charities, etc. This is the more practical approach when applying the legislation in disposal situations, and evidently the one which the legislation has more frequently adopted to date.

48 4.168 We would retain 2.5.15 (List of provisions outside this Chapter about disposal values), as helpful to the reader. We appreciate the difficulty in ensuring and maintaining its completeness, particularly as Acts outside the CAA 90 may be involved (for example, para 11 Sch 12 FA 1997). Computer aided text search engines may increasingly help with this in future. These would equally assist readers to do their own research, but not all readers would have this facility and in a rewrite context we would prefer to have 2.5.15.

51 4.185 PRC 24 – We support the intention to provide an explicit disposal value where the benefit of a contract is assigned without plant or machinery being brought into use. Our understanding is that, in such circumstances, any capital expenditure actually incurred by the assignor before the assignment will constitute qualifying expenditure (as 2.6.1(3) appears to provide), so that any actual loss realised by him will be relievable.

The meaning of the wording in the fifth line of PRC 24 from 'which similarly. . . .' to the end is not very clear; but we assume that it means that assignors of the benefit of a contract are as a result to be treated in effect the same as persons disposing of actual plant or machinery under hire purchase and similar contracts.

We also have some difficulty in understanding Commentary 4.183. The second and third sentences are correct in relation only to contracts where the plant or machinery has been brought into use for the purposes of the qualifying activity. They are not correct where the

plant or machinery has not been brought into such use before the assignment of the contract, when only capital expenditure previously incurred is taken into account. We are then unsure what the final sentence means.

59 4.250 The proposed rewrite change to omit "to that effect" from 2.11.14(1) (from line 18), with which we agree, is omitted from the list of PRCs on pages 14-18.

87 4.501 PRC 7 – We agree the PRC, but isn't this a change to the law but not to policy (see Commentary 4.499) rather than a change in approach but not in the underlying law as listed on page 14?

84 4.473 PRC 28 –We agree the PRC, but isn't this a change in approach but not in the underlying law (see Commentary 4.472) rather than a change to the law but not to policy as listed on page 16?

113 4.677 If the reference in 4.1.1(3)(b) to an agreement to acquire is apt then surely 4.2.6 needs to merge the agreement with the owner's interest in the same way as it merges it with the fee simple. If this is not done it highlights an unanswered question about the position in Scotland.

114 4.682 We do not support the omission of what was PRC 83 in ED7. The rewrite has highlighted a gap in the law, where a person acquires the relevant interest in part of the related agricultural land *before* an agricultural building is first used. It is unsatisfactory to ignore the problem now, leaving the situation to be dealt with in practice through an apportionment as hitherto. It is essential that this situation should be clarified, and we believe that PRC 83 in ED7 should be retained even though this may disadvantage some taxpayers.

118 4.706 PRC 33 – An agricultural building 'ceases to exist as such' when its use changes to non-agricultural use. For example, where a barn is converted into an industrial workshop for use in a different trade. By dropping the term 'ceases to exist as such' the 4.5.4 Table will no longer include such change of use as a balancing event and the rewrite will be defective. As illustrated by this example, there is a significant difference between the terms 'ceases to exist as such' and 'ceases altogether to be used'. 'Demolition or destruction' will not comprehensively cover the former, nor will 'ceases altogether to be used', as the building would continue to exist in its new use. We accordingly do not support the PRC. We also consider, in any event, that a 'ceases altogether to be used' test might be unworkable in practice. Where a building continues to exist, it is not possible to be certain that it will never be used again.

122 4.730 PRC 34 – We support the PRC, for the reasons set out in Commentary 4.731 particularly and in 4.732.

127 4.772 PRC 39 – We agree with the interpretation set out in the second sentence in Commentary 4.771. S 115(2)(b) apparently refers to a situation where the higher scientific research allowances were made to the previous trader on expenditure which would otherwise have been eligible for mineral extraction allowances as expenditure on mineral exploration and access or on the purchase of a mineral asset, and allows the buyer to ignore this in determining whether his own expenditure on the purchased asset is partly attributable to mineral exploration and access.

As regards the relationship between s 115(1)(b) 'expenditure' and s 115(2)(b) 'qualifying expenditure' we read this as meaning that where the previous trader has incurred 'expenditure' on mineral exploration and access, on which he has claimed scientific research allowances, that does not prevent the buyer from claiming mineral extraction allowances if he can establish that the whole or part of that expenditure is intrinsically 'qualifying expenditure' for mineral extraction allowances purposes.

130 4.796 PRC 35 - We support the treatment of the net cost of restoration as per se qualifying expenditure, without it having to pass the purpose of trade test (which other expenditure has to pass in order to become qualifying expenditure). This is a sensible and practical approach, avoiding the doubt indicated in Commentary 4.795. This PRC is correctly listed in 3 (Changes to the law but not to policy) on page 15 Volume 1: Introduction and Commentary, the reference to it being a change in approach but not in the underlying law in Commentary 4.795 being incorrect.

150 4.934 PRC 41 – We agree that s 157(3) is unnecessary. S 157(4) protects the interests of the other party to the transaction; for example, a market value acquisition cost to a UK resident buyer from a non-resident seller. S 157(4) is also subject to the whole of s 158 which takes care of the 'but subject to subsection (3)' (of s 158) in s 157(3).

C SPECIFIC COMMENTS ON MATTERS OF PRINCIPLE

1 INTRODUCTION

1.2 Exclusion of double relief

1.2.3 Interaction between claims in respect of fixtures and other claims

(1)(a), (3) Does the extension to Part 11 in the references to 'Part 2 or 11' need to be dealt with as a PRC?

(3) Section 147(2C) prohibits claims to any other allowances where a claim under (Chapter 2.14, Fixtures) has already been made. To reflect this timing point more clearly, we suggest replace 'is not entitled to' by 'may not claim' in line 33.

2 PLANT AND MACHINERY ALLOWANCES

2.1 Introduction

2.1.1 General conditions as to availability of plant and machinery allowances

(4) How does the Bill provide capital allowances on expenditure on improvements to plant or machinery? Qualifying expenditure on an asset has to result in the person incurring the expenditure becoming the owner of it (2.1.1(4)(b)). It is not obvious that expenditure on improvements satisfies such a requirement. It appears that 12.6.1, which treats part of an asset as a separate asset, would treat such improvements expenditure as itself a separate asset which the taxpayer might then be regarded as owning as a result of incurring the expenditure so that the general rule in 2.1.1(4) could apply. This is clearly tortuous, and not readily evident to the reader. Moreover, as a separate asset, the expenditure could not go into the same pool as the asset which it improved where that asset was in a single asset pool. Improvements to ships, for example, would then not be eligible for the higher allowances available in their case. We may be misunderstanding the draft legislation; but at the very least we are in doubt, which is undesirable in a rewrite context, and this is a very important aspect to clarify.

2.2 Qualifying activities

2.2.5 Special leasing of plant or machinery

Is it intended to omit 2.2.5(2) in ED9? It should evidently still be included in the rewrite.

2.3 Qualifying expenditure

2.3.9 Fire safety

(1) In our comments on 2.5.3 in ED9 we suggested that 'or intends to use' could appropriately be inserted after 'uses' (in line15). This comment similarly still applies also to 2.3.10, 2.3.11 and 2.3.12.

2.4 First-year qualifying expenditure

2.4.7 ICT expenditure incurred by small companies

Section 71 FA 2000 introduces 100% first-year allowances on ICT expenditure by incorporating a new section (3E) into s 20, whereupon s 22(1) achieves this by treating (3E) as 'any other case' eligible for first-year allowances equal to the whole of the expenditure. This includes any additional VAT liability, even if incurred after 31st March 2003. As presently drafted 2.5.1(3) provides 100% first-year allowances only on expenditure qualifying under 2.4.7, which in 2.4.7(1)(a) requires that expenditure to be incurred on or before 31st March 2003.

A similar situation applies in respect of 2.4.2, where the intention is also to apply 100% first-year allowances to any additional VAT liability incurred in respect of capital expenditure incurred on or before 11th May 2002 even though that liability is incurred after 11th May 2002.

2.4.9 Expenditure of small or medium-sized enterprises: companies

General This section would be clearer if it sought to distinguish small from medium-sized companies. This could be achieved by deleting 'small or' in (1)(a) at line 26; deleting 'small or' in (2) at line 28 and in 2(a) at line 30.

2.4.10 Expenditure of small or medium-sized enterprises: businesses

General This section would be clearer if it sought to distinguish small from medium-sized businesses. This could be achieved by deleting 'small or' in (1)(a) at line 16; deleting 'small or' in (3) at line 25 and in (3)(b) at line 29; and by deleting 'small or' in line 45 on page 26 and in line 2 on page 27.

2.4.11 Whether company is a member of a large or medium-sized group: general

General This section would be clearer if it sought to distinguish large from medium-sized companies. This could be achieved by deleting 'large or' in (1)(b) at line 21; deleting 'large or' in (3) at line 29; inserting 'large or' before 'small' in (3)(a) at line 32; deleting 'large or' in (4)(b) at line 40 and in line 43. In (5) delete lines 45 and 46 and insert after 'whether' in line 44 'a group qualifies as small, medium-sized or large'.

2.5 Allowances and charges

2.5.1 First-year allowances

(5) We note the comments in Commentary 4.106; but consider that it would complete the information on amounts of first-year allowances currently applicable if a cross-reference were made to para 59, Schedule 3. This could

be achieved by inserting 'and paragraph 59(3) Schedule 3 (Transitionals and savings)' immediately after the bracket in line 31.

2.5.2 Pooling of qualifying expenditure

(1) In line 3, we note the change to qualifying expenditure *'has to be'* (our italics) pooled compared with *'is'* (our italics) pooled in the predecessor 2.8.1 in ED9. We agree that this is logical as all expenditure falls to be pooled.

2.5.7 Initial allocation of qualifying expenditure to pools

General We would remove the word 'initial' from the heading in line 16.

(1) 2.5.7 does not clearly identify what might be termed the 'normal' treatment of a person's qualifying expenditure. This might be achieved by rewording (1) as 'A person may allocate qualifying expenditure to the appropriate pool, subject to the following restrictions.' The word 'may' recognises that, except where first-year allowances are made in respect of first-year qualifying expenditure, a person can choose not to allocate qualifying expenditure to a pool.

2.5.8 Unrelieved qualifying expenditure

Should the equivalent of 2.10.7(3) in ED9 be added?

2.5.9 Meaning of "disposal receipt" and "disposal event"

(2) 'Disposal events' are no longer fully listed, as they were in 2.10.9(2) and (3) in ED9; being now defined as 'under section 2.5.10(1) or otherwise'. We prefer the ED9 approach, which enables the reader to see the whole picture.

2.6 Hire-purchase etc and plant or machinery provided by lessee

2.6.3 Disposal value on cessation of notional ownership

(2) Where the plant or machinery has been brought into use s 60(2)(b)(i) places a cap on the disposal value equal to the total capital expenditure which the person would have incurred in respect of the plant or machinery if he had wholly performed the contract. This needs to be provided for in 2.6.3(2) also.

2.11 Overseas leasing

2.11.6 Cases where allowances are prohibited

(2)(d) We prefer the ED9 wording in 2.14.7(2)(d) to 'has any of the features listed' to the reference to the lease being 'within one of the items' listed, for the avoidance of any doubt where the lease contained more than one of the items listed.

2.13 Provisions affecting mining and oil industries

2.13.12 Participator's expenditure attributable to plant or machinery

(4)(b) Is (4)(b) needed? Doesn't 2.13.12(2) already provide that the participator is to be treated as the owner of the plant or machinery?

2.14 Fixtures

2.14.6 Equipment lessors

(1) Should provision be made that the equipment lessee must be within the charge to tax in the UK on the profits of the qualifying activity for the purposes of which he has entered into the equipment lease (as in 2.17.7(2)(b) in ED9)?

2.14.18 Identifying the qualifying interest in special cases

(1),(2), (3),(4) The 'same interest' continuity was more evident in the wording of 2.17.19(2)-(5) in ED9. This is the most important effect of 2.14.18, preventing 2.14.17 from applying, and the new wording now masks it. It is not easy for the reader to readily appreciate that the 'old' and the 'new' interests are to be treated as the same qualifying interest, such that there is no cessation of ownership under 2.14.17.

2.14.25 Disposal values in relation to fixtures: general

(1) In item 2 of the Table, in column 1 (Disposal event) (b) should be worded 'the conditions in subsection (2) are met by the purchaser'. In 2.14.25(2), line 11 should read 'The conditions referred to in item 2 of the Table are -' introducing the existing (a) and (b) as Condition 1 and adding as a Condition 2 after line 17 (and) 'there is no charge to tax under Schedule E.'

How is a disposal event and disposal value under 2.14.20 (Cessation of ownership on severance of fixtures) dealt with in the Table?

Item 11 should also deal with *part* use for other purposes. Section 59(9) refers to part use as well as whole use.

2.15 Asset provided or used only partly for qualifying activity

2.15.1 Reduction of first-year allowances

(1) If 'qualifying' is to be dropped before 'expenditure' in line 5 (see 2.18.1(1) in ED9, line 12) then it should be replaced by 'capital'. This will then relate back to the general rule in 2.1.1(4) and it can be deduced that the expenditure is still qualifying expenditure.

2.15.2 Single asset pool, etc

General The contrast between 2.18.2(1) and (2) in ED9 was clearer than the contrast now between (1) with (2), and (3). The reader needs now to appreciate that 'begins' in line 25 of 2.15.2(3) refers to a situation where the plant or machinery was previously *wholly* used for the purposes of the qualifying activity. In the absence of any signpost he may also struggle to realise that in 2.15.2(3) line 27 'disposal value' means 'market value' and that the plant or machinery is to be removed at that value from an existing pool into a new single asset pool. Also, why has the provision in 2.18.2(3) in ED9, that there is to be a separate single asset pool for each occasion on which this section applies, been dropped?

(3) In 2.18.2(2)(b) in ED9 an amount equal to the disposal value was required to be allocated to a single asset pool as qualifying expenditure incurred immediately after the beginning of a chargeable period, which avoided the need for any apportionment of allowances (as in s 79(3)). Why has this been dropped?

In summary, we would prefer the retention of the clearer wording in 2.18.2 (1)-(3) in ED9, with appropriate amendments to include 'if allocated to a pool' after 'expenditure' in line 29 of 2.18.2(1) and to make clear that 'disposal value' in 2.18.2(2)(b) means market value.

2.15.3 Reduction of allowances and charges on expenditure in single asset pool

(3) 2.18.5(2) (reduction of balancing allowances and balancing charges) in ED9 was worded more liberally than 2.18.3(2) in ED9 (reduction of writing down allowances) by allowing regard to the extent of use throughout ownership rather than only in the chargeable period in which the chargeable event arises. This has changed following the combination of 2.18.5 and 2.18.3 in ED9 as 2.15.3(3) now. 2.15.3(3) does rewrite s 79(5)(a) accurately; but there is a case for a future change in policy if not a PRC now. In practice this may not have caused any particular difficulties; but in principle it appears inappropriate to assess a balancing charge or balancing allowance on the basis of circumstances in the final chargeable period only, rather than by reference to the whole period of ownership prior to the chargeable event.

(4) Unless there are any circumstances where unrelieved qualifying expenditure can be carried forward after a balancing charge or allowance arises in a single asset pool, then 'in any writing down allowance' should be inserted after 'reduction' in line 4.

2.15.4 Effect of significant reduction in use for purposes of qualifying activity

(1)(b) Whilst 2.15.4 correctly rewrites new s 79A, introduced by s 75(2) FA 2000, 2.15.4(1)(b) is unnecessarily long and is not reader friendly. The section seeks simply to prevent cumulative allowances writing the asset down to £1m or more below its prevailing market value, correcting the situation through a balancing charge recovery and then transferring the plant or machinery as an equivalent deemed amount of expenditure incurred into a (presumably new) single asset pool. 2.15.4(1)(b) needs to say no more than that 'there is such a change of circumstances as results in a significant reduction in use of the plant or machinery for the purposes of the qualifying activity', because 2.15.4(1)(d) is in principle a clear objective test for the section to operate.

(2)(a) We suggest inserting after 'value' in line 29 the words 'equal to the market value of the plant or machinery at the end of the relevant chargeable period' and, in lines 29 and 30, replacing the words 'the relevant chargeable' by 'that'.

(2)(b) It is not clear whether the following period 'reacquisition' at market value occurs in the same single asset pool or in a new single asset pool. Commentary 4.436 refers to a new single asset pool.

2.16 Partial Depreciation Subsidies

General It would be helpful to indicate what the 'disposal value' to be taken into account in 2.16.3(4) is. Presumably the event falls within item 7 of the disposal events in the Table (Disposal Values: General) in 2.5.10? On this assumption we suggest that at least a cross-reference to this would be helpful or to incorporate some form of wording such as 'the market value of the plant or machinery at the time the partial depreciation subsidy is paid'. The frequent references to the 'partial depreciation subsidy' in Chapter 2.16 may initially mislead the reader into thinking that this may be the disposal value.

2.16.3 Single asset pool, etc

(4)(b) After 'pool' in line 29 delete the full stop and add 'as qualifying expenditure incurred at the beginning of that period'.

2.16.4 Reduction of allowances and charges on expenditure in single asset pool

(3) Unless there any circumstances where unrelieved qualifying expenditure can be carried forward after a balancing charge or allowance arises for a single asset pool, then 'in any writing-down allowance' should be inserted after 'reduction' in line 2. Delete 'under subsection (1) or (2)' in line 2 (regardless of this suggestion., the reference to subsection (1) appears inappropriate).

2.18 Additional VAT liabilities and rebates

2.18.3 Additional VAT liability generates first-year allowance

(2) We criticised the predecessor 2.21.3(2) in ED9 on the basis that first-year allowances might not be available when the additional VAT liability is incurred, and that this was in principle inappropriate. Our view is that any additional VAT liability should qualify for allowances at the same rate applicable to the original expenditure. This point has not been taken. Whilst the person is regarded as having incurred the same kind of first-year qualifying expenditure as the original expenditure, this will be to no avail if he does so in a chargeable period in which first-year allowances are not available (for example, after 11 May 2002 in the case of 2.4.2 expenditure and after 31 March 2003 in the case of 2.4.7 expenditure). If not dealt with as a PRC, this should be put forward as a policy matter.

(2)(a) 'the same kind of first-year qualifying expenditure' needs to be defined as expenditure either within 2.4.2, 2.4.6 or 2.4.7. 'Type' rather than 'kind' would also be a more appropriate term in line 23 to line up with the italicised first column heading in the Table in 2.5.1(3).

2.18.4 Exceptions to section 2.18.3

(2) Subsection (2) appears to be a rewrite of 2.21.4(4) in ED9 only. 2.21.4(3) in ED9 has evidently not now been rewritten as an exception (to 2.18.3). Why not? Our understanding is that 2.21.4(3) dealt with situations where the original expenditure *was* Northern Ireland expenditure (being outside the

timescale within what is now 2.4.5(3)), rather than never having been treated as such.

2.18.5 Additional VAT rebate generates disposal value

Commentary 4.475 is difficult to understand. It appears to be saying that 'made' rather than 'accrues' should be used in line 10, presumably because s 24(7)(c) refers to 'the *making* of an additional VAT rebate'. If so, this seems correct. In 2.18.5(2) and (3) the word used is 'accrues' (in lines 13 and 17), presumably based on the second of the two meanings in s 159A, in (3) and (4), and used only for the purpose of determining the chargeable period (the other meaning being in s 159A(1)). The legislation appears to be correctly rewritten; but the reader is likely to be confused as to the distinction between the words 'made' and 'accrues' as now used in 2.18.5 and its relevance. Is this distinction in wording really necessary, or could it be removed by a PRC or dealt with as a policy matter?

2.18.10 Restriction on B's qualifying expenditure: sale and finance leaseback

(1)(b) Why doesn't this subsection also refer to additional rebates, as 2.18.9(1)(b) does?

(3)(b) Why doesn't the calculation of 'E' also take into account any reduction for the amount of any additional VAT rebate(s) made to B in respect of his expenditure on the provision of the plant or machinery? A similar point applies to 2.18.9(3).

2.18.11 B's qualifying expenditure if lessor not bearing non-compliance risk

General Is it necessary to provide, as in 2.17.14(3), that the lessor and persons connected with the lessor are to be treated as the same person?

2.19 Giving effect to allowances and charges

2.19.7 Investment companies

(7) We refer to our comments on 2.22.7(7) in ED9, and assume that these (and our comments regarding 2.19.12 – 14 below) remain under consideration (Commentary 4.492).

2.19.12 Special leasing of plant or machinery

(4) We refer to our comments on 2.22.12(4) in ED9.

2.19.13 Excess allowance from special leasing: income tax

General We refer to our comments on 2.22.13 in ED9.

2.19.14 Excess allowance from special leasing: corporation tax

General We refer to our comments on 2.22.14 in ED9.

2.20 Supplementary provisions

2.20.3 Successions: general

We note that whether 2.20.3 is now needed in full remains under consideration.

2.20.7 Use of plant or machinery for business entertainment

(1) We refer to our comments on 2.23.7(1) in ED9.

3 INDUSTRIAL BUILDINGS ALLOWANCES

3.1 Introduction

3.1.1 Industrial buildings allowance

General We support the intention to give the reader an early indication of the relationship between the key concepts, expressed in Commentary paras 4.518 – 4.523, but 3.1.1 does not fully achieve this.

The references to 'construction' in (1)(a) and (1)(c), possibly rooted in Chapter 1 of CAA 90's concern with construction expenditure for the purposes of initial allowances, leaves the reader uncertain whether second-hand buildings acquired can qualify for IBAs (see also our comments on 3.6.3 below). The primary essential is for the person to hold the relevant interest in the building in the first place, and we would position this requirement earlier in 3.1.1 than in (3).

We would then put as a further essential, following that, the need for qualifying expenditure to have been incurred upon the building or structure whether on its construction or improvement. In this context 3.1.1(1)(a) and (c) might be merged as simply requiring that qualifying expenditure has been incurred upon the building or structure. The reference to 'construction', as implying bringing a new building or structure into being, could be dropped as not really appropriate to qualifying improvement expenditure on the building. 3.1.1(1)(a) is evidently intended to refer to both new and second-hand buildings, through its basic requirement that expenditure must have been incurred (at some time) in constructing the building or structure concerned, and 3.1.1 then strains in 3.1.1(1)(c) to cover improvements expenditure to an existing building through the phrase 'or other expenditure'.

In summary, we would redraft 3.1.1(1) to start with the two essentials above, with cross-references to Chapters 3.3 and 3.4, and then add as a third essential the requirement set out in 3.1.1(1)(b). We would retain 3.1.1(2), and drop 3.1.1(3).

3.1.2 Expenditure on the construction of a building

General The heading is too broad, 3.1.2 dealing only with two types of expenditure; one excluded and the other included as expenditure on construction. We suggest that 3.1.2 could be incorporated more appropriately in 3.4.3 (Capital expenditure on construction of a building).

3.1.3 Preparation of sites for plant or machinery

General As a policy matter, we suggest consideration be given to amalgamating 3.1.3 and 2.3.5 and treating all the expenditure as expenditure qualifying for

plant and machinery allowances. Site preparation costs are as necessary as any alterations to existing buildings in the context of the installation of plant or machinery.

3.2 Industrial Buildings

3.2.1 Trades and undertakings which are "qualifying trades"

(1) In Table B we would restore the word 'undertaking' to the italicised descriptions in the second column. The 'definitions' in the third column for items 5, 7, 8 and 9 might then be removed and the column left blank as in 3.2.2 in ED9. To define 'Transport' as ' A transport undertaking', etc seems pointless.

In view of the references to 'item' in 3.2.1(2) and 3.2.4(2), consideration might also be given to reinstating 'Item' at the top of the first column in Tables A and B.

3.2.4 Exclusion of dwelling-houses, retail shops, showrooms, hotels and offices etc

(2),(3) The 'is about' link between 3.2.4(2) and (3) is inelegant. It may be better to combine these two subsections by merging (2) into (3). This might be done by replacing the words 'which this subsection is about' in line 36 by 'constructed for occupation by, or for the welfare of persons employed in a trade within item 5 (foreign plantations) or item 7 (mineral extraction) of Table A'. There seems to be little point in preserving the contrast between 'on, or in connection with' in (2)(a) and 'at, or in connection with' in (2)(b) which would be lost if the subsections were merged in this way.

3.2.6 Qualifying hotels

(8)(b) There is no definition of 'a member of his family or household'. This will require a change in the law, as there is no definition in s 19.

3.2.7 Qualifying sports pavilion

As this is an unexpectedly wide definition, we regard the words 'The trade need not be a qualifying trade' in 3.2.9 in ED9 as helpful to the reader and would prefer to see them retained in 3.2.7. Otherwise, although it would be a logical conclusion, in practice the reader would need to exercise his mind to conclude that 'trade' was wider than 'qualifying trade'. The inclusion of the above words would avoid any doubt and would avoid testing the reader unnecessarily.

3.2.10 Non-industrial part of building disregarded

(1) The inclusion of the words, in lines 32 and 33, 'but taking into account section 12.6.1 (parts of buildings, etc)' is a change to the law, and would also make it very difficult to apply. These words should be deleted. S 161(7) (building to include part of building), the predecessor to 12.6.11, is subject to the proviso that it shall not apply where reference is to 'the whole of a building or structure'. This aspect is rewritten in 12.6.1(2); but has been lost sight of in rewriting 3.2.10(1). In s 18(7), the predecessor to 3.2.10, the

reference is specifically to parts 'of the whole of a building' and hence 12.6.1 is not applicable for the purposes of 3.2.10.

3.2.12 Cessation of use and temporary disuse of building

In (a), line 10, we prefer the words 'ceases temporarily to be in use' in 3.2.12(1) in ED9 to 'falls temporarily out of use'. 'Out of use' also clashes with 'disuse' in (b).

3.4 Qualifying expenditure

3.4.3 Capital expenditure on construction of a building

The inclusion of the new words 'or, if it has been sold, it has been sold only after the first use of the building' is confusing. Why is it necessary to introduce these words? In contrast 3.4.2 in ED9 applied clearly to persons constructing a building and retaining the relevant interest until after it was first used.

3.6 Writing-down allowances

3.6.3 Basic rule for calculating amount of allowance

(1),(2) In our response to the predecessor 3.6.3 in ED9 we drew attention to this section as concerning the important point that someone buying a second-hand building may be entitled to allowances. The section heading and drafting now in 3.6.3 still do not make this as obvious as it ought to be.

3.7 Balancing adjustments

3.7.4 Balancing event where hotel not qualifying hotel for 2 years

(1) We pointed out in our response to 3.7.3 in ED9 that it would simplify matters if the same 2 year period applied for the purposes of 3.7.4(1)(b) and (4) to avoid unnecessary balancing event calculations where the qualifying hotel comes back into use after the expiry of the (1)(b) period but before the expiry of the (4) period. This point has not been taken; but it should be put forward as a policy point.

(3) Although technically correct the reference to 'industrial building' looks odd in the context. As this is explanatory wording only, we suggest replacing 'industrial building' in lines 40 and 41 by 'qualifying hotel'. This is the approach adopted in 3.7.4(4); with 3.2.12(b) and 3.1.1(c) authorising the use of the term 'qualifying hotel' in the circumstances.

3.7.10 Adjusted net cost

General In the formula, provision needs to be made to adjust 'S' where 3.10.7 has applied during the person's ownership.

3.7.11 Net allowances

It looks odd to include a deduction 'B' in respect of balancing charges in the context of a balancing adjustment. 3.7.11 correctly rewrites s 4(10). This

originated in paragraph 4(5) Sch 14 FA 1991 to provide that balancing charges already made in respect of a VAT rebate are also to be taken into account. As there appear to be no other circumstances where a prior balancing charge falls to be taken into account, it would be helpful in the definition of 'B' to cross-refer to 3.10.6(3) and (4).

3.7.12 Balancing allowances restricted where sale subject to subordinate interest

(7) As a policy matter, the deduction of the full balancing allowance when it is not given in full appears unnecessarily severe. It should be sufficient to reduce the residue of qualifying expenditure only by the amount of the balancing allowance actually given in the circumstances of 3.7.12.

3.7.14 Capital value provisions: application of provisions

To meet the point raised in our comments on 3.9.10 (incorrectly labelled 3.9.7 in our submission) in ED9, we would suggest adding '(c) the expenditure is qualifying enterprise zone expenditure' after 'b' with an introductory 'and' at the end of line 29.

3.12 Supplementary provisions

3.12.1 Apportionment of sums partly referable to non-qualifying assets

(1) 'Sum paid' is the term used in s 21(3) and is appropriate, but we prefer 'the consideration' as used in 3.13.1 in ED9. Consideration will not always be in the form of payment. It could be satisfied through a share issue by the purchaser or in kind.

The use of the word 'consideration' would require consequential amendments in 3.12.2(1) and 3.12.2(6).

3.12.2 Arrangements having an artificial effect on pricing

(1)(c) Is 'a provision' in the singular, in line 28, adequate or should the reference be to 'provisions' (as in 3.13.7(2)(b) in ED9)? This also concerns 3.12.2(2)(c) and 3.12.2(4).

4 AGRICULTURAL BUILDINGS ALLOWANCES

4.2 The relevant interest

4.2.4 Merger of leasehold interest

(3) What is the authority for providing that 4.2.4(1) does not apply if a new lease of *'a part'* of the related agricultural land is granted to take effect on the extinguishment of the former lease? s 125(4) CAA 90 does not appear to provide for this. Its reference to 'a new lease of the land concerned' appears instead to assume a new lease of the same area of land let under the lease which is extinguished. We have no objection in principle to the relevant interest (in the extinguished lease) being treated as continuing into a

new lease of a part only of the land previously let under the extinguished lease; but this will require a PRC. Please also see our comments on 4.2.5.

4.2.5 Provisions applying on ending of lease

General As concerns ownership of the relevant interest, s 126(5) does not provide for a new lease to replace only part of the land let under the lease which comes to an end. The references to 'part' in 4.2.5(2) and (3)(a) are not appropriate. 4.2.5(3) appears to be particularly contorted in seeking to transfer the relevant interest in the whole of the related agricultural land to the incoming lessee where his new leasehold entitlement is in part only of that land. As with 4.2.4(3) these changes would require a PRC, although we are unclear how 4.2.5(3) would operate if anyone else could have a claim to the relevant interest in the part of the related agricultural land not within the new lease.

4.4 Writing-down allowances

4.4.8 Final writing-down allowance

(2) This is written in mandatory terms, 'the allowance is increased to that amount' (line 41). It would be helpful to make clear that this is subject to 4.4.1(3), the claimant's right to require the allowance to be reduced to a specified amount.

4.5 Balancing adjustments

4.5.4 Proceeds from balancing events

(1) As the Table itself does not refer to any amount being 'receivable', it might be clearer to delete the words 'received or receivable in connection with the event' in line 16 and to insert after 'following' in line 17 'Table, where references to amounts received include amounts receivable'. The heading of column 2 in the Table might also read better as *'Amount of proceeds'*.

4.5.7 The residue of qualifying expenditure

General As a policy matter, in calculating a balancing adjustment it is cumbersome to require all allowances and balancing charges previously made during the life of the asset, through however many changes of ownership, to be brought into account in calculating a balancing adjustment on each balancing event. Later owners may also have difficulty in obtaining the relevant details from former owners. It would be simpler to require figures for the amount of the original qualifying expenditure and for the residue of qualifying expenditure in the seller's hands to be notified to a purchaser.

4.5.10 Balancing allowances restricted where sale subject to subordinate interest

(7) As a policy matter, the deduction of the full balancing allowance when it is not given in full appears unnecessarily severe. It should be sufficient to reduce the residue of qualifying expenditure only by the amount of the balancing allowance actually given in the circumstances of 4.5.10.

5 MINERAL EXTRACTION ALLOWANCES

5.4 Qualifying expenditure: second-hand assets

5.4.2 Acquisition of oil licence from non-trader

(2)(b) Whilst we understand the reasoning, as a policy matter it appears unfair to reduce the buyer's expenditure on acquiring the interest in the oil licence by E2 where he is only able to treat a lesser E1 amount as qualifying expenditure on mineral exploration and access (because the value of that expenditure has increased during the vendor's ownership).

5.4.6 Transfers of mineral assets within group: limit is initial group expenditure

General The drafting of this section needs further attention. It is very difficult to understand, in particular 5.4.6(3) and (6).

We suggest that 5.4.6(3) might be easier to understand if worded as 'If the seller acquired assets X or Y in circumstances where subsection (1) applied, then apply subsection (2) to that acquisition, and so on in relation to any previous acquisition within subsection (1) until the earliest such acquisition'.

In 5.4.6(4)(a), delete the words 'the acquisition in relation to which it is established that there is no earlier buyer, and' and insert 'the earliest acquisition within subsection (1), and'.

In 5.4.6(4)(b), delete the words 'who is not an earlier buyer' and insert 'whose acquisition was the earliest acquisition within subsection (1)'.

5.4.6(6) is likely to be unintelligible to most readers. This subsection rewrites s 117(6), which requires the buyer to be treated as incurring qualifying expenditure equal to an earlier group owner's unrelieved value determined under s 110(4). Can this be expressed more clearly?

6 RESEARCH AND DEVELOPMENT ALLOWANCES

6.1 Introduction

6.1.1 Research and development allowances

(2) Whilst we appreciate that this may be on account of its length and in order to have a single definition in the Tax Acts, it is unfortunate that the reader has to turn to s 837A of ICTA for the meaning of a definition so basic to his understanding of Part 6.

It might be helpful to at least insert as a brief explanation after 'ICTA' in line 29 '(activities that fall to be treated as research and development in accordance with normal accounting practice, subject to any regulations made by the Treasury)'.

6.1.2 Expenditure on research and development

(1) As Part 6 is concerned only with capital expenditure (as 6.2.1(1) makes clear), it may be appropriate to insert 'capital' before 'expenditure' in line 31 and possibly in the section heading.

6.4 Additional VAT liabilities and rebates

6.4.2 Additional VAT liability treated as additional expenditure, etc

(1) Reference Commentary 4.839, if the original expenditure was capital expenditure on 'research and development' then it was by definition 'qualifying expenditure'. A related additional VAT liability will not affect its character, so we see no reason why the additional VAT liability should not be described in line 42 as 'additional qualifying expenditure' rather than 'additional capital expenditure'. Is the Commentary perhaps mistaken here, as 6.4.2(1) in ED9 *did* refer to 'capital expenditure'?

(2) As this subsection also refers to VAT rebates, it might be better to incorporate it into 6.2.2(2)(b).

7 KNOW-HOW ALLOWANCES

7.1 Introduction

7.1.3 Acquisition of know-how together with a trade

(1) The words 'and for the purposes of corporation tax, income tax and capital gains tax' in s 531(2) of ICTA are omitted. Is there a reason for this? These purposes are wider than 'for the purposes of this Act' in 7.1.3(1) at line 20 (we raised this in our comments on 7.1.4(1) in ED9).

8 PATENT ALLOWANCES

8.3 Allowances and charges

8.3.1 Pooling of expenditure

(2) This could be more clearly worded as 'If a person carries on more than one trade, expenditure relating to each trade must be allocated to its own separate pool'.

(3) It is not made clear that as well as being kept separate from qualifying trade expenditure pools, all qualifying non-trade expenditure must be allocated to a single distinct pool. We suggest that 8.3.1(3) would read more clearly as 'If a person also has qualifying non-trade expenditure it must be allocated to a single separate pool'.

8.3.6 Limit on amount of disposal value

(2) This does not rewrite the s 521(3) requirement that, where patent rights are sold by a person in parts, the *aggregate* disposal value must not exceed his qualifying expenditure on purchasing the rights. The drafting is correct as regards the sale of a single part, but does not provide for the limit to extend also to any sales of the remainder.

We suggest redrafting 8.3.6(2) as 'The amount of any disposal value to be brought into account by a person on the sale of one or more parts of any patent rights is limited, as the case may be in the aggregate, to the qualifying expenditure incurred by that person on purchasing the rights'.

(4) 'in the case of the sale of a part' in the singular does not relate logically to 'the total amount of the disposal values' in the plural. We suggest replace 'a sale of a part' by 'sales of more than one part' in line 7.

8.4 Giving effect to allowances and charges

8.4.2 Persons having qualifying non-trading expenditure

We do not agree the interpretation of the relationship between s 532(1) of ICTA and s 145 in Commentary 4.863. S 528(2) and (3) of ICTA are drafted on the basis that allowances are available only against income from profits. S 532(1) however then treats such allowances as being included within any reference in the Tax Acts to any capital allowances to be given 'by way of discharge or repayment of tax and to be available *or* available primarily against a specified class of income'; but if regard is had to the practical effect of the quotation in s 532(1), it is that 'available' or 'available primarily' are *alternatives* and s 532(1) does ensure that s 528(2) and (3) allowances *are* within the 'available' alternative. We place the emphasis on 'or' rather than the word 'available' having always to be linked with the words 'or available primarily'. It follows that we believe that 8.4.4(3) – (7) in ED9 *should* be included in the rewrite. In this context our comments on 8.4.3(2) in ED9 remain relevant.

9 DREDGING ALLOWANCES

9.3 Allowances

9.3.1 Entitlement to writing-down allowances

(2) This subsection is shown in Volume 3 as originating in s 134(1). Is it in law correct that the person has no writing-down allowance entitlement in a final chargeable period where 9.3.6 or 9.3.7 apply? S 134(1) itself appears silent on this; but s 134(2) refers to 'any other allowance made' to the person in the final chargeable period (apart from a balancing allowance) and it is difficult to see what this would be if it isn't the writing-down allowance for

that period (albeit possibly reduced under 9.3.3(2) if the final period was less than twelve months).

9.3.4 Claim for a reduced specified amount

General Part VI of CAA 90 does not seem to provide for writing-down allowances to be reduced on a claim by the taxpayer. We have no objection to this; but it would appear to require a PRC. If a writing-down allowance is not claimed in full, the expenditure unrelieved could then be relieved only in calculating a balancing allowance under 9.3.6 or 9.3.7.

9.3.8 Calculation of the amount of balancing allowance

General As drafted , this does not take into account any writing-down allowance for the final chargeable period itself (see our comments on 9.3.1(2) above).

The step-by-step approach is also somewhat ponderous. We believe it could be improved if, essentially, a first subsection stated that the balancing allowance was equal to the excess of the qualifying expenditure over all allowances given; and a second subsection indicated which allowances to bring into account (including possibly a writing-down allowance for the final period – see our comments on 9.3.1(2) above).

10 ASSURED TENANCY ALLOWANCES

We have no comments.

11 CONTRIBUTIONS

We note that you have yet to revise Part 11 in the light of responses to ED9. We accordingly refer you to our responses to Part 11 of ED9 earlier submitted.

12 SUPPLEMENTARY PROVISIONS

12.4 Partnerships, successions and transfers

12.4.1 Application of sections 12.4.2 and 12.4.3

General As well as Parts 2 and 6, Part 10 (Assured tenancy allowances) should also be excluded (see our response to 12.4.1 in ED9, parts C and D).

12.4.3 Effect of successions

General We note that you are still considering whether this clause is needed in the Bill (Commentary 4.926).

12.5 Miscellaneous

12.5.1 Apportionment where property sold together

General We note that 12.5.2(3) in ED9 has been omitted in rewritten 12.5.1. We agree that this is in accordance with s 150(4), which applies to the entire CAA 90 and did not exclude industrial and agricultural buildings and dwelling-houses let on assured tenancies.

12.5.7 Election to treat sale as being at lower amount

(4) Why is there a reference to allowances and charges under Chapter 9, when 12.5.5(2) and 12.6.3(3) do not apply to that Chapter?

12.6 Final provisions

12.6.1 Application of Act to parts of assets

General S 161(7) more obviously covers industrial and agricultural buildings and plant and machinery allowances; but the inclusion of the word 'asset' can justify extending it to the entire Act, as in 12.6.1(1). The s 161(7) inclusion of part, however, is specifically excluded only where the reference is to 'the whole of a building or structure' and 12.6.1(2) might be construed as having a narrower meaning than this (as extending to all assets). We have no objection in principle to 12.6.1 as drafted; but it seems appropriate to deal with its introduction as a PRC. There also appears little point in the descriptive words in brackets, in lines 21 and 22, if all assets are covered.

D DETAILED COMMENTS ON DRAFTING

1 INTRODUCTION

1.1 Capital allowances: general

1.1.3 Claim for capital allowances

(3)(b) Insert 'balancing' before 'allowance' in line 22?

(3)(c) Replace 'non-trading' by 'non-trade' in line 24?

(4)(a) The reference in line 30 should be to 2.19.14(3)(b).

(4)(b) Insert 'balancing' before 'allowance' in line 32?

2 PLANT AND MACHINERY ALLOWANCES

2.1 Introduction

2.1.1 General conditions as to availability of plant and machinery allowances

(4) The introductory words 'The general rule' is an improvement, but we prefer the (a), (b) and (c) layout in 2.1.1(2) in ED9. The repetition of 'the person incurring the expenditure' in (4)(a) and (4)(b) is cumbersome.

(5) We prefer the precision of the layout in 2.1.1(5) in ED9 to the shortened subsection now proposed, which gives no guidance as to what the 'other provisions' are and leaves the reader to search them out.

2.2 Qualifying activities

2.2.1 Qualifying activities

(3) This subsection could be omitted, as it adds nothing to 2.3.16 which more adequately deals with the treatment of expenditure on plant or machinery for use in a dwelling-house.

2.3 Qualifying expenditure

2.3.2 Structures, assets and works

(1) In List B, item 3, delete the comma after 'basin' in line 34. In Table 2, Schedule AA1 to CAA 90, item C, 'a navigable river' is included within 'any inland navigation'.

In List B. item 5, all the words after 'dock' in line 3 to the end of the sentence in line 5 should be in brackets; also delete the comma after 'dock' in line 3 and insert 'including any' immediately after the new opening bracket and before 'harbour' in line 3. Table 2, Schedule AA1 to CAA 90, item E, treats all of these as '(a) dock'.

2.3.3 Expenditure unaffected by sections 2.3.1 and 2.3.2

(2) In the cases of 2.3.8 and 2.3.14 the descriptive words in brackets do not match those in the sections themselves. In the case of 2.3.14 the ED9 stage heading is still being used.

2.3.9 Fire safety

(3)(a), (4)(a), (6)(b) References to 'the 1971 Act' need to be defined as meaning 'the Fire Precautions Act 1971', perhaps by inserting '("the 1971 Act")' after '1971' in line 18.

2.3.10 Safety at designated sports grounds

(2)(a), (3)(b)(i) References to 'the 1975 Act' need to be defined as meaning 'the Safety of Sports Grounds Act 1975', perhaps by inserting '("the 1975 Act")' after '1975' in line 3.

2.3.11 Safety at regulated stands at sports grounds

(2)(a), (3)(b)(i) &(ii) References to 'the 1987 Act' need to be defined as meaning 'the Fire Safety and Safety of Places of Sport Act 1987', perhaps by inserting '("the 1987 Act")' after '1987' in line 28.

2.3.12 Safety at other sports grounds

(2)(a)& (b), (3), (4)(b) References to 'the 1975 Act' need to be defined as meaning 'the Safety of Sports Grounds Act 1975', perhaps by inserting '("the 1975 Act")' after '1975' in line 6.

2.3.14 Films

(1) We note that the ED9 (2.6.1) reference to 'audio products', which was not a term used in s 68, has been dropped from 2.3.14.

2.4 First-year qualifying expenditure

2.4.3 Miscellaneous exclusions from section 2.4.2 (expenditure for Northern Ireland purposes, etc)

(3) References to 'the Department' need to be defined as meaning 'the Department of Agriculture and Rural Development in Northern Ireland', perhaps by inserting '("the Department")' after' Ireland' in line 34.

2.4.7 ICT expenditure incurred by small enterprises

The Class B italicised heading is stranded at the foot of page 23.

2.4.9 Expenditure of small or medium-sized enterprises: companies

(5) References to 'the 1985 Act' and 'the 1986 Order' need to be defined as meaning 'the Companies Act 1985' and 'the Companies (Northern Ireland) Order 1986' respectively, perhaps by inserting '("the 1985 Act")' after '1985' in (4)(a) in line 43 on page 25 and by inserting '("the 1986 Order")' after '1986' in (4)(a) in line 45 on page 25.

2.4.10 Expenditure of small or medium-sized enterprises: businesses

(5)(d) 'the 1985 Act' requires definition.

(6), (7) We would prefer to retain the CAA 90 wording 'treated as' in place of 'assumed to be' in lines 4 and 9.

2.4.11 Whether company is a member of a large or medium-sized group: general

(4) 'arrangements' in line 37 requires definition.

(8) References to 'the 1985 Act' and 'the 1986 Order' need to be defined, perhaps by inserting '("the 1985 Act")' after '1985' in line 6, and '("the 1986 Order")' after'1986' in line 8.

The subsection would also read better if 'as in' was removed from line 17 and inserted before 'Part' in line 19.

2.5 Allowances and charges

2.5.3 The different kinds of pools

(5) In lines 23 and 24 replace 'to a class pool-' by 'to distinct class pools-'.

2.5.8 Unrelieved qualifying expenditure

In line 13, we suggest, insert 'that pool and' before 'period'. This will line up with the TDR wording.

2.5.9 Meaning of "disposal receipt" and "disposal event"

(1) In line 21, delete the final 's' from 'cases', to line up with the heading in 2.5.13.

2.5.10 Disposal events and disposal values

(3) We would prefer the retention of the word 'following' before 'Table' in line 14 (see ED9, page 43 line 28 in 2.10.10).

2.6 Hire-purchase, etc. and plant or machinery provided by lessee

2.6.2 Hire-purchase etc and fixtures

(2)(b) With the passing of FA 2000 on 28 July 2000, it is presumably necessary under s 71(3)(b) FA 2000 to insert 'before 28th July 2000' after 'fixture' in line 11.

2.7 Computer software

2.7.3 Limit on disposal values

(1)(b) For consistency with 2.7.1(2) and 2.7.2(1), we suggest, change 'in' to 'with' in line 13.

2.10 Long-life assets

2.10.12 Long-life asset pool

(2)(b) In line 8 delete 'to' immediately before 'allocated'.

2.10.13 Writing-down-allowances at 6%

(1) In lines 14 and 15 'see Chapter 2.5' is an unusually broad signpost; but it does seem appropriate in the context of referring to 'AQE' and 'TDR'. A similar situation exists in 2.11.5(1).

2.11 Overseas leasing

2.11.13 Recovery of allowances in case of joint lessees

General We note that the Bill will be further revised before its introduction (Commentary 4.247).

2.12 Ships

2.12.2 Expenditure which is not to be allocated to single ship pool

(3) In line 18 "designated purpose" should be amended to "designated period". Similarly in 2.12.6(4) in line 3.

2.12.30 Connected persons

(1)(a), (c) Commentary 4.322 states that the term 'connected persons' when used in CAA 90 is broader than the meaning in s 839 ICTA, and the wording 'in the sense given in section 839 of ICTA' is adopted in 2.12.30(1)(a) and (1)(c). This is an unusual term to use and rather vague. .

2.13 Provisions affecting mining and oil industries

2.13.9 Production sharing contracts

General We suggest that the heading for 2.13.9 and the italicised heading at line 6 on page 84 would be clearer if they read 'Oil production sharing contracts'.

(1) Is it necessary to deal with the change in wording from "qualifying purpose" in s 64A(1)(b) to "oil-related use" as a PRC? As the definition of either is the same, from the same source in s 64A(11) we hold no strong view on this.

(3) The definition of 'oil' in 12.3.5(3) is a more detailed definition than that in s 138A(4). Confirmation is requested that this reflects only changes in the wording of the Petroleum Act 1998 compared with the Oil Taxation Act 1975. The reference to the Petroleum (Production) Act (Northern Ireland) 1964 appears to be a new reference, however. We have no objection, of course, to the updating of the definition.

2.14 Fixtures

2.14.28 Election to apportion capital sum given by lessee on grant of lease

(1),(2) The references to 'item 4' in lines 36 and 40 should be to 'item 5'.

2.16 Partial depreciation subsidies

2.16.4 Reduction of allowances and charges on expenditure in single asset pool

(4) In lines 5 and 6 replace 'take' and 'takes' respectively by 'claim' and 'claims', to line up with 2.15.3(5).

2.17 Anti-avoidance

2.17.21 Meaning of connected person

(2)(b) This would read better if worded 'the plant or machinery is available for any use to which it is put directly or indirectly as a consequence of having been leased under a finance lease'.

2.18 Additional VAT liabilities and rebates

2.18.6 Limit on disposal value when additional VAT rebate

(5) In line 43 on page 118 we suggest that the words 'less the total of any additional VAT rebates' be replaced by 'reduced by any additional VAT rebates in respect of it' and insert 'net' before 'expenditure' in line 1 on page 119. This will make it clearer that the VAT rebates referred to are those made only to that connected person whose (net) qualifying expenditure is taken as the disposal value limit.

2.18.9 Restriction on B's qualifying expenditure: general

(1) In line 31 ':general' is included in the bracketed cross-reference heading to 2.17.6. This is not included in the actual 2.17.6 heading. It would seem appropriate to include it also in the 2.17.6 heading.

3 INDUSTRIAL BUILDINGS ALLOWANCES

3.1 Introduction

3.1.2 Expenditure on the construction of a building

(1) In line 15 insert 'of' before 'rights'. The sentence could otherwise be read as meaninglessly stating that expenditure on the construction of a building does not include rights in or over land.

3.2 Industrial buildings

3.2.4 Exclusion of dwelling-houses, retail shops, showrooms, hotels and offices etc.

General Delete 'etc' from the heading, which appears to exhaustively cover the types of building to which 3.2.4 relates.

3.3 The relevant interest in the building

3.3.3 Effect of creation of subordinate interest

(1) In line 38 we suggest delete 'merely'.

(2) Its title in brackets is missing after 3.3.5. Possibly the close proximity of this following section explains this.

3.3.5 Election to treat grant of lease exceeding 50 years as sale

(3) This correctly rewrites s 11(2) CAA 90; but the wording, particularly in (a), is not straightforward for a reader to understand. Could 'a' perhaps be reworded as 'related to the relevant interest in subsection (1)(b)'?

3.3.6 Supplementary provisions with respect to elections

General Is Commentary 4.562 mistaken? We cannot see how 3.3.9(5) in ED9 has been incorporated into 3.3.6.

3.4 Qualifying expenditure

3.4.1 Meaning of 'qualifying expenditure'

Should there also be a signpost to 3.4.6 (Purchase of used building from developer)?

In the descriptions of 3.4.10 and 3.4.12 it would be more consistent with the other signposts to replace 'sale' in lines 12 and 15 with 'purchase'.

3.4.4 Purchase of unused building where developer not involved

(1)(a) We assume that the absence of the word 'capital' before 'expenditure' in line 36 is to cover the situation where the person who built the building did so as a trading transaction otherwise than as a developer.

3.4.10 Purchase of building within 2 years of first use

To distinguish 3.4.10 from 3.4.12, which both have the same heading, insert ', constructed wholly within 3.4.7 time limit,' after 'building' in line 32.

(7)(a) Why isn't the wording the same as in (a) in 3.4.13(3)?

3.4.11 Qualifying enterprise zone expenditure where section 3.4.4 or 3.4.5 applies

(2) In line 2, '(4)' should be '(3)'.

3.4.12 Purchase of building within 2 years of first use

To distinguish 3.4.12 from 3.4.10, which both have the same heading, insert ‘, constructed partly within 3.4.7 time limit,’ after ‘building’ in line 11.

3.4.13 Application of section 3.4.12 where developer involved

(2) In line 17 the formula would be clearer as ‘N = L-(L x E/T)’.

This formula might be expected logically to be ‘N = C – Z’.

3.5 Initial allowances

3.5.1 Initial allowances for qualifying enterprise zone expenditure

(3) Why does the wider definition of “trade” apply to (1)(a) only and not to (1)(b) also?

3.5.4 Grants affecting entitlement to initial allowances

(6) If there are any circumstances now where ‘notwithstanding any other provision’ in s 1(9) could permit a longer period of adjustment, 3.5.4(6) will be drafted too restrictively.

3.7 Balancing adjustments

3.7.2 Main balancing events

General If (1) and (3) now comprise a full list of balancing events, the word ‘main’ can be deleted from the heading.

(1)(c),(2) As the definition of ‘foreign concession’ appears earlier in 3.2.4(4), it would suffice to insert in brackets after the first word ‘concession’ in line 14 the words ‘as defined in 3.2.4(4)’. 3.7.2(2) could then be deleted.

(3) The wording in brackets after 3.7.15 in line 20 and 3.9.3 in line 22 are free-form explanatory rather than a repetition of the section’s title (as in the case of the reference to 3.10.6 in line 23). This varied treatment recurs throughout the Bill. We have no objection to this, but note it for the record.

3.7.3 Proceeds from main balancing events

(1) The Table does not deal with a balancing event within 3.7.2(1)(b). The intention of (1)(b) may be to cover the expiry of a leasehold interest at the end of its term without any consideration arising. If so, it would be helpful to indicate this. Otherwise something should be said in the Table about this balancing event and any proceeds from it.

The reader is left to discover the proceeds from the balancing events listed in 3.7.2(3), by reference to the sections concerned themselves; but this is not unreasonable as 3.7.2(1) lists the actual events whilst 3.7.2(3) is only a signpost to other sections which then identify other balancing events.

3.7.4 Balancing event where hotel not qualifying hotel for 2 years

General The heading would be more reader friendly if ‘not’ in line 27 was replaced by ‘ceases to be a’.

(1)(a) In line 30 the cross-reference should more precisely be to 3.7.2(1).

3.7.12 Balancing allowances restricted where sale subject to subordinate interest

(4) In lines 28 and 29 it might be clearer to rephrase 'the net proceeds of the sale *to* the former owner' as 'the former owner's net proceeds of sale' as the sale is by rather than to him.

3.8.8 Crown or other person not within the charge to tax entitled to the relevant interest

(2)(a) In line 37 after 'Crown' insert 'or a person who is not within the charge to tax'.

(3) In line 2, page 160, delete 'to'.

3.9.2 The relevant interest

(2) In line 14 insert 'to' after 'relation'.

3.9.3 Balancing adjustment on ending of concession

(1) In line 26, '3.8' should read '3.7'.

3.9.4 Cases where highway concession is to be treated as extended

(1) In line 37, change 'and' to 'or'. The concession is either renewed or a new one, and an 'or' link between (a) and (b) would also cater for situations where part was renewed and part was new.

3.10.2 Additional VAT liabilities: initial allowances

To conform with the other section headings in Chapter 3.10, we suggest that the 3.10.2 heading should be 'Additional VAT liabilities and initial allowances'.

3.10.7 Additional VAT rebates and writing off qualifying expenditure

In line 22, insert 'and no balancing charge arises under 3.10.6' after 'expenditure'.

4 AGRICULTURAL BUILDINGS ALLOWANCES

The overall structure of Part 4 is logical and reader-friendly. Promoting the chapter on the relevant interest to Chapter 4.2 is sensible, so that the reader can see early on whether he is likely to have such an interest and whether the Chapter concerns him or not.

The expansion of Chapter 4.4 (to include all the legislation bearing on writing-down allowances) is also appropriate, although it might be helpful to the reader to insert appropriate italicised sub-headings before 4.4.1 (dealing with the main requirements for allowances); before 4.4.2 which, with 4.4.3, deals with ABAs on newly constructed buildings; before 4.4.4 which, with 4.4.5, deals with second-hand buildings; and before 4.4.6 which, with 4.4.7

and 4.4.8, deals with balancing adjustments and final writing-down allowances.

There is a need to bring out more clearly that ABAs may be available to persons who acquire existing agricultural buildings (see our comments below on 4.1.1).

In more detail, we support the restoration of the 'major interest' in 4.1.1 and the promotion of 4.1.3 into Chapter 4.1. Our comments in B on Commentary 4.682 express reservations on the proposal to omit PRC 83 in ED7.

4.1 Introduction

4.1.1 Agricultural buildings allowances

General In our general commentary on Part 4 in ED9 we pointed out that there was nothing to clearly alert the reader to the fact that allowances are also given to a person who acquires an existing ('second-hand') agricultural building. This defect remains.

We also have a difficulty with the wording in 4.1.1(1)(a) which provides that ABAs are available if capital expenditure has been 'incurred on the construction' of a building, fences of other works. 4.1.1(1)(b) goes on to provide that the expenditure must be incurred *by* a person having a major interest in land 'occupied [presumably by him] wholly or mainly for the purposes of husbandry' and for the purpose of husbandry on that land. The intention clearly must be to make ABAs available to a person who incurs capital expenditure on building or having a building built on his land for the purposes of husbandry. However, for the avoidance of doubt it ought to be made clearer that incurring capital expenditure on construction includes contracting with a builder to actually construct the building. It is a narrow and perhaps pedantic point and clearly unintended; but it might otherwise be argued that the person had not actually incurred capital expenditure on construction; but instead on purchase of a new building constructed by the builder. 4.2.1 could not then effectively operate, as the builder would not normally hold a major interest in the land (in this context, the reference to expenditure on the construction of the agricultural building is to 'expenditure' only and not to 'capital expenditure', so could include a builder's expenditure on revenue account). 4.1.3 might be extended to clarify this point.

(1)(a) In line 40 examples of a building are given in brackets, following the introductory words 'such as'. S 123(1) in fact refers *only* to the construction of farmhouses, farm buildings, cottages, fences or other works. We assume the basis of the non-exhaustive definition now included in 4.1.1(a) will lie in the wider references to 'any asset other (than a farmhouse)' in s 124(1)(b) and in particular to 'other buildings' in the s 133(1) definition of 'agricultural land'. We have no objection to the approach in 4.1.1(1)(a), as better adapted to accommodate practice on this (for example, that growers' glasshouses with certain exceptions are treated as qualifying for ABAs); but,

if our assumption is incorrect, this will be a change of law requiring to be dealt with as a PRC.

The words 'such as' in line 40 of 4.1.1(1)(a) also affect the definition of 'agricultural building' in 4.1.1(2)(a), making it in consequence a less precise definition.

(2)(b) The definition of 'the related agricultural land' would fit better in 4.2.1 (General rule as to what is the relevant interest) where it is first referred to (in 4.2.1(1)).

4.1.2 Meaning of 'husbandry'

(2) We agree the reference to s 154 FA 1995 for the reasons set out in Commentary 4.667, but prefer the words in brackets in lines 28 and 29 to read '(means a perennial crop of tree species planted at high density, the stems of which are harvested above ground level at intervals of less than ten years)'.

4.4 Writing-down allowances

4.4.5 Calculation of allowance after acquisition

(2) In the definition of 'B', it would be helpful to cross-refer to the definition of 'writing-down period' in 4.4.1(2).

4.5 Balancing adjustments

4.5.3 Requirements as to elections

(5) This sub-section is cumbersomely worded. The predecessor 4.5.3(7) in ED9 was better drafted, and we suggest its retention.

4.5.5 Exclusion of proportion of proceeds

(1) We preferred the more positive drafting of the predecessor 4.5.7(1) in ED9 to the negative approach in 4.5.5(1).

4.5.9 Acquisition of relevant interest in part of land etc

(2) We suggest delete the full stop after 'building' in line 17 and add 'as if it were qualifying expenditure separate from the rest' which should lead the reader to appreciate that the related capital allowances and balancing charges will require similar apportionment.

4.5.10 Balancing allowances restricted where sale subject to subordinate interest

(4) In lines 40 and 41 it might be clearer to rephrase 'the net proceeds of the sale *to* the former owner' as 'the former owner's net proceeds of sale' as the sale is by rather than to him.

5 MINERAL EXTRACTION ALLOWANCES

5.2 Qualifying expenditure on mineral exploration and access

5.2.3 Pre-trading expenditure on plant or machinery

(5) After 'machinery' in line 1 on page 185 add 'in subsection (4)'. Although this can be understood from the present drafting, this would make clearer that relevant receipts relating to plant or machinery acquired more than 6 years before the first day of trading are not to be taken into account.

5.4 Qualifying expenditure: Second-hand assets

5.4.5 Assets generally: limit is previous trader's unrelieved qualifying expenditure

(7)(b) In line 14 'attributable' should be attribute'.

5.4.6 Transfers of mineral assets within group: limit is initial group expenditure

(2)(b) In line 31 replace 'that mineral asset' by 'asset Y'.

(6)(b) In line 9 the reference should be to 5.3.3(3) and not to 5.3.3(4).

In lines 9 and 10 should 'section' read 'subsection'?

5.5 Other kinds of qualifying expenditure

5.5.3 Expenditure on restoration within 3 years of ceasing to trade

(6)(a) In lines 13 and 14 the words 'to the working of which the mineral extraction trade related' are a little cumbersome. We suggest replace these by 'worked in carrying on the related extraction trade'.

5.6 Allowances and charges

General 'AQE' and 'TDR' are defined in 5.6.1 and 5.6.3, but not in 5.6.2. This might be dealt with by inserting 'throughout this Chapter' after AQE and TDR in the brackets in lines 32 and 34 respectively in 5.6.1. This would require only 'WDA' to be defined in 5.6.3.

5.6.4 Meaning of 'disposal receipt'

In line 5 should '5.6.8' be '5.6.9'?

5.6.7 Sections 5.6.5 and 5.6.6: amount of disposal value to be brought into account

General With reference to Commentary 4.814 we agree the proposal to omit what was clause 5.5.18 in ED9, for the reasons set out in Commentary 4.809 – 4.813.

5.6.14 Disposal of asset, etc

(1)(b) In line 1, 'permanently' should be inserted after 'ceases'. S 99(1)(b) provides for a permanent cessation of use.

5.6.15 Discontinuance of trade

In line 13, we suggest insert 'in relation to all qualifying expenditure' after 'allowance', in accordance with s 101(1).

6 RESEARCH AND DEVELOPMENT ALLOWANCES

General We note that further changes to this Part are likely (Commentary 4.827).

6.2 Qualifying expenditure

6.2.1 Qualifying expenditure

(1)(b) 'connected with' in line 10 was not defined for the purposes of s 137(1). It is correctly rewritten into 6.2.1(1)(b), but it contrasts with 'related to ' in s 137(1)(a) for no evident reason. The opportunity might be taken to amend it to 'related to' by means of a PRC.

In line 10 we suggest add 'and development' after 'research'. The latter may be an overhang from s 137(1)(b) where it referred to 'scientific research'.

(5) We refer to our comments on 6.1.3(a) in ED9.

6.3 Allowances and charges

6.3.1 Allowances

General This section needs to provide that any balancing allowance within 6.3.1(1), where a disposal event occurs before any allowance is made, is made only if the disposal event does not give rise to a balancing allowance under Part 2 or 3.

Scientific research allowances under Part VII CAA 90 appear to be mandatory. In the context of a 100% allowance, we assume that this is why Chapter 6.3 itself makes no provision for balancing allowances, other than where a disposal event occurs before any allowance is made and is relievable by 6.3.1(1).

As a matter of policy, the taxpayer should be given the alternative freedom to claim the allowance as he chooses spread over a number of chargeable periods.

6.3.2 Balancing charges

General We note that further work is required on this clause.

6.3.3 Disposal events and disposal values

(3) In item 3 in the Table, in the first column (Disposal event) the words 'any of' are unnecessary.

6.3.4 Chargeable period for which a disposal value is to be brought into account

(1) Despite the Table of Origins 6.3.4(1)(a) appears to rewrite s 138(3) which provides that, where the relevant event occurs before the chargeable period in which the (scientific research) allowance would otherwise have been made, then the chargeable period is that in which the relevant event occurs. This is not what 6.3.4(1)(a) currently says, 'that chargeable period' in line 6 appearing to refer to the chargeable period in which the allowance is made.

The 'the' at the end of line 5 also duplicates the one at the start of line 6.

(2)(b) In line 12 we suggest replace 'carries' by 'begins to carry'.

7 KNOW-HOW ALLOWANCES

General We note that further changes may well be made in response to the comments on ED9 (Commentary 4.842).

7.2 Qualifying expenditure

(1) If the use of the word 'he' is unacceptable, we suggest deleting 'the person' from lines 6, 8, 10 and 13 and inserting 'that person' after 'if' in line5.

7.3 Allowances and charges

General We note that the clauses in Chapter 7.3 are still provisional.

7.3.1 Pooling of expenditure

(2) We suggest replace the words after 'to' in line 40 to the end of the sentence in line 41 by 'each trade must be allocated to a separate pool'.

7.3.2 Determination of entitlement or liability

(1) In line 8 insert 'in that pool' after 'account'.

(4) As balancing allowances are only given when a trade is permanently discontinued, unrelieved qualifying expenditure relating to any individual assets included in the trade pool which are disposed of while the trade continues will remain in the pool following their disposal and continue to be relieved under 7.3.3. As a policy matter, the law should be amended to make balancing allowances available in such circumstances.

7.3.4 Available qualifying expenditure

(1)(a) We suggest replace 'the current' by 'that' in line 30.

(1)(b) With reference to our comments on 7.3.5(1)(c) in ED9, we remain unclear as to what expenditure this will cover; particularly as s 530 of ICTA appears to apply on a mandatory basis

7.3.5 Disposal values

General We note that 7.3.6(4) in ED9 has now been dropped. We agree that this is unnecessary, as the chargeable period in which the disposal value on a sale of know-how is brought into account is fixed by 7.3.5(1). S 530 of ICTA deals only with sales of know-how, and rewritten 7.3.6 reflects this. How is s 531(8) of ICTA (the giving of an undertaking for consideration, in connection with a disposal of know-how) dealt with in the rewrite? How are gifts of know-how, or compensation arising in relation to it, to be dealt with?

(3) In line 13 we suggest replacing 'the' immediately before 'know-how' by 'that'.

8 PATENT ALLOWANCES

General We note that further revision of the clauses in Part 8 may yet be made in response to earlier comments received (Commentary 4.852), in particular in Chapter 8.3. We draw attention to our comments on 8.1.3(1) and (2)(a) in ED9, as the same cumbersome wording to which we referred there remains in 8.1.2(2)(a).

8.3 Allowances and charges

8.3.2 Determination of entitlement or liability

(1) In line 19 insert 'in that period' after 'account'

(4) As balancing allowances are only given in the final chargeable period, unrelieved qualifying expenditure net of the disposal value of any assets sold will remain in a pool until that period and continue to be relieved under 8.3.3. As a policy matter, the law should be amended to make balancing allowances available in such circumstances.

(5) In line 25 insert 'trade' before 'expenditure'.

8.3.3 Amount of allowances and charges

(5) In line 40 delete 'of the amount' after 'amount'.

8.3.4 Available qualifying expenditure

General We note that you will be revisiting this claim.

The use of 'chargeable period' in line 3 and '*current* chargeable period' in line 5 to refer to the same period is a little confusing. We suggest delete 'current' where it appears in lines 5, 14 and 18.

(1)(b) Although correctly rewriting s 521(1)(a) of ICTA we remain unclear as to what expenditure this will cover. In particular, it is not clear in Part 8 whether a writing-down allowance claim can be deferred to a later period, when the qualifying expenditure would be first brought into account in that later period. 8.3.7 evidently deals with expenditure which is not qualifying expenditure, rather than qualifying expenditure purposefully kept out of any pool, and so does not seem to shed any light on this.

8.3.5 Disposal value of patent rights

(1) 'Disposal receipt' is not a term used in 8.3.3, other than indirectly through the definition of TDR in 8.3.2(1). Should the 'to' in line 30 be replaced by 'and'?

8.3.7 Cases in which no disposal value need be brought into account

General We note that 8.3.7(2) in ED9 will be revisited and is not yet incorporated in the Chapter 8.3 clauses.

9 DREDGING ALLOWANCES

9.1 Introduction

9.1.1 Dredging allowances

(2) The definition of "dredging" in s 135(3) is not an exhaustive definition, but rather by reference to what it 'does not include' or 'includes'. As it leaves open for inclusion other unnamed relevant activity, we consider that the word 'means' in 9.1.1(2) in line 8 should be replaced by 'includes'.

We suggest that (2) and (3) could be merged, continuing on from line 13 at the beginning of line 14 with 'also includes . . . '; deleting both the full stop after 'water' in line 13 and '(3) The expression' at the start of line 14.

9.3 Allowances

9.3.6 Balancing allowance where trade discontinued

(3) In line 28, replace 'Subject to that' by 'Subject to subsection (2)'.

9.3.7 Balancing allowance where trade sold

(2)(c) Insert 'or' after the semi-colon in line 2.

10 ASSURED TENANCY ALLOWANCES

General We note that this Part is only partly revised, and that you will revisit it again before the Bill is introduced.

10.2 The relevant interest

10.2.4 Effect of creation of subordinate interest

General In line 37 we suggest delete 'merely'.

10.3 Qualifying expenditure

10.3.1 Capital expenditure on construction

General We note that you will revisit 10.3.1(b).

10.4 Qualifying dwelling-houses

10.4.2 Qualifying dwelling-houses: exclusions

The heading '*Exclusion 4'* is stranded at the foot of page 224.

10.6 Balancing adjustments

10.6.6 Overall limit on balancing charge

(2) The cross-reference should be to section 10.6.5(8) and not to 10.6.5(5).

10.6.10 Adjusted net cost

General In the formula, the letters 'I' and 'R' are as appropriate as any; but somewhat meaningless. We see no particular benefit in the change from 'P' in 10.6.10 in ED9 to 'R' now. This may be a case for reverting to 'A' and 'B' which are perhaps more familiar in this type of situation.

11 CONTRIBUTIONS

We note that you have yet to revise Part 11 in the light of responses to ED9. We accordingly refer you to our own responses to Part 11 of ED9 earlier submitted.

12 SUPPLEMENTARY PROVISIONS

12.2 Additional VAT liabilities and rebates: interpretation, etc

12.2.3 Time when additional VAT liability or rebate is incurred or made

General It would be clearer to rephrase the heading as 'Time when additional VAT liability is incurred or rebate made'.

12.3 Disposals of oil licences: provisions relating to Parts 5 and 6

12.3.1 Meaning of 'oil licence' and 'interest in an oil licence'

(3) Subsection (3), the definition of "foreign oil concession" might be better as a separate section ('Meaning of "foreign oil concession"'). Subsection (4) follows better immediately after subsection (2), and the section heading would then also be comprehensive.

12.4 Partnerships, successions and transfers

12.4.1 Application of sections 12.4.2 and 12.4.3

General The bracketed description of 12.4.3 in lines 29 and 30 should read '(effect of successions)'.

12.4.4 Transfer of insurance company business

12.4.5 Transfer of a UK trade to a company in another member State

General We note that you have yet to revisit clauses 12.4.4 and 12.4.5 in detail. We refer you to our comments on the similarly numbered clauses in ED9 which remain relevant.

12.5 Miscellaneous

12.5.1 Apportionment when property sold together

(5)(a) The reference in line 39 should be to 5.1.4 and not to 5.1.4(1).

(5)(b) We remain of the view that the insertion of 'in or' after 'land' in line 40 would be sensible, as removing all doubt (see our comments on 12.5.2(4) in ED9, part D).

12.5.4 Companies not resident in the UK

(2) The subsection remains unnecessarily difficult to understand. We refer you to our comments on 12.5.5(2) in ED9.

12.5.5 Sales between connected persons, etc

(1) It would also be helpful to have signposts to 12.5.5 (and to 12.5.6) within Parts 3, 4, 5, 6 and 10 themselves.

12.6.3 Transfers treated as sales

(1)(b) We suggest replace 'sale.' in line 7 by 'sale (including sales within 12.6.2(1)).'.

SCHEDULE 1

Index of defined expressions

General The cross-reference to the Act is more precisely to 'Section 12.6.7*(5)*'.

We note that the policy continues of defining terms on occasion by reference to definitions included in other Acts. Although it is in principle undesirable, we can understand this in the context of the longer and more complex definitions and also from the viewpoint of having to amend only one definition in one Act when changes affect it; but we believe there is a case for including in full the shorter definitions even if this means that they recur in several Acts. Track might perhaps be kept of them in various Acts by including in the definition a reference to a central definition, for example 'As defined in s 404(4) of ICTA, "dual resident investing company" means ...' (or as suggested below with s 832(1) of ICTA).

Specifically, in line 22 on page 255, the definition of 'body of persons' in s 832(1) of ICTA is a short definition, which for easier reference might be repeated in 12.6.7 followed by the bracketed words '(as defined in s 832(1) of ICTA)'. Similarly with regard to the definition (in s 831(1)(a) of ICTA) of 'the Corporation Tax Acts', in line 2 on page 256, and to the definition (in s 832(1) of ICTA) of 'Schedule A business' in line 16 on page 258.

We accept, however, that where the cross-reference is to a section of ICTA, as with the definition of 'investment company' in line 39 on page 256, it is not unreasonable to assume that the reader has access to ICTA ; but the definition of 'dwelling-house' in 10.8.3(1), for example, simply refers the reader to the Rent Act 1977 definition and the definition of 'development' in 5.7.5 is by reference to various planning enactments. It is unlikely in practice that all readers will have ready access to this other legislation, and in the case of such definitions there is a clear case for including them exceptionally in full. These might be included in a further Definitions schedule.

Line Page

13 256 The definition of 'dual resident investing company' is more accurately to 'section 40.4*(4)* of ICTA'. There seems little point in including this definition in 12.6.7(1) also; the reference might just as well be direct to s 404(4) of ICTA in Schedule 1 only.

23 256 'final chargeable period (in Part 7)' is defined in 7.3.*2*(5) and not in 7.3.3(5).

27 256 'first-year qualifying expenditure' is not defined in 2.5.1(3), which instead deals with the amount of first-year allowances. The whole of Chapter 2.4 (apart from 2.4.13) deals with its definition.

38 256 'interest in an oil licence (in Chapter 12.3)' is strictly defined in 12.3.1*(4)*. This would distinguish the definition from that of 'oil licence' (in Chapter 12.3)' in line 14 on page 257 which is contained in 12.3.1(1) with (2) and (3).

43 256 'lease and related expressions (in Part 10)' is strictly defined in 10.8.3*(2),(3)*. 10.8.3(1) contains the definition of 'dwelling-house', referred to in line 14 on page 256.

1-3 257 'life assurance business' - it would be simpler to cross-reference to s 431(2) of ICTA only and delete 12.1.1(5) on page 238. If the reader wants to know what 'life assurance business' is he can reasonably be expected to refer to Schedule 1 (Index of defined expressions).

4 257 2.10.1 is referred to as defining long-life asset expenditure '(in Chapter 2.10)'. 2.10.1 itself does not in fact restrict the meaning to the purposes of Chapter 2.10; but, as this is the practical effect, we have no objection to these bracketed words in Schedule 1.

14 257 The definition of 'oil licence (in Chapter 12.3)' is more specifically in 12.3.5*(3)*.

16 257 The definition of 'overseas property business' could more simply be defined as 'sections 65A(4) or 70A(4) of ICTA'.

22 257 The reference is to 'a balancing event (in Part 3)' which implies coverage of any balancing event, whereas 3.7.3 is expressed as dealing with 'main' balancing events (but see our general comments on 3.7.2 in section D above). The same criticism is not applicable to the similar Parts 4 and 10 definitions respectively in 4.5.4 and 10.6.3.

36 257 For consistency with line 35, we suggest insert '(in Part 8)' after 'expenditure'.

41 257 The definition of 'relevant interest (in Part 4)' is in Chapter 4.2 and not 4.3.

2-4 258 As regards the definition of 'research and development'. See also our earlier comments on 6.1.1(2) in section C.

19 258 The 5.1.1(5) definition of 'source of mineral deposits' in Part 5 is an example of giving instances only of what the (wider) term includes, to which we drew attention in 2.14 of section A of our response to ED9.

24 258 In the definition of 'the Tax Acts', the reference to section 831 should more accurately be to s 831(2) of ICTA.

27 258 In the definition of 'tax return', the reference should more accurately be to 1.1.3*(2)*.

30 258 The definition 'United Kingdom' is cited as s 830 of ICTA. That definition does not really define what comprises the United Kingdom; but rather treats its territorial sea as part of the UK, and also deals with certain taxation aspects of designated areas. The main definition of 'United Kingdom' appears to be in Schedule 1 to the Interpretation Act 1978.

32 258 The expression defined is 'unrelieved qualifying expenditure (in Part5)'. 5.6.3 is strictly headed 'Available qualifying expenditure' but it does in fact identify what is unrelieved qualifying expenditure for the purposes of Part 5. Similar comments apply to 7.3.4 in line 34 on page 258 (concerning Part 7) and to 8.3.4 in line 35 on page 258 (concerning Part 8).

33 258 In 'unrelieved qualifying expenditure (in Part 6)' the reference should be to 6.3.2*(4)*.

38 258 In 'writing-down period (in Part 4)' the reference should more accurately be to 4.4.1*(2)*.

SCHEDULE 2

We have not reviewed Schedule 2, as it remains to be fully revised (Commentary 4.949).

SCHEDULE 3

General We note that work on this Schedule is not yet complete; but it appears to be sufficiently advanced to warrant comments at this stage.

The Schedule head cross-reference is strictly to section 12.6.9(3), in line 24 on page 280.

Should the heading read 'Transitional Provisions and Savings' in line 25 on page 280?

Para

2 Although meant to provide for PRCs, para 2 will also have the effect of validating any unintended changes in the law which may slip through unnoticed into the Act. Clearly the intention is that there will not be any; but the only way of protecting against this risk is to include in a schedule sufficient details of the intended changes in order that they remain identifiable for future reference.

7 Paras 4 and 5 are applied 'only in so far as the context permits'. The equivalent wording in s 17(2) IA 1978 appears to be 'unless the contrary intention appears'.

27 Para 27 directs certain wording in 2.12.15 to be ignored if the relevant disposal event occurred before 29 April 1996. The words referred to in quotation marks are not in fact in 2.12.15. Para 27 presumably needs to direct that 2.12.15(1)(b) should apply with the omission of all the words after the first word 'owner' in line 13.

30 The reference in line 2 should be to subsection (2) and not (4).

35 In the interest of brevity the reference to the beginning of the qualifying period is correct; but it would be more intelligible to say that s 2.12.28 does not apply if the ship was first brought into use for the purposes of the qualifying activity in 2.12.28(2)(a) before 20 July 1994.

36 To what does 'by virtue of paragraph (b)' in line 33 on page 287 refer?

In line 1 on page 288 the second 'by' should be replaced by 'with'.

41 In line 40 the word 'and' at the close of the quoted text to be substituted appears unnecessary. With reference to the similar definition in para 92 (for ABAs purposes) it seems anomalous that the definition in 2.14.4(1) should include (d) and (e), correctly rewriting s 51(3), whereas the para 92 definition, which correctly rewrites s 125 (1), excludes these. The former definition is of 'interest in land' and the latter of 'major interest' in land, so presumably this explains the difference.

45 In line 31 the date of Royal Assent of FA 2000 (28 July 2000) is to be inserted.

46 In s 54(1)(c) there was an exclusion from disposal value for additional VAT rebates (s 24(7)). This exclusion, which was introduced in relation to a chargeable period or its basis period ending after 5 April 1990, is not included in the text of (bb) in lines 37 – 43 on page 289. There needs to be an appropriate reference to 2.18.5 to make clear that these VAT rebates are excluded, as otherwise (via 2.5.15 and 2.5.9(1)(b)) they will be included in the reference to Chapter 2.5.

47 The same comments apply as under para 46 above.

77 In line 20, replace 'transferred' by 'sold'.

82 Para 82(3)(b) does not accurately rewrite s 4(12)(b). The latter attributes to the building its proper share of any allowances granted in respect of the (single) premises of which it forms part (premises including several buildings or structures are dealt with in s 4(12)(a)). This attribution aspect needs to be written into para 82(3)(b).

97 In para 97(3), in line 30, insert ‘to’ after ‘relation’.

100 In line 31, on page 304, ‘part’ should be ‘apart’.

In line 3, on page 305, ‘ere’ should be ‘were’.

We note that there are no transitionals or savings included in Schedule 3 in respect of assured tenancy allowances.

The numbering of the Parts in Schedule 3 is also a little confusing in relation to the Part numbering in the Bill itself.

We have not reviewed Part 10 of Schedule 3 (Contributions), as this is subject to revision (Commentary 4.896).

SCHEDULE 4

We have not reviewed Schedule 4, as it is still in preparation (Commentary 4.1014).

14-13-36
TJH/PCB
2.10.00