

TAXREP 21/99

TAX LAW REWRITE CAPITAL ALLOWANCES: PART 2

Memorandum submitted in July 1999 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales to the Inland Revenue in response to Exposure Draft 5 entitled: Capital Allowances: Part 2 issued in April 1999

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Unless otherwise stated all references are to the Capital Allowances Act 1990 ('CAA 1990')

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TAX LAW REWRITE CAPITAL ALLOWANCES: PART 2

A. GENERAL COMMENTS

- 1 We welcome the opportunity to comment on the exposure draft issued in April 1999.
- 2 Once again, the rewrite is a valuable exercise which has been well executed. It is a considerable improvement on the original. The rules are easier to read and understand, and the structure of the rewritten rules is much more straightforward. With few exceptions, we find that the minor changes that have been made to the original are an improvement and fair, both to taxpayer and the Revenue.
- 3 In principle, we are in favour of extending the structure used in this rewrite to all capital allowances. However, we will have to wait to see the proposed Capital Allowances Bill before we are able to decide if this structure is suitable for all capital allowances.
- 4 We believe that paragraph 9.4.3 (non-trade allowances: corporation tax) provides a good example of the benefits that can be achieved by the Rewrite. The Rewrite team has shown considerable ingenuity in reducing section 145(3), CAA 1990 (a sentence just short of 170 words) to separate, simple concepts.
- 5 Our main concerns with this rewrite relate to Chapter 9, Patent Allowances. In particular, it is insufficiently clear that separate pooling applies and also how loss relief is given. These points need to be clarified.

B. PROPOSED REWRITE CHANGES

1 Changes to statute but not underlying law (page 13)

We agree with the proposals, subject to the following comments:

- (9) We favour the use of the word ‘own’ etc to replace the word ‘belong’ etc, but there may be some benefit in legislating for the position of trustees and personal representatives, if only for the avoidance of doubt.
- (22) In 9.5.2, while we have no objection to the rewrite change that results in unrelieved qualifying expenditure being the sum *before* deducting current year sale proceeds (with matching changes elsewhere), it would be interesting to know the reason for it. For instance, will it make the approach consistent with that for writing down allowances on plant and machinery in the forthcoming exposure draft?

3 Changes to law but not policy (page 16)

We agree with the proposals, subject to the following comments:

- (2) We do not understand why limiting caravans on which allowances may be claimed to those used on a holiday caravan site is regarded as concessionary. There is no such limitation in existing paragraph 1(3) of Schedule AA1. This appears to be an unnecessary and disadvantageous change of the law.

4 Removal of unnecessary material (page 17)

We agree with the proposals, subject to the following comments:

- (3) We agree that section 60(3) (hire purchase entered into before 27 July 1989) should be omitted here. Assuming it actually serves some purpose other than to avoid doubt, we would have thought it would be appropriate to include it in the transitional provisions when drafted.

C. REPLIES TO OTHER SPECIFIC QUESTIONS

2.1.3, 4 Part of plant, and share in it

- 5 We agree that the availability of capital allowances on both a *part* of plant and machinery and a *share* in it should be dealt with at this point rather than later on in the Act.

2.2.6 Furnished holiday lettings

- 7 Generally, where the definition is quite complex, we prefer it to be referred to rather than repeated. Where, however, the definition comes from outside the tax legislation we prefer it to be set out in the tax legislation rather than referred to. Paragraph 2.2.6(3) is an instance of the former and 2.2.3(3) an instance of the latter.

D SPECIFIC COMMENTS

Numbered references in brackets are to subclauses; those not in brackets are to paragraphs of the Commentary. Where we have not commented on individual paragraphs, we agree with the drafting and the comments.

2 PLANT AND MACHINERY

2.1 Introduction

2.1.2 *Qualifying expenditure*

- (3), We think it preferable to include software with the other examples in 2.5 rather than having it in the (yet to be published) 2.15 and deeming it to meet the general conditions for qualifying expenditure.
- Note 2, 8

2.1.5 *Exclusion of expenditure deductible in calculating profits*

Section 159(1) excludes from capital expenditure both trading deductions and sums allowed as annual charges, whereas the rewrite excludes only the former. Perhaps it has been assumed that expenditure on plant is unlikely to constitute an annual payment, but we think the change should have been identified.

2.2 Qualifying activities

2.2.3 *Employments and offices*

- (2) Essentially, this *defines* the sort of plant that qualifies in the hands of an employee. It does not seem appropriate to make this subject to section 27(2C) to (2E), which are concerned with *computation* of the allowance.
- (3) The first paragraph is difficult to follow. It could be written more simply without we think materially changing the result if it was rewritten in the

terms that the vehicle or cycle is not disqualified from allowances merely because it is used partly for employment and partly for other purposes.

Regarding the second paragraph, we think as a general principle that definitions outside the tax legislation should be set out in full rather than by way of a cross-reference. The only exception to this rule would be where the definition is unduly long or complex, although we suspect that such cases will be rare.

2.2.4 *Management of the business of investment companies*

- (1) We do not think it is logically correct to say ‘This section applies when the qualifying activity consists of ...’, when the rest of the clause is part of the definition of a qualifying activity. We think that Paragraph 1 of the Commentary is a more accurate statement than the subclause, and suggest that this is substituted in its place..
- (3) The meaning of this is not clear. The reader expects it to end with ‘as they apply ...’ but it appears this is not intended. In any event, we are not convinced that it adds anything to 2.2.2(1)(d), and think it should either be redrafted or deleted.

2.2.5 *Schedule A businesses*

- (2) This sentence is not easy to read and should be redrafted. However, we suspect that in order to improve the drafting of this definition, it will be necessary to rewrite paragraph 1(2) of Schedule A.
- (2) We do not think it necessary to refer to ‘profits *or gains*’. ‘Or gains’ does not appear in section 15, ICTA 1988, and it was dropped from 3.1.1 of ED1 (Trading income of individuals). We feel that it would be retrograde to introduce it here.
- (3) The cross-reference to 2.6.6. appears to belong to Chapter 2.3 rather than here being it refers to an exclusion for a particular type of expenditure than of a particular activity.

2.2.8 *Occasional lettings*

- (2) The proposed use of *occasional letting* rather than the current definition provides a useful contrast to a trade of letting. Chattels, however, are normally described as leased rather than let, and ‘occasional leasing’ (without an s at the end) might be a preferable. ‘Non-trade leasing’ may be a suitable alternative.

It would be desirable to make it clear that fixtures can be included even though, at law, they cannot be leased separately from the land.

- (2), (3) The treatment of each item of plant as a separate qualifying activity is arguably implicit in section 61, but this treatment is not always sensible. For example, consider the position of a landlord who provides 100 carpets, 200 curtains and even, say, 300 desks as part of an office lease. It would be convenient, though incorrect, to treat them all under Schedule A. If however they have to be treated as occasional lettings (or leasing), it would be convenient to treat them as either one or three pools and very inconvenient to treat them as 600 different items.

We would hope that this problem can be solved by a minor change of law

permitted under the rewrite. If not, we would prefer the existing rules to be amended, or possibly by way of a published practice.

2.3 Provision of plant and machinery

2.3.2 *Exclusion of expenditure on buildings and structures etc.*

(3),
Table B Schedule AA1 refers to ‘Any way *or* hard standing, *such as* a pavement, ...’. The excision of the words in italics in the rewrite alters the sense. ‘A pavement’ etc are meant as examples of a way or hard standing, not additional items. The examples indicate what is meant by a way or hard standing whereas the rewrite appears to consider that these are further items within Item 2 of Table B. We think that the original wording should be restored.

(4) This ‘subject to’ clause would come better at the end of (1) to save the possibility of people fruitlessly examining Tables A and B.

2.3.3 *Expenditure unaffected by section 2.3.2*

General Bringing together all the ‘unaffected’ items is an improvement, but the position would be improved further if Tables C and D were merged. The items in each are similar in nature, despite the difference in the wording of the headings between ‘assets unaffected’ and ‘expenditure unaffected’. However, machinery (Item 1 of Table C) would have to be dealt with separately.

Table D
2 The words ‘or any other structure in or at which vessels may be kept’ comes from the definition of ‘dock’ in Note 1 to existing Table 2 but we do not think it can have been intended to apply to the phrase ‘dry dock’.

2.3.5 *Provision after use for other purposes*

(1)(a),
(4) If the word ‘belong’ is to be replaced with ‘owned by’ elsewhere in this rewrite, we would prefer that the term is replaced entirely, including where it is used in 2.3.5. Despite the Commentary on Chapter 2.4 on page 82, we think that the use of both terms will cause confusion. Most readers will not appreciate that, judicially, the terms have been held to amount to the same thing. The same point applies to 2.3.6 and, we suspect, elsewhere.

2.4 The ownership of the plant or machinery

2.4.1 *Plant or machinery acquired under hire purchase and similar contracts*

(4) The consequences of the plant ceasing to be owned need spelling out. We presume that this will be done in the next draft on capital allowances. However, it would be useful to have a signpost to it.

2.4.3 *Ownership of plant or machinery installed by lessee*

(1)(e), (4) Section 61(4) has two limbs, separated by a semi-colon. ‘If the machinery or plant would not otherwise belong to [the lessee]’ governs the first limb only, not the second one. In the rewrite, however, the equivalent to the words we have put in quotes appears in (1)(e) so that it governs the equivalent of the second limb in section 61(4). We believe that the operation of section 61(4), which deals with the disposal value, should not

depend on the lessee not owning the plant. This appears to be a change in the law, though we are not sure if it is that significant, or even if the original was drafted intentionally in that way.

2.5 Other qualifying expenditure which is qualifying expenditure

Overview

At the end of the second paragraph, it is stated that the disposal value in these circumstances is said to be nil. We would have thought that the significance of this should be made clearer, both here and in 2.5.1(2), as on its own it is not clear what is the implication of this statement. The paragraph makes no reference to a disposal.

2.5.1 *Other expenditure which is qualifying expenditure*

- (1) This clause should start with the words 'This Chapter applies ...' The version as drafted provides no obvious way into this clause.

The concept of allowances being given in taxing the trade has been dispensed with, so we doubt whether it is appropriate to bring in the concept of taxing the qualifying activity.

- 2.5.4 *Expenditure on safety at designated sports grounds and regulated stands***
General We have found this clause difficult to understand. In particular, we are not convinced why it is necessary to distinguish between expenditure on a *designated* sports ground and expenditure on a regulated stand at *any* ground. This distinction merely appears to cause confusion.

Further, the separate definitions of sports ground in (5) applying for the two separate purposes are particularly confusing: in which sense is the term 'sports ground' used, whether designated or not? We have set out in the Appendix the way in which we have had to unravel the meaning of this clause. However, we are convinced that it should be redrafted so as to make it easier for the reader to understand. We think that an introductory note would be helpful.

- (5) It is confusing enough to have 'local authority' etc have a different meaning for different kinds of asset. It is even more challenging to have the definitions by reference. As we have said under main heading C above by reference to 2.2.6 and 2.2.3, we think that all definitions used in the tax legislation should be contained within the tax legislation.

2.5.6 *Expenditure on personal security*

- (1) We believe that this clause needs to be redrafted in order to clarify its effect and to avoid the clause narrowing the scope for allowances. Whereas section 71(2) sets out precisely how the expenditure is to be treated, this clause merely says 'this Chapter applies' to it. It does not even say if it becomes qualifying expenditure. For example, expenditure on a structure such as a wall (see 2.5.6(5)) is deemed under section 71(2) to be expenditure on plant, among other things. The use of the expression 'this

Chapter applies' to it, by contrast, would appear to result in the expenditure not qualifying for allowances on account of 2.3.2 (expenditure on buildings and structures).

We also have similar problems in part 2 of the Trading Income of individuals: see 3.2a.7.

2.6 Further provisions relating to qualifying expenditure

2.6.4 *Exceptions to the general rule*

(2) This omits the exception for grants under the Industrial Development Acts 1972 and 1982.

(7)(c) Section 153(2)(b) excludes certain subsidies towards expenditure that is deductible in arriving at the profits of a *trade, profession or vocation*. This subclause extends the exclusion to a 'qualifying activity' but subclause (8) takes out from it employments, offices and occasional lettings. This would appear to have broadened the exclusions to the exception by adding the management of an investment company, together with the various sorts of letting business listed in 2.2.2. While we welcome this, we would like confirmation that our interpretation is correct, or if not whether it is within the remit of the rewrite project.

2.21 Supplementary provisions

2.21.2 *Partnership using property of a partner*

General Existing section 65(2) (sale or gift of plant or machinery between partners) appears to have been omitted. We would be grateful for an explanation.

(2) It is arguable at law that partners do not own partnership property; rather they own a collective interest in all the assets and liabilities as a whole. We would welcome clarification that the wording is still appropriate (apart from the fact that it would be preferable if the word 'belong' could be avoided).

2.21.4 *Successions by beneficiaries*

(3) We do not understand how, both in section 78(2) and here, there can be 'any previous succession occurring on or after the death of *the* deceased' (*italics added*) when the decease is a current one.

(4)(b) There is an ambiguity in section 78(2)(b) whether the 'him' is the deceased or the successor. As a matter of construction, and because at the time of death the plant cannot yet be used by the beneficiary, we would have thought that the reference is to the deceased. In the rewrite it is assumed to be the latter. Is there authority for this?

5(b) We would have thought that the last phrase of this subclause 'if the disposal value of the plant or machinery is nil' was redundant. The unrelieved qualifying expenditure will presumably be the same regardless of the disposal value, though that depends on a definition we do not yet have.

More generally, we are not certain whether this subclause has a different effect from the more familiar wording in (eg) 2.21.6(2). Either it is undesirable for two different approaches to be used to obtain the same result or, if there is a minor difference in the result, the two might be aligned in the interests of simplification.

- (6) We have some difficulty in interpreting section 78(2A). It treats a disposal by the beneficiary following a succession election as being a disposal by the deceased. This would certainly limit any balancing charge, as set out in the rewrite. It is possible that the original goes further than this, however. It might have the effect of ignoring the succession election so that the balancing allowance or charge is calculated by reference to the allowances the successor would have had if (say) the market value had come to more than the tax written down value on death. Is there authority for the treatment adopted?

2.21.5 *Election where predecessor and successor are connected persons*

- (3) In the absence of any compelling reason, we are not in favour of a non-standard deadline for the election. We think it would be better that the election be made by the 31 January following the end of the tax year after the date of succession.

6 DREDGING

6.1 Introduction

We doubt if this overview is needed as 6.1.1 and 6.1.2 are short and simple. However, we accept it may be helpful to have an overview for consistency with the other capital allowance provisions.

6.2 Qualifying expenditure

6.2.2 *Qualifying trades*

- (2) We think it would be easier and simpler to draft a separate, free-standing rule to cover an apportionment of expenditure. This should avoid the need to have deemed separate trades and the incorporation of 6.2.1(3) by cross-reference.

6.2.3 *Trade not yet carried on or premises not yet occupied*

- (1) While we appreciate the attempt to solve the drafting problem, we are not convinced that the result is altogether successful. If the person is intending to carry on a trade within (b) rather than (a) of 6.2.2(1), his pre-trading expenditure is likely to come within both (a) and (b) of 6.2.3(1). 6.2.3(2)(a) and (b) then appear to give potentially different answers.

6.2.4 *Contributions and subsidies*

- (1), (2) We note that there may continue to be an unintended loophole which could give rise to uncertainty. The contributor under (1) obtains allowances in appropriate circumstances. If that capital contribution is for

the purposes of the dredger's trade, there appears to be nothing to stop the dredger having allowances on the gross amount of his expenditure. If this interpretation is wrong it would be useful to have the drafting clarified.

6.3 Writing-down allowances

6.3.4 *Claim for a reduced specified amount*

We are not sure whether it has been established that a dredging allowance has to be claimed in the first place. For example, the allowance for companies may be deducted automatically.

Further, there may be a need to stipulate when the reduction should be communicated to the Revenue, unless the normal self-assessment time limit for altering a return applies.

9 PATENT ALLOWANCES

General No doubt it is intended in a subsequent rewrite draft to have know-how and copyright brought into this part of the Rewrite Bill so that all intellectual property is dealt with together.

9.2 Qualifying expenditure

9.2.3 *Qualifying non-trade expenditure*

This is yet another example (we have raised this point a number of times in our comments on earlier exposure drafts) where the sentence is expressed in reverse. This reads unnaturally and may cause uncertainty. 'Capital expenditure ... is qualifying non-trade expenditure' is a definition of qualifying non-trade expenditure, just an example of it. This appears to open up the possibility that there are other examples that have not been mentioned. The approach used in 9.2.2 - 'qualifying expenditure means ...' - is much more satisfactory.

9.3 Allowances and charges

9.3.1 *Pooling of expenditure*

(2) While separate pools for each trade and a single pool for any non-trade expenditure is undoubtedly convenient, we would be grateful for confirmation that this is the correct treatment under the existing rules.

9.3.5 *Available qualifying expenditure*

(1)(c) The reference to part of a person's qualifying expenditure, both here and in the original, causes difficulty. What if, in a previous period, £10,000 of expenditure is incurred, £7,000 of which is qualifying expenditure of that period and £3,000 is qualifying expenditure of the current period? Does the £3,000 not qualify in the current period? If such a situation is inherently unlikely, we suggest that the reference to part of the

expenditure could be deleted.

9.3.7 *Disposal values to be brought into account*

- (2) The meaning of the first paragraph of this subclause is not altogether clear. On the face of it, it would appear to relate to the receipt of deferred consideration arising from a sale of patent rights. Paragraph 3 of the Commentary gives a useful perspective to it, but it would help if the legislation itself pointed the reader in the right direction.

The interaction between the second paragraph of this subclause and 9.3.6(3) could also usefully be clarified.

9.4 How allowances and charges are given effect

9.4.2 *Qualifying non-trade expenditure: income tax allowances*

It is inconsistent and unnecessarily confusing that excess patent allowances can be set against other income of a company (see 9.4.3) but not of an individual. This is of course subject to any changes that are made as a result of the consultation on the taxation of intellectual property.

9.4.4 *Corporation tax: claim for set off and carry back*

General We have a number of difficulties in interpreting this clause. We have set out below both points of principle and also points on the drafting.

- (1) Presumably 'profits of whatever description' means the same as 'all its profits wherever arising', on which corporation tax is charged under section 8(1), ICTA 1988. We presume that the two definitions will be aligned and we would be grateful for confirmation.
- (3) This subclause is not as clear as it should be. That the claim 'is subject to' other reliefs does not convey the (presumably intended) concept that other reliefs are given in priority to this relief.

More to the point, 'relief for earlier allowances or for losses' retains the compression of the original text, the meaning of which is not entirely obvious. At first glance, the losses referred to might only be 'earlier' ones, but that would be an incorrect construction. So what loss relief is given in priority? Does it include, say, a trading loss carried back one year or a loan relationship deficit carried back three years? The original text provides no guidance, but if the Revenue have an interpretation they generally apply we think that it should be set out in the draft with a request for comments.

- (4) Subclause (1) says that the allowance may be set against profits of earlier periods, then this subclause says it may not be set against profits of earlier periods unless certain the company complies with certain conditions. We would prefer it if this old-style 'negative' approach could be avoided. For example, would it be better to say that the relief could be given against profits of earlier years *if ... etc.*

The carry-back period is difficult to define simply, and we cannot suggest any improvement to your method. A simple example would help, as a note to the subclause or otherwise. This could be, say, of an allowance in a nine-month to 31 December 2002, for which the carry back period must

end between 31 March 2001 and 31 December 2001.

- (5)(b) The significance of the word ‘corresponding’ may be lost upon the reader. What it means is that any other form of loss *carried back* has to be added to the patent allowance carried back for the purposes of allocation to part of an earlier period where there have not been normal 12-month periods. We would like it to be made clearer that, for instance, a loss brought forward does not need to be included here.

9.4.6 *Qualifying non-trade expenditure: balancing charges*

- (2), (3) Although this reflects the original, the distinction between the income tax treatment and that for corporation tax appears unnecessary. Is there any policy reason to retain it?

In any event, it is unclear what the corporation tax rule is trying to achieve. How is the 'income from patents' to be taxed? The reference to balancing charges here and in 9.4.7(b) seem to produce a circularity.

9.5 *Expenditure incurred before 1 April 1986*

9.5.6 *End of writing-down allowances*

- (1)(a) Neither the original nor the rewrite gives a timespan within which rights can be regarded as revived 'subsequently'. We would appreciate confirmation that it is patent law that governs whether a patent can be revived, so that the tax legislation cannot be more specific.

9.5.9 *Balancing charges*

- (1) This subclause emphasises a doubt that has concerned us throughout the rewrite of Chapter 9.5. The doubt is what happens if there is unrelieved qualifying expenditure on items 1 and 2 and item 1 is sold. (1)(b) refers to proceeds from 'the sales'. If the sale proceeds of item 1 come to more than the unrelieved qualifying expenditure on item 1, do the excess proceeds go to reduce the unrelieved qualifying expenditure on item 2? For reasons we have pointed out under 9.5.7 of our part E below (drafting points), the answer is 'no' – allowances are calculated on an unpooled, per-item basis. This follows from 9.5.2(2). Nevertheless, 9.5.2(1), on its own, might suggest that pooling is required, and it would be easy to miss the significance of the word 'item' in 9.5.2(2). It would help to dispel any doubts that people may have in reading any part of this Chapter if it could be stated explicitly in 9.5.2 that each item of expenditure is to be treated separately throughout the Chapter.

9.5.10 *How allowances and charges are given effect*

- (5) The same point arises as under 9.4.6 above.

9.6 *Supplementary provisions*

9.6.1 *Limit on qualifying expenditure incurred on or after 1 April 1986*

- (7)(c) This might have dealt more explicitly with the case where the rights have passed down a chain of owners including more than one person connected

with the ultimate purchaser - cf 9.6.2(2). (This may be an obscure point in this context but it will be more relevant when the equivalent rule for plant is rewritten.)

9.6.2 *Disposal value: expenditure incurred on or after 1 April 1986*

- (1) From the construction of this clause, 'sell' can be assumed to have its natural meaning, in contrast to the extended meaning in 9.6.1. This would seem to be a correct interpretation, in that 9.6.2 is initially derived from section 521(2) and (3), which refer to sales, whereas 9.6.1 is derived from section 521(5), which refers to transactions as well as sales. We request confirmation that this distinction is deliberate.

9.6.4 *Capital expenditure and sums: certain exclusions*

- (3) Sections 348 and 349, ICTA 1988 do not, by themselves, provide for annual payments to be deducted from profits. The deduction is governed by custom and by case law (*Frere*), derived from the origins of income tax where, under the principle of alienation, the tax suffered by the recipient through deduction at source represented his final liability to tax. No doubt you will consider what should be put in the place of sections 348 and 349.

We would like the rewrite of annual charges to be an opportunity to make the general relief for charges explicit.

E. DETAILED COMMENTS ON DRAFTING

Number references in brackets are to subclauses; those not in brackets are to paragraphs of the Commentary. Where we have not commented on individual paragraphs, we agree with the drafting and the comments.

2 PLANT AND MACHINERY

2.1 Introduction

2.1.2 *Qualifying expenditure*

- (3)(c) This would be simplified if, in ‘in consequence of the incurring of that expenditure’ was written as ‘in consequence of incurring that expenditure’.

2.2 Qualifying activities

2.2.2 *Qualifying activities*

- (2) A ‘ring fence trade’ would mean nothing to many readers. Linking it to the oil trade would help.
- (3) We would prefer the ‘subject to’ to be made specific (eg to 2.5.and 2.15) rather than general.

2.2.3 *Employments and offices*

- 3 We would like to think that it will be possible to call ‘mechanically propelled road vehicles’ ‘motor vehicles’.

2.2.4 *Management of the business of investment companies*

- (3) The significance of applying ‘the other provisions of the Corporation Tax Acts relating to allowances and charges under this Part’ to management expenses is difficult to understand. Can the significance be explained? A similar phrase occurs in 2.2.6(2).
- (4) The wording is not as straightforward as it might be. We would prefer if the word ‘disbursed’ could be avoided. Perhaps the word ‘for’ at the end of the first line should probably be included in the part put into italics and bold.

2.2.5 *Schedule A businesses*

- (2) We do not think it necessary to refer to ‘profits *or gains*’. ‘Or gains’ does not appear in TA s15, nor does it appear in 3.1.1 of ED1 (Trading income of individuals).
- (2) ‘... including the business in the course of which any transaction is by virtue of paragraph 1(2) of that Schedule to be treated as entered into’ is not plain English. Nor does it appear to add anything useful. Besides, it should be 1(1)(2), not 1(2).

2.2.6 *Furnished holiday lettings businesses*

- (3) When rewriting TA s504, and in referring to the section here, the heading

would be more meaningful if it started with ‘meaning of’ and the phrase at the end ‘: supplementary provisions’ was deleted .

2.2.7 ***Overseas property businesses***

(2) We note that the drafting is provisional but suggest that the ‘by a particular person or partnership’ and ‘or transaction’ can be dispensed with here. Perhaps 2.2.5(2) could be suitably adapted her, subject to the comment we have made on it above.

Origin The origin for part of subclause (3) is section 28A(3), not (1).

6 In case you replicate this wording in a later draft, we should point out that there is a superfluous end of bracket in line 5.

2.3 **Provision of plant and machinery**

Overview

Para 1 Can the repetition of ‘provision’ in the first line be avoided?

Paras 2, 3, 4 These paragraphs (para 4 twice) each refer to a ‘block’ of sections. There is perhaps a degree of over-dramatisation here, seeing that the ‘blocks’ comprise variously one, two and three sections.

2 The sentence about computer software at the end of the paragraph does not obviously fit here.

4 The second sentence contains 72 words and would be easier to follow if it was broken up by indents.

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2.3.2 ***Exclusion of expenditure on buildings and structures etc***

(2)(c) If this subclause began with ‘in particular’, it would be clear that these items are examples of what falls within (2)(a). It would make better grammatical sense to put ‘incorporated’ before the first ‘in’. It would be preferable to add ‘of a type’ before ‘included in Table A’.

(3) It is a little confusing that the heading of Table B refers to *excluded* structures whereas, within the wording of the subclause, they are *included* ones.

Flow-chart We like this. It would be possible, however, to eliminate two boxes, and therefore to simplify it, by:

- omitting the top right box and inserting ‘or its note’ in the centre box;
- eliminating the middle right box, which appears to be a duplication of the centre box.

2.3.3 ***Expenditure unaffected by section 2.3.2***

General A signpost to the additional qualifying items in Chapter 2.5 would be useful.

Table C 17 Since by no means all glasshouses are included, a signpost to the definition in 2.3.4 would be helpful.

Table ‘Air purification powered systems’ is an awkward jumble. Perhaps it

C, 3	should read ‘powered systems of ... air purification’, as before.
Table C, 10	For consistency, ‘sprinkler systems’ should not start a new line but be moved to the first one, after a semi-colon. (And a full stop is needed at the end.)
Table C, 14	We doubt if the ‘the’ has ever been needed in front of hotel, restaurant ...’.
Note	Similarly, we think that it should be ‘a building’ rather than ‘the building’.
2.3.5	<i>Provision after use for other purposes</i>
(5)	This subclause is meaningless on its own. A signpost to the rewrite of section 79 would help.
2.3.6	<i>Provision after receipt in consequence of a gift</i>
(2)-(6)	These subclauses duplicate those in 2.3.5. We suggest that the two clauses are merged.
2.4	The ownership of the plant or machinery
	Overview
7	If this Commentary is repeated it would read better with a link, such as ‘. In particular’ in front of the semi-colon preceding the bullet points.
2.4.2	<i>Ending of ownership in case of loss or abandonment</i>
4	2.2.3 should of course be 2.4.2.
2.4.3	<i>Ownership of plant or machinery installed by lessee</i>
(1)(d)	We doubt if the word ‘other’ is needed in front of ‘land’ in the last line.
2.5	Other expenditure which is qualifying expenditure
2.5.1	<i>Other expenditure which is qualifying expenditure</i>
Note	We doubt if the note is needed, seeing that the overview has already set the scene.
2.5.3	<i>Expenditure on fire safety</i>
(2)-(3)	We hesitate to say so, but we find ‘The first [second, third] kind of steps is taken where ...’ rather inelegant.
2.5.4	<i>Expenditure on safety at designated sports grounds and regulated stands</i>
Note	In a simple note such as this, we doubt if the words in brackets are necessary.
(2)	Here, and elsewhere, we find ‘steps is steps’ awkward.
(5)	If (a) and (b) were reversed, symmetry between grounds and stands would be achieved throughout the clause.
2.5.6	<i>Expenditure on personal security</i>
(1)	This sentence rambles through a succession of short phrases, and the object of the expenditure – the security asset - is lost sight of by being

placed at the end. We suggest that it should be broken up by having indents.

- (2) We would have thought it possible to avoid the awkward repetition of 'incurring the [or that] expenditure'.

2.6 Further provisions relating to qualifying expenditure

2.6.2 *Demolition costs*

- (3) We are not sure if it is necessary to refer to 'new' qualifying expenditure. This expression is not used in 2.3.5(2), for instance, where an asset is taken into use for a qualifying activity after being used for something else.

2.6.3 *General rule: exclusion of expenditure met by subsidies*

Despite 2.6.4(7)(a), there may be no need to mention subsidies from the Crown or a government or public or local authority, as these are subsumed in 'or any person'. This is the view taken in 2.6.7 (payments for wear and tear).

2.6.4 *Exceptions to the general rule*

- (8) Referring to (7)(c) in the first line would target the exclusion more closely.

2.6.5 *Expenditure by MPs and others on accommodation*

- (1) We find the meaning of the 49 words that follow the indented parts difficult to grasp quickly. We think that would be better if they were broken up.

2.6.6 *Expenditure on plant and machinery provided for use in dwelling houses for certain qualifying activities*

Note If we need a note to say this clause does not apply to a holiday lettings business, should it not also say that it does not apply to a trade?

2.21 Supplementary provisions

2.21.1 *Qualifying activities carried on in partnership*

- (1)(a) Here, and elsewhere in the clause, we suggest the substitution of 'partners' for 'person or persons'.

- (1)(c) While we welcome it being spelt out when a partnership change produces a succession rather than a discontinuance, we are not sure that this subclause does it as clearly as it might. Section 113(1), ICTA 1988 on its own treats *any* partnership change as a discontinuance. Section 113(2), ICTA 1988 then over-rides this so long as there is at least one continuing partner. We suggest that this second subclause should be brought into the reference. The same point arises in 2.21.3(1)(b), 2.21.4(1)(b) and 6.4.1(2)(a).

- (1) 'Predecessors' includes predecessors of predecessors etc, which may not be clear from the draft. Perhaps they might be defined as 'the partners who formerly carried on the qualifying activity'. Alternatively, as the word 'predecessors' is used once only, it does not need defining. Instead, (4)(b) could simply refer to 'the former partners' rather than 'their predecessors'.

- 2.21.5** ***Election where predecessor and successor are connected persons***
 (6) We doubt if it is necessary to preclude successions occurring before July 1989. For such successions, either the election will have been validly made or it will not, and the consequences will have been determined.
- 2.21.8** ***Index of defined expressions***
 There does not seem to be much point in referring for the definition of an investment company to 2.2.4 when that simply refers to section 130, ICTA 1988. The reference could be made direct.

6 DREDGING

- 6.2** **Qualifying expenditure**
- 6.2.1** ***Qualifying expenditure***
 (2)(c)(i) The second 'or' should of course be 'of'.
- 6.2.5** ***Exclusion of expenditure deductible in calculating profits***
 Note We are not sure what is the point of this Note. Does it explain the reason for this clause, limit or extend its ambit, or some other reason?

9 PATENT ALLOWANCES

- 9.1** **Introduction**
- (a) It would be preferable to avoid repetition of 'in respect of', both here and in 9.1.3. The first one could perhaps be replaced by 'relating to'.
- 9.1.2** ***Meaning of patent rights***
 At the risk of upsetting any consistency in the structure of the capital allowances rewrite, clauses 9.1.1 and 9.1.2 are so short that they might be combined.
- 9.1.3** ***Acquisition of future patent rights***
 Head- In the light of subclause (3), the words 'and sale' might be added to the
 ing heading after 'Acquisition.'
- (1), (2) Even without the repetition of 'in respect of' (see under 9.1 above), the words that occur in each of these subclauses are something of a mouthful. We would like to think that a 'plain English' approach could be adopted.
- (2) We think that it should be possible to bring out more clearly that the expenditure on the right to a future patent merges with the patent if it is acquired.
- 9.3** **Allowances and charges**

- 9.3.2, 9.3.5**
General ***Determination of entitlement or liability, Available qualifying expenditure***
Having used 'qualifying expenditure' to describe the amount originally laid out, it is potentially confusing to use the same term, albeit qualified by the word 'available' to describe something quite different - ie what in ordinary language is the written-down value. We would suggest using 'written down value' or 'pool value'.
- 9.3.3**
(2) ***Writing-down allowance or balancing allowance***
Although 9.3.2(1) says that AQE and TDV are determined separately for each pool, it would be helpful to have a reminder here that this is so. For instance, the words 'in respect of any pool' could be inserted between 'entitled' at the end of the first line and 'for any' at the start of the second one.
- 9.3.5**
Origin ***Available qualifying expenditure***
We are not sure this is correct.
- 9.3.7**
(2) ***Disposal values brought into account***
The second paragraph, limiting total proceeds to total expenditure, would appear to add braces to the belt of 9.3.6(3).
- 9.4**
How allowances and charges are given effect
- 9.4.3**
(2) ***Qualifying non-trade expenditure: corporation tax allowances***
Step 2 would read better as 'Deduct A from any remainder of I', because I has already been reduced under Step 1 by any unused patent allowances brought forward. This would also deal with the possibility that the amount 'carried forward' from an earlier period is equal to or exceeds I. It is a convention that amounts are 'brought forward' *from* a period ere rather than 'carried forward' *to* a period.
- (2) Step 3 refers to 'other income', whereas 9.4.4(1) refers to 'profits, of whatever description'. The different wording will tend to confuse. In any case, both presumably are rewritten versions of 'all its profits wherever arising', on which corporation tax is charged under TA88 s8(1). We would prefer a simple, standard version to be used throughout the corporation tax provisions, such as 'total profits' in 9.4.4(1) and elsewhere, and 'other profits' in 9.4.3(2) and elsewhere.
- (2) 'Method statement' is rather inelegant and reminds one of the (probably already dated) term 'mission statement'. We suggest 'in the following manner'.
- 9.4.4**
(1) ***Corporation tax: claim for set off and carry back***
See our comments under 9.4.3(2) Step 3.
- 9.4.5**
Defined terms ***Corporation tax: carry forward of unused allowance***
Income from patents is of course defined in 9.4.7, not 9.4.3.

- 9.5 Expenditure incurred before 1 April 1986**
- 9.5.2 *Meaning of qualifying expenditure and unrelieved qualifying expenditure***
- (2) Again (see our comments on 9.3.3(2)), it would be both helpful and more accurate to say that the result of steps 1 to 3 is the unrelieved qualifying expenditure for a chargeable period *in respect of each item of qualifying expenditure*.
- 9.5.3 *Entitlement to writing down allowances***
- (1)(b) It would help to give a brief description of 9.5.6 in brackets to save having to look it up. Perhaps '(rights no longer owned)' would be suitable, or '(cessation of writing down allowances)' per 9.5.5(2)(a).
- 9.5.4 *The writing down period***
- (1) While we like the table, we question whether the middle column is needed. The start date of the writing down period is the same for each of the three situations, so it can perhaps better be dealt with in narrative form.
- Item 2.(b) refers to the 'number of years comprised within the specified period'. It is not clear, either here or in the original, whether (say) a specified period of 10.5 years comprises complete years, ie 10, as used elsewhere in this clause, or whether it comprises 11, or even 10.5 years. We imagine that your practice is to treat it as 10 years, in which case this would be worth making explicit.
- 9.5.7 *Reduced writing-down allowance***
- General It is not immediately apparent what happens to the allowances on expenditure in an earlier period on item 1 if the rights sold in the current period relate either to expenditure in an earlier period on item 2 or to expenditure in the period on item 3. The answer is to be found of course in the definition of unrelieved qualifying expenditure in 9.5.2. This is calculated on an item by item basis, so U and N are separately calculated for each item, and item 3 does not have any unrelieved qualifying expenditure till the next period. It would help the reader if this was brought out more clearly within 9.5.5.
- 9.5.8 *Balancing allowance on sale or expiry of patent rights***
- (1) Part of section 523(2)(b), ICTA 1988 has been omitted - to the effect that there is no balancing allowance unless the proceeds come to less than the unrelieved qualifying expenditure. While it is not strictly necessary to include it, to do so (a) would stop people from reading the rest of this clause where the proceeds came to more than the unrelieved qualifying expenditure, (b) would eliminate any possible question of whether there could be a negative balancing allowance and (c) would tie in with the balancing charge provision 9.5.9(1)(b).
- (1)(b) There is ambiguity in the original whether a balancing allowance is triggered by the sale of *all* the patent rights held by the person in question or (as is presumably intended) just by a complete sale of any *particular* rights. If anything, the ambiguity is greater in the rewrite.

9.5.9 *Balancing charges*

(1) Again, this reads like a pooled calculation whereas, presumably, it is meant to be done item by item.

(5) 'The total amount of' as in subclause (4) would read better than 'the total amount on which'.

9.5.10 *How allowances and charges are given effect*

(3), (4) It would help to have some guidance on the meaning of this legislation by reference to clause 9.4.2 and Chapter 9.3. For instance, the words '(expenditure incurred on or after 1st April 1986)' could be added after the latter. It is not in any case clear why subclause (3) needs a reference to Chapter 9.3 but subclause (4) does not.

9.6 *Supplementary provisions*

9.6.1 *Limit on qualifying expenditure incurred on or after 1 April 1986*

Defined terms For the definition of connected persons, is it necessary to refer to clause 9.6.7, which then refers to section 839, ICTA 1988, rather than refer direct to section 839 in the first place?

9.6.2 *Disposal value: expenditure incurred on or after 1 April 1986*

Head-
ing This heading is not particularly helpful as a guide to what is in the clause. We suggest that the emphasis should be on the limitation on the disposal value and/or connected parties rather than 1 April 1986. Admittedly, to drop the reference to 1 April 1986 would also require reconsideration of the heading to 9.6.1.

9.6.3 *Contributions, compensation and grants*

Origin A link is needed between section 153 and section 520, ICTA 1988 etc.

9.6.5 *Exchange*

Origin Similarly, a link is needed between section 150(4) and section 524, ICTA 1988.

9.6.6 *Sums paid for Crown use treated as paid under licence*

Head-
ing The scope of this clause would be clearer if, without offending any canon of good English, the word 'etc' could be inserted after 'Crown'.

(1) It would be helpful if the link to 9.1.4 could be made in this subclause or in a footnote rather than left to the Commentary. Without that link, this clause appears fairly meaningless.

14-13-36
FJH
30 July 1999

APPENDIX: THE MEANING OF 'SPORTS GROUND'

Meaning in 2.5.4

- (1) refers to a *designated* sports ground and a *regulated* stand at a sports ground.
- (2) and (3) refer to a safety certificate for *the* sports ground, which therefore must be for safety at a *designated* ground or at a regulated stand at *any* ground.
- (4) defines a designated sports ground by reference to the 1975 Act, and a regulated stand by reference to the 1987 Act.
- (5) says that 'sports ground' (without the pre-fix 'designated') takes its meaning from the 1987 Act in the context of an regulated stand, and from the 1975 Act in the context of a sports ground.

Conclusions

- (1) 'Sports ground' in the context of expenditure on a regulated stand may or may not be a designated one, but in the context of expenditure on the ground itself must be a designated one.
- (2) Accordingly, expenditure qualifies for allowances under this clause if:
- the safety is at a *designated* sports ground; or
 - the safety is at a regulated stand at *any* ground.

Meaning in 2.5.5

- (1) refers to a sports ground of the sort dealt with in the 1975 Act:
- for which no designation order had come into operation
 - but which would have fallen within 2.5.4(2) or (3) if a designation order had been made, etc.
- (2) excludes an regulated stand that is within 2.5.4.
- (4) defines a sports ground by reference to the 1975 Act.

Conclusion

The meaning of this clause is fortunately quite clear. It relates to expenditure on a ground which would qualify for designation but has not actually done so. And it does not relate to a regulated stand.