TAXREP 16/00

TAX LAW REWRITE
CAPITAL ALLOWANCES PART 4

Memorandum submitted in May 2000 to the Revenue by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to exposure draft 9: 'Capital Allowances – Part 4'

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Tax Faculty responses to Exposure Draft 9: Capital Allowances Part 4

A General points

1 Overall comments

1.1 This exposure draft is a milestone in the rewrite project, not just because it is the first draft Bill to be published. Now that we can see it as a whole rather than in three (potentially four) separate drafts, and there has been some important rearranging of the structure of the earlier drafts, we find that it has been put together in a sensible and balanced way that makes it relatively easy to find one's way through it. It will also be a fillip to the project as a whole: once it is published, the benefits will be self-evident, and we expect there will be an enthusiasm to have more topics rewritten as quickly as possible.

1.2 Altogether, the way capital allowances have been rewritten is to be applauded. The legislation is now clearer and better organised. Particular improvements include the collection of clauses under clear headings and the occasional use of tables to portray information in a manner which is easy to understand. Whilst the legislation is still very complex, it is written in a form which is far more logical and accessible.

1.3 Now that we have the complete code for capital allowances, and it is possible to leave behind the baggage of conceptions of the old code, a useful test of the effectiveness of the Bill is seeing how easy it is to find one's way around it. Examples that could be used to test it are: what happens when disposals or successions affect both an industrial building and the plant in it; what allowances are available for different kinds of assets used in a particular activity such as an investment business; and whether assets are pooled or dealt with separately. We find that the new structure provides the answers with comparative ease. For instance, 2.8.2 is useful in setting the scene for asset pools and articulating the different kinds of pools.

1.4 We have noted below a number of occasions where an old drafting style has crept in, or simply not removed from the original (eg in Chapter 2.15: ships), but these are comparatively few. We hope they will be removed from the July draft. For the moment they serve to show, by comparison, how much better the new style is.

Rewrite as catalyst for policy change

1.5 We note there are a number of policy changes to be made to the CA regime contained in this year's Finance Bill so as to simplify the regime to some extent. An example is getting rid of the need specifically to notify expenditure on plant. We understand that much of the impetus for the changes came from the rewrite process, on the grounds that it is better to rewrite simplified legislation than to struggle to rewrite tortuous legislation, which can never really be done successfully. This illustrates the principle that we have always believed: that the rewrite is not only worthwhile as an exercise in simplifying the language but will also generate a momentum for simplifying the tax laws themselves.

1.6 We are strongly committed to tax simplification, even when it bears a tax cost (reasonably balanced, we hope) to both the taxpayer and the Revenue. To this end, we will continue energetically to pursue the campaign which we launched last autumn with 'Towards a better tax system'. We would like to see a programme put in train for doing a basic review of particular aspects of the tax system with a view to drastically simplifying them. Industrial buildings allowances would be a good place to start.

2 General comments on the rewritten Bill

Defined terms, Origins

2.1 We appreciate that the loss of Defined terms and Origins at the end of each clause has been forced on the rewrite team by Parliamentary authorities requiring a uniform style for all legislation. We also appreciate that commercial publishers will probably reinsert them. All the same, we find it much less convenient, when reviewing the rewrite, having the origins in a separate Table of Origins and not having a comprehensive set of defined terms at all. It will be seen that quite often we had difficulty in locating the given meaning of a particular word or phrase. The Index of defined expressions at the end of each Part is by no means comprehensive, for instance. We believe that further thought needs to be given to this whole area.

2.2 We suggest that, so far as possible, the Revenue should keep the Defined terms and Origins attached to each clause in its own database so that it might be made available to commercial publishers, in the interests of accuracy

Overviews

2.3 Similarly, we miss the overviews previously used to introduce a topic. To take one example among many possible ones, plant and machinery allowances almost cry out to have some order made out of their dense (though much improved) structure. One has to go through 42 pages of necessary introduction (what is plant, what is qualifying expenditure, etc) before discovering something as basic as the fact that writing down allowances are given at 25%. We also comment on the struggle the reader has to go through to understand that a purchaser of an industrial building or an agricultural building is entitled to allowances on the construction expenditure incurred by someone else (see our comments in 3.6.3 and in the opening of 4 under C below).

2.4 We notice, by contrast, that 2.15.8 contains a brief overview of the deferment of allowances on ships. We found it helpful and suggest this approach could profitably be repeated elsewhere.

Parliamentary requirements

2.5 We have set out instances where it is unfortunate that the format required by the Parliamentary authorities (taking out Defined terms, Origins, Overviews and, we could have added, Notes) has had to be applied to the rewritten tax legislation. We would have thought that this was an opportunity for the tax law rewrite to lead the field, not follow it.

2.6 We support the Steering Committee's proposal that, in future, users of the legislation should be brought into discussions with the authorities in the hopes of persuading them of the advantage of having more 'user-friendly' legislation.

Length versus helpfulness
2.7 We have noted in D below occasions where we think there is unnecessary duplication of text but on the whole we think that a good job has been done in addressing the needs of the reader, even at the cost of adding to the length.

2.8 An example is in 2.22.1 to 6 where the same wording is repeated six times, with only small variation, to say how allowances and charges are given effect for first a trade, then a Schedule A business and so on. It would have been easy to condense these into a single clause with variations in subclauses to deal with each kind of business, saving a large number of words. For something as basic as this, however, we think that the right choice has been made: to serve the needs of the user, who usually will be interested in how allowances and charges are treated for only one of the businesses. This is referred to in para 918 of the Commentary

Gender-related words
2.9 We note the use of 'his' and 'he' in 1.1.6(2)(a), 2.17.13(1)(b)(ii) and elsewhere, meaning 'a person's and 'a person'. We would like to know if a decision has been made on gender-related words – for instance, to use 'his' where it relates to either a company or an individual, but 'the person's' where it relates only to an individual. (If so, it is an irony in this case that apparent gender-orthodoxy is the diametric opposite of correct grammar.) Generally, we find the use inconsistent but we would not want brevity to be sacrificed for rigid correctness. A further inconsistency is the use of 'the taxpayer' in 2.13.15(1)(a). We also refer to the potentially even more anthropomorphic 'lessors who are a companies' in 2.17.8(1)(g).

2.10 We understand, however, that for this, first, draft of the Bill, more emphasis has been put on accuracy and structure, with the intention of fine-tuning the words in the July draft. We also have this factor at the back of our minds, generally, when commenting on secondary matters in the next few paragraphs.

'The amount of'
2.11 We would like to think that the repetitively-used phrase 'the amount of' (eg of the disposal value) can be avoided. In many cases, possibly most of them, we doubt if it adds to the meaning, and it certainly adds to the complexity while detracting from the flow of the text. For instance, we do not understand why 2.17.24(2) needs to refer to 'the amount of the disposal value' when 2.10.10, which determines the disposal value to be brought into the computation, refers simply to 'the disposal value'. We further notice that the heading of the right-hand column in 2.17. 31 is inconsistent in this respect with that in 2.10.10. We wonder if 'the amount of' is no more than a habit carried over from traditional drafting style. Ideally, there should be a large-scale purge of the phrase.

Cross-references, definitions and signposts
2.12 We have noted a number of occasions where there is a cross-reference to another clause for (say) a definition. There is even an example where the reference is to a complete Part (in 2.16.1, referred to under D below). It would make it easier for the reader if the reference were to the specific part of the clause containing the definition.

2.13 We note that certain definitions that are contained outside the tax legislation and are too lengthy to make it practical to include them in the relevant clause of this Bill are now included in the Commentary (eg para 535). We find this helpful. An alternative worth consideration is that such definitions should be put into a Schedule to the Bill itself.

2.14 Some so-called definitions are really only instances of what the term means. For example, 2.3.1(3) does not define a building but merely give instances of one. Perhaps 'as instanced by' would be suitable, here and elsewhere. This would avoid the problem, much discussed in tribunals and courts, whether a particular definition is inclusive or exclusive.

2.15 It would generally be helpful to have a signpost to a definition whenever an expression with a special meaning is first used in a Chapter. This would both make it clear that the words do not have their natural meaning, if any, and point to the actual definition. To repeat the signpost whenever the expression is used subsequently, however, would tend to clutter up the text. We have given examples of this under 3.6.4(2) and 3.7.7(3) of C below, among many others.

2.16 Generally we have found the cross-references within the Bill, and the references given in the Commentary and in the Table of Origins and Destinations commendably accurate. They have not been uniformly so, however, which on occasion has made our task of reviewing that much more difficult. (An example is in para 1561 of the Commentary which refers to CAA s 22B instead of 22C). We have also found occasions where it has been quite difficult to find the meaning of a word or phrase through the lack of cross-referencing (see for instance our comments on 3.7.7(3) under C below). We appreciate, of course, that the rewrite team works under pressure and is continually having to redraft and reposition its work.

3 Specific topics

Life assurance

3.1 There is a case for putting the parts that deal with capital allowances for life assurance business, including 2.2.5(6) and Chapter 12.1 (which we have not looked at in any detail), into the exposure draft covering the rules for life assurance business generally. Those rules would then be more comprehensive.

Ships

3.2 The concepts underlying capital allowances for ships, together with much of the drafting of the rewrite, are difficult to follow. Since the subject is a specialist one, however, we have drawn attention only to the parts that have caused us the greatest difficulty. Nevertheless, we are disappointed that many old drafting habits have survived in this part of the rewrite (see in particular our comments on 2.15.12 under C below).

Fixtures

3.3 We find the rewrite of the fixtures legislation far clearer than the original and organised in a much more logical way. We like having the main definitions collected at the beginning (in 2.17.2), the overview in 2.17.4 and the common pattern used in 2.17.5 to 15 (even though the use of the common pattern adds quite considerably to

the length in certain instances). An example of the way the original has been disentagled to make it clearer is 2.17.7, where three basic concepts conflated into s 353(1) (the qualifying conditions, the disqualifying conditions and the consequence) have been dealt with in separate subclauses. Another example is 2.17.11, which spells out part of the consequences where someone takes on the obligations of another person under an equipment lease; this replaces the original 'subsection (1) above shall apply as if that capital sum were such a capital sum as is referred to in paragraph (b) of that subsection'. Then compare 'another interest in … land' in 2.17.12(2) with 'that interest is not the one which … is acquired by the purchaser' in s56A(2)(b). We could of course go on in this vein.

3.4 These are the sorts of things that makes the rewrite so useful, even though they often add to the length.

Enterprise zones
3.5 It will be seen from our comments on Chapter 3.9 under C below, that we found that this subject read somewhat less well than most of the rewrite. We felt both that the underlying complexity of the legislation was not being sorted out as it might have been and that some of the drafting was muddled.

3.6 We appreciate, however, that the number of enterprise zones below ten years old is diminishing and may reach zero, so that the rewrite team may have decided to give priority to other parts of the legislation.

Anti-avoidance
3.7 Chapter 2.20 is well written and in a format which is more intelligible than the original legislation. There is a great deal of reliance on cross-referencing between sections within the Chapter, but this is probably unavoidable in view of the complexity of the matters addressed.

4 Our approach in the rest of our responses

Structure of our review
4.1 Having dealt with these general points, 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;
D - detailed comments on drafting.

4.2 Our statutory references (eg s 47) are to the existing legislation in the Capital Allowances Act 1990 except where otherwise stated.

Scope of our review
4.3 We have been invited to review:

- 355 pages of draft legislation, half of which is new material and half old;
- 217 pages of commentary; and
- 160 pages of tables of origins and destinations.

4.4 These add up to a large amount of material to review within a period of just over two months. We have concentrated, therefore, on reviewing the *new* material in as much depth as time has permitted. This comprises Part 1 (introduction), Chapters 2.11 to 2.23 (cars, short- and long-life assets, overseas leasing, ships, mining and oil, fixtures and anti-avoidance among others), Part 7 (know-how), Part 10 (assured tenancies), Part 11 (contributions) and Part 12 (supplementary). We have not had time to review the three schedules, though.

4.5 Of the *old* material, some has already been altered. We understand that the remainder is due to be altered (where necessary) in the revised draft Bill to be published in July. Because of the provisional nature of some of the material in the current draft and because of the limited time available, we have only done a light review of the old material. This has involved reading through it to see that it looks reasonable and concentrating on the changes referred to in the Commentary. We have not at this stage checked it against the original legislation, against the earlier rewritten drafts or against our responses on the earlier drafts.

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. This does in fact constitute by far the majority of answers.

Page	*Para*	*Comment*
74	387	We agree that the rules on the clawback of FYAs on 'old' expenditure under s 47 need not be rewritten. The maximum time limit for the clawback is ten years from when the plant is brought into use (s 40(4)(b)(ii)). We do not imagine that less than the requisite ten years will have elapsed in any case from when the plant has been brought into use.
88	505	We agree to this change (excluding balancing charges on expensive cars), even though it is potentially to the taxpayer's disadvantage. The point is likely to arise rarely if at all, and we are in favour of simplifying the law.
95	571	Although there is not an obvious distinction between losing possession of plant where the loss is likely to be permanent and abandoning it, the distinction is written into the existing legislation and is probably worth preserving. Given that, we agree that it should be made clear that once the plant has been abandoned it ceases to be owned.
111	710	The Commentary points out that carrying forward the unrelieved expenditure after deducting the full amount of the first-year allowance, even though the FYA is restricted when there is partial non-qualifying use, is a change from the present position, where nothing is said about the carry forward. The Commentary regards this as implied. We are not sure if this is the case, but it is common sense. For this reason, and in the interest of having legislation that is consistent with WDAs, we agree that the change should be made even though it is potentially against the taxpayer.
115	746/7	We agree that 'wear and tear' should be widened. but it needs clearly to cover obsolescence, as intended in para 745. We suggest 'depreciation in value during its use' to replace 'depreciation resulting from its use'.
123	806	We agree the concept of 'treated as' (being companies incorporated in the UK) in 2.20.7(2). The use of the new words '(or would fall)' in 2.20.7(1)(b)(i) and (ii) follows from this.
129	868	In 2.21.2 and 2.21.5, in a rewrite context, we do not think it right to ignore additional VAT liabilities and rebates which arise before the underlying expenditure is incurred even if this has been the practice to date. In principle, where taxpayers suffer more VAT, or less, their expenditure qualifying for CAs should ultimately be the same as if the 'right' amount of VAT had been incurred in the first place. It is indeed possible that taxpayers advantaged in consequence would be broadly offset by those disadvantaged, and

		that instances would be extremely rare in practice; but this will not be, or have been, a justification for perpetuating an anomaly. We agree that under the existing legislation s 24(1A) (the incurring of an additional VAT liability) applies only to times after the s 24(1) incurring of the capital expenditure on the provision of the plant concerned. in order to correct the anomaly. However, in order to correct the anomaly, 2.21.2 might perhaps be amended by replacing 'has incurred' in line 4 by 'incurs', and in line 6 by replacing 'subsequently' by 'at any time'. Similar changes might be made in 2.21.5(1)(a) and (b).
131	880	We support the proposals to set out how the legislation for first-year allowances applies to VAT liabilities under the capital goods scheme in Northern Ireland cases, subject to our comments on 2.21.4(3)-(4) under C below.
169	1211	We have no objection to 7.3.5(3) being included in the situation where unrelieved qualifying expenditure remains in a final chargeable period. 7.3.3(3) provides for an entitlement to a balancing allowance of the whole amount of the pool balance in the final chargeable period; but we assume the concern here is that, if this is not claimed under 1.1.3(1), the pool should still be effectively extinguished on the permanent cessation of the relevant trade. Nevertheless, in the absence of 7.3.5(3), we cannot readily see how any know-how allowances could in practice be claimed post-cessation; but perhaps there is some anti-avoidance motive here?
190	1379	We would prefer the use of the word 'relevant' instead of 'net'. We appreciate the difficulty in trying to cater both for persons who acquired the dwelling house as new and for those who purchased ; but we find the word 'net' confusing in the case of the former and it looks odd in 10.6.9 to describe the entirety of the new expenditure as 'net' expenditure. If our suggestion is accepted, this will involve replacing the word 'net' where it appears in 10.6.5 (at lines 6, 15 and 20), in 10.6.9 (at lines 22, 23, 27, 28 and 31) and in 10.6.10 (at line 3) by 'relevant'. In 10.6.10 'NQE' would become 'RQE' (at lines 1 and 3).
194	1415	We agree the omission of the references under s 153(1) to grants under Part II of the Industrial Development Act 1982 or Part 1 of the Industry Act 1972.
195	1423	Agreed. In practice it must now be unlikely that expenditure incurred after say April 2001 will attract a contribution made before 27 July 1989, and accept this as a proposed rewrite change. We would like to think that if such circumstances did arise steps would be taken to avoid the taxpayer being disadvantaged.
197	1435	In 11.2.2(2), in order to include all contributions to the plant or machinery in question in a single-asset pool, in line 25 it might be clearer to insert 'All' before 'Expenditure' and to insert 'an asset' in place of 'plant or machinery' in line 26.

201, 202	1459, 1469	We have not reviewed these life assurance provisions in any depth so do not have a view on the changes.
208	1524	It is clearly in the taxpayer's favour to clarify that references to s 76 in s 152A do not include s 76(1)(d), this being regarded as the original intention of s 152A (paragraph 1523). We welcome this as a proposed rewrite change.
211	1551	We are not aware of any current practical applications of CAA s 143 (agreement between an inspector and the taxpayer to give effect for income tax purposes to capital allowances without any assessment being made). However, in discovery cases, or where there is no obligation to make a return because of losses, this provision may be needed. We think it should be rewritten, therefore.
214, 215	1580, 1587	We have not reviewed these consequential amendments in any depth so do not have a view on the changes.

C Specific comments on matters of principle

1 INTRODUCTION

1.1 Introduction

1.1.5 When capital expenditure is incurred

General — This brings a great deal of clarity to a section that was previously not user-friendly.

1.2 Exclusion of double relief

1.2.1 No double allowances

- — Double allowances cannot be claimed but, where there is a conflict, there is no steer as to which allowance has priority. Is it covered by the convention that the taxpayer has the choice?

2 PLANT AND MACHINERY ALLOWANCES

2.2 Qualifying activities

2.2.4 Management of investment companies

(2) — The definition of this activity is circular. In any case, we doubt if it is helpful to define the management of an investment company by reference to the pursuit of purposes that would allow the expenditure be treated as expenses of management under TA s 75. The reason is that expenses of management are not defined in s 75 and not particularly well settled in case law.

2.3 Provision of plant or machinery

2.3.6 Software and rights to software

(2)(a) — This envisages that a right to software and the software itself are acquired at the same time. It leaves it unclear whether the acquisition of a right to software on its own is plant. Compare 2.10.12, which clearly envisages expenditure being incurred on the software alone.

2.5 Special categories of expenditure

2.5.3 Fire safety

(1) — Like the original, this requires the taxpayer to *use* the building for the purposes of a qualifying activity. This contrasts with the general rule for plant allowances in 2.1.1(2)(b), where the expenditure has to be *incurred* for those purposes. The taxpayer carrying on an existing trade who buys a new building and takes the necessary fire precautions night therefore be denied plant allowances in year 1 or even, arguably, altogether if he does not start to use the building till year 2. We assume this point is not taken in practice, in which case the legislation should be clarified – perhaps by bringing in 'intends to use' as well as 'uses'.

The same applies to 2.5.4-6 (safety at sports grounds). By contrast, more helpfully, 2.5.7 refers to expenditure on personal safety *for use* in a trade etc.

2.5.7 Personal security

(2)(a) — A 'special' threat, although contained in the original, is vague. Can it be made more meaningful as a minor rewrite change?

2.8 Pooling of qualifying expenditure

2.8.2 Different kinds of pools

164 In the Commentary it is said that there is no need to provide for single asset pools for expenditure on plant for 'special leasing' since each special leasing is a separate qualifying activity. While, of course, we agree with this as a technical matter, we think it would be helpful to include special leasing in the list of single asset pools. This could be fitted in easily if, 'For each qualifying activity' was inserted at the beginning of each subclause.

2.9 Qualification for first-year allowances

2.9.2 Condition of entitlement

(4) Expenditure is excluded from the FYA if 'it appears' that 2.14.6 would have effect. We are not sure that, as in the original, the exclusion needs to be subjective. Can it me made more objective as a minor rewrite change?

2.9.15 Interpretation of 2.9.13 and 14

(1) The meaning of 2.9.13 and 14 depends to a substantial extent on the large number of definitions included here. We suggest a signpost to 2.9.15 should be put at the beginning of 2.9.13 and 14.

2.10 Allowances and charges

2.10.7 Unrelieved qualifying expenditure

(1) Paras 189 to 192 of the Commentary discuss the form acronyms should take. We think that the ones used here are a good model for the rest of the rewrite. They are more meaningful that A, B, C etc and not so unwieldy as the likes of the old UFYQE. Two or three initial letters seem about right for most circumstances.

2.10.10 Disposal values: general

Table 'Net proceeds of sale' under item 1, column 2 is imprecise, as is the original. It could be net of VAT, net of proceeds relating partly to other items or net of selling costs, for instance. They are certainly meant to be different from 'proceeds from the balancing event' as used, for instance, in 3.7.4, though they come to the same thing when 3.7.11 defines 'proceeds from the balancing event'. Net of selling costs is no doubt intended. For capital gains tax purposes, of course, selling costs are defined strictly and quite restrictively. While not going so far as to suggest that something similar be introduced for CAs (which would probably go beyond the remit of the rewrite project in any case), we think it would be helpful to have incorporated something like 'net of selling costs'.

The same applies to IBAs under 3.7.11 and to assured tenancies under 10.6.3(1) – and possibly elsewhere.

We have some difficulty with item 3, column 1. While it is obvious who the Sch E tax is charged on, so we are happy for this not to be stated, we do not think the word 'gift' should be used in the context of Sch E. If a car is transferred to an employee for nil consideration, it is arguable that that is not a gift. It is something for something, not something for nothing. Failing that it falls within item 7 (any other event: market value), which clearly is not intended.

2.10.14 Gifts to charities etc

(2) A case can be made, in the interest of simplification, for extending the list of qualifying activities for this purposes so as to correspond with the list of qualifying activities for CA purposes generally in 2.2.1(1). There seems no good reason to exclude the management of an investment company for instance, and the exclusion may have been unintended. We would like this to be considered as a minor rewrite change.

2.11 Cars etc

2.11.1 Single asset pool

(3) S 34(1) treats expenditure within s 34(4)(b) and s 81 as having been incurred. We assume this is reflected in 2.11.6(3), though there is no such reference in the Table of destinations.

2.11.3 Limit where part of expenditure met by another person

(3), (4) Para 255 of the Commentary says that the two limits given by the formula add up to £3,000. This is not necessarily so. S in subclause (2) (the amount contributed) may differ from S in subclause (4) (the contribution on which CAs are claimed by the contributor). This is presumably why S is given a different meaning in each case. If not, it would be better to make them identical.

2.11.10 Vehicles provided for purposes of employment or office

(1) Whilst accurately reflecting s 27(2B)(a), we note that 'mechanically propelled road vehicles' are included here without any of the limitations introduced in 2.11.11 in defining a 'car'. Is it intended to include within 2.11.10 such vehicles as goods vans, for example? Logically we think it should.

2.12 Short-life assets

General The ordering of the clauses is more logical and their content clearer than ss 37 and 38.

2.12.1 Meaning of 'short-life asset'

- The application of Chapter 2.12 to qualifying expenditure rather than to capital expenditure incurred wholly and exclusively for the purposes of the trade (as in s 37(1)(a)) is agreed (ref para 278 of the Commentary).

We are not happy with the term 'short-life asset', however. It is defined, negatively, as any asset for which an election is made, unless it is a car etc. Although 'short-life asset' is a familiar term, it might tend to suggest the election can only be made for assets that depreciate quickly, whereas of course there is no such restriction.

2.12.2 Cases in which short-life asset treatment is ruled out

General We find that the use of the table improves comprehension of the exclusions and exceptions.

Table *Plant or machinery provided for leasing – qualifying purpose exception, as defined by 2.14.3.* The heading to 2.14.3 indicates that protected leasing is use for a qualifying purpose. For the avoidance of any doubt, in 2.14.3(2)(a) we suggest inserting 'as mentioned in subsection 1(a)' after 'for short term leasing'. This would then accord with the treatment of the leasing of a ship, aircraft or transport container in 2.14.3(2)(b).

Paragraphs (g) and (k) of s 38 are correctly excluded from the Table as spent;

and paragraph (m) is presumably excluded on the basis that in practice there are now no cases where first year allowances continue to be available under ss 22(2), (3) or (3A.

2.12.4 Short-life asset pool

(1) We agree to the making explicit of the requirement that there is a separate pool for each asset (ref para 284 of the Commentary).

(3) This might be written more simply as 'If there has been no final chargeable period for the short-life asset pool in a chargeable period …'

(3)(b) We agree the use of the new term 'the four-year cut off'(ref para 285 of the Commentary).

4(b) '… incurred *in* different chargeable periods' would be more natural and also correspond to 2.12.3(3)(b).

2.12.5 Short-life assets provided for leasing

- Applying 2.12.4(3) for the purposes of 2.12.5, to achieve the consequences in 2.12.4(3)(b) - to transfer the pool qualifying expenditure back into the main pool – has the advantage of brevity but is a little cumbersome. Strictly read, it would also apply 2.12.4(3)(a) - the pool to end at the end of year four - which is not intended. It is also an impossibility where the change of use is earlier in the four-year period and the pool has effectively ended then.

  The reference in 2.12.4(3)(b) to 'the first chargeable period ending after the four-year cut-off' would also require appropriate interpretation in the 2.12.5 context. It might be better to extend 2.12.5 at the end by separately providing for the pool to end, the qualifying expenditure to be transferred to the main pool for the relevant chargeable period and for the asset to cease to be a short-life asset.

2.12.6 Sales at under-value

(2) This could be added to the Table to 2.10.10, followed by the statement 'The same applies to 2.12.6, 2.10.13(3)(a) (and possibly elsewhere).

2.12.7 Disposal to connected person

(2) The treatment set down for the transferor's disposal value does not obviously govern the transferee's acquisition cost – in contrast to 2.14 5(3) (overseas leasing) and indeed to s 37(8).

2.13 Long-life assets

2.13.9 Expenditure to which the monetary limits apply

(2)(c) 'The whole or a substantial part' replaces 'substantially the whole' in s 38C(3)(b). The change in wording goes beyond clarification, but we do not object to it.

2.13.12 Long-life asset pool

(2) S 38E(6) excludes expenditure within ss 31 (ships), 61 (special leasing), 79 (partly for other uses) or 80 (subsidies). S 79 is covered by 2.13.12(2)(a), and s 61 is special leasing within 2.13.12(2)(b); but can it be confirmed that the only instances of long-life asset expenditure going into single asset pools is under ss 31 or 80? If not, the wording 'single asset pool' in 2.13.12(2)(b) will be too wide. The s 31 ships at issue are presumably those failing the conditions in s 38B(3) and hence remaining long-life assets.

2.13.14 Later claims

(2)(a) This is a troublesome piece of writing. Someone trying to make sense of the subclause would be distracted by the reference to '*that claimant* or another person' claiming plant allowances subsequent to the original claim having been made. He would similarly be distracted by the reference to the second claim being for expenditure incurred before that for the first claim. In any case, this subclause is very long. We suggest that it is broken up into separate sentences which deal with (a) subsequent expenditure by a different person, (b) subsequent expenditure by the original claimant (presumably because he has bought the plant back from a third party) and (c) earlier expenditure by the original claimant. This still leaves us mystified, however, how, under (c), the original claimant might have earlier expenditure when it is the later expenditure which determines whether the asset is a long-life one. Can it be second-hand expenditure before it is first-hand?

Although the meaning is relatively clear, we are not altogether happy with the (undefined) term 'subsection (1) claim'.

2.13.15 Disposal value of long-life assets

General This section does not apply if an election is made under 2.23.5; 2.23.5(6) provides for this. It would be helpful to have a similar cross-reference from 2.13.15 itself to 2.23.5.

(3)(d) We note that this assumption has been added to those in s 38G. We assume this is because the original is cannot work properly without it.

Under 2.10.4, the final chargeable period involves something like the discontinuance of the activity. A mere sale appears not to be caught, therefore. We wonder if this is intended.

2.14 Overseas leasing

2.14.1 'Leasing' and 'overseas leasing'

(3) 12.6(4)(1) implies that 'tax' means UK tax, but there is no signpost to it. It would be even more helpful to have it made explicit. Contrast 2.17.7(2) and 4.6.6(2)(b), where the person concerned must be 'within the charge to tax in the United Kingdom'.

2.14.7 Cases where allowances are prohibited

Table, item 4 'Periodical payments' are not defined, here or in the original, which leaves their meaning vague. We doubt, however, if it is possible to define them adequately.

2.14.22 Other qualifying purposes

(2), (4), (5) Traditionally, and in most of the rewrite programme, such subclauses have been prefaced by 'The first circumstance is that' etc. Perhaps the treatment here is an experiment. We find the subclauses stand up perfectly well without any preface, and on balance we prefer it. The same technique might be used elsewhere so as to streamline the drafting.

2.15 SHIPS

2.15.9 Claim for deferment

(3)(a) We think the disposal event should take place in the period *for* which, not in which, the claim is made.

2.15.12 Limit on amount deferred

General We have a number of points to make on this clause which we would normally include in D below (presentational points). We have put them under C (points of principle), however, because they exemplify unhelpful styles of drafting that we would have hoped would have disappeared by now. We make similar points on 2.15.13 and 2.15.15 under D below.

(1) It is not altogether clear what happens when any of the 'following amounts' is exceeded: does none of the charge rank for deferment, or is it only the excess that cannot be deferred?

(2) It is difficult to disentangle the first sentence. In fact, it is difficult to discover any meaning to it.

It is not till reaching the end of the second paragraph that one discovers the vital point that the balancing charge is to be disregarded. For about 70 words, all possibilities are open. We suggest putting 'there is to be disregarded' at the front, after 'For this purpose'.

(2)(a), (b) Cross-references are needed for these pools, as they are for the pools under (c) and (d).

(4) A signpost is needed to the meaning of 'new shipping' in 2.15.20.

(5)(a) The meaning of 'any other amounts deferred under section 2.15.11' is unclear.

2.15.29 Change of person carrying on the qualifying activity

General We note that lengthy repetition of the means of identifying a particular person is avoided in 2.15.28 and 30 by the use of 'A' and 'B'. This shorthand could be used here – and probably elsewhere in the whole of the rewrite – to good effect.

2.16 Mining and oil industries

2.16.6 Meaning of 'abandonment expenditure'

(5)(b) In para 535 of the Commentary, 'offshore installation' is defined by reference to Regulations as applied by section 12 Mineral Workings (Offshore Installations) Act 1971. Is the reference to Part IV of the Petroleum Act 1998 correct as concerns this particular definition?

2.17 Fixtures

2.17.10 Purchaser of interest in land

(1)(b) As in the original, the reader will struggle to know the meaning of 'a capital sum which … is treated as expenditure on the provision of the fixture for the purposes of this Part'. The same applies in 2.17.13(1), and possibly elsewhere.

2.17.13 Incoming lessee: lessor entitled to allowances

(5) While the two-year time limit is inconsistent with ones based more on self-assessment in (eg) 2.17.9(2), we appreciate that it is a necessary consequence of a joint election between parties that may have different periods. The same applies elsewhere, eg 2.17.28(2).

2.17.23 Severance of fixtures

(1)(b) We cannot see where the disposal value for this disposal event is determined. It does not appear to come within item 4 or 5 of the table in 2.10.10. 2.17.4 applies only where the taxpayer ceases to have a qualifying interest. S 59(1)(c), giving rise to 2.17.24, excludes severance, of course, but we think that if there is a gap it should be filled, hopefully as a minor rewrite change.

2.17.24 Person ceasing to have qualifying interest

(5) Since subclause (4) deals with a sale at market value or above, the supposition is that subclause (5) deals with sales at below market value and the purchaser claims allowances. Were this not so, the reference in subclause (c) to a dual-resident company would not make sense: s26(1) only makes that reference in relation to a sale at below market value. To avoid the reader having to struggle to this conclusion, as we did, we believe it should be made explicit.

2.17.32 Fixtures beginning to be used wholly for other purposes

(1) We cannot see where *part* use for other purposes is dealt with. S 59(9) refers to part use as well as whole use.

2.18 Part use for qualifying activity

2.18.2 Single asset pool, etc

General This is intelligible only with the help of the explanation in para 716 of the Commentary. That explanation itself requires the italicised 'provided' to be contrasted with the italicised 'used' in order to make the point that 'provision' of the asset in 2.18.1 does not require that it should be in use partly for the purposes of the qualifying activity at the time it is provided; but can be brought into use later, without such commencement of use then having to be treated as a disposal event in a final chargeable period.

The situation envisaged in the final brackets in para 716 is that the asset is in a single asset pool even though it is never used for purposes other than those of the qualifying activity. This is presumably only because it appeared at the outset that it might be so used, and the first-year allowance was accordingly reduced under 2.18.1(1). This is a surprising situation, arising from the proposed use of the new single asset pool mechanism. It would be fairer to return the asset without any balancing adjustment to the pool which would otherwise have been appropriate to a fully qualifying asset, and reinstate the right to the full first-year allowance entitlement in the original chargeable period concerned.

2.18.4 Writing down allowance not taken in full

(1) It is not clear what is meant by not *taking* a WDA, or taking less than the full amount. Does it mean treating as an expense (cf 2.22.1 and following) an entitlement to an allowance that has been reduced or eliminated under 2.18.1 because there is non-qualifying use? Or does it mean as well, or instead, claiming less than the full allowance to which the taxpayer is entitled (cf 1.1.3 and 2.10.19)? We note 'claimed' in paras 695 and 724-726 of the Commentary (and the omission of the word 'qualifying' before 'purposes' in the first line of para 697) and 'given' in 2.19(3)(1)(c) and (2)(b). The point needs clarifying.

(2) In line 31, the words 'proportionately reduced' are not very precise. In order to ensure that the 2.18.3 reduction is ignored in this context, would it be preferable to replace them by 'reduced by the amount of the allowance taken before any reduction under 2.18.3'?

2.18.5 Reduction of balancing allowances and balancing charges

(2) We are confused by this subclause on the one hand, and 2.18.1(3) and subclauses of a number of other clauses in this Chapter on the other. They seem to say the same thing about not reducing the unrelieved qualifying expenditure carried forward, but in a different way.

(3) Should this subclause also deal with balancing allowances? In the case of a disposal event affecting a single asset pool, in what circumstances would there be concern over 'the amount of unrelieved qualifying expenditure carried forward'? As a part disposal does not constitute a disposal event for 2.10.9, a balancing allowance or charge in respect of a 2.10.9(2) disposal event in a single asset pool can only arise in a final chargeable period (as provided in 2.10.4(3)). 2.10.7(3) then provides that no amount can be carried forward as unrelieved qualifying expenditure from a final chargeable period.

2.19 Partial depreciation subsidies

2.19.1 Meaning of 'partial depreciation subsidy'

General The explanation in para 745 of the Commentary, by reference to the example given, concludes that if a subsidy covers only part of the loss in value of the asset during its use, then where that loss is not strictly a result of 'wear and tear' but, for example, obsolescence, s 80(2) and (3) is inapplicable; and there is no other provision for allowances and charges where the expenditure is partly subsidised in these circumstances. Hence the asset will not attract capital allowances at all. This situation can be dealt with as a proposed rewrite change only if for 'wear and tear' can be substituted by 'depreciation'. This is argued in para 744, although conceding that the case law is not conclusive; but para 745 expresses the view that 'wear and tear' is unlikely to include depreciation through obsolescence. In these circumstances we doubt if the proposed rewrite change can be justified as a clarification of the current law; but as a sensible change in practice, we support it.

2.19.2 Reduction of first-year allowances

(1)(b) In lines 26 and 27 'the period during which the plant or machinery will be used' is vague, but it correctly rewrites s 80(1). The intention is to restrict the first-year allowance if it appears that a partial depreciation subsidy will be payable to the person who incurred the expenditure on providing the plant or machinery whilst it is in use for the purposes of the qualifying activity.

There appears, however, to be no provision to reinstate the full first-year allowance entitlement should no partial depreciation subsidy become payable in fact. Also, what happens if the subsidy is paid before the plant or machinery is brought into use, or after it has ceased to be used?

In line 25 what is meant by 'is or will be'? In s 80(1) the words were 'are or are to be'. Is the intention of 'will be' to include amounts which will actually be received after the end of the period of use? Such a construction can be read into s 80(1); but 2.19.2(1)(b) reads more as concerning payment receivable only within the period of use.

2.19.3 Single asset pool, etc

(3) We are not sure if the disposal value will always be market value. If it does, in line 16, after 'The disposal value' it may be helpful to insert '(market value of the plant or machinery)' or indicate this by appropriate wording. We would like to avoid any confusion with the amount of the payment received on the deemed disposal event under 2.19.3(2).

2.19.5 Writing-down allowance for qualifying activity not taken in full

(2) In line 3, at the end, the words 'proportionately reduced' are not very precise. In order to ensure that the 2.19.4 reduction is ignored in this context, would it be

preferable to replace them by ‘reduced by the amount of the allowance taken before any reduction under 2.19.4’?

2.19.6 Reduction of balancing allowances and balancing charges

(2) Should this sub-section deal with balancing allowances?

In the case of a disposal event affecting a single asset pool, in what circumstances would there be concern over ‘the amount of unrelieved qualifying expenditure carried forward’? Please also see our comments on 2.18.5(3).

2.20 Anti-avoidance

2.20.3 Transactions to obtain allowances

(b) In lines 15 and 16, the inclusion of ‘any other party’ is wider in scope than ‘any of them’ (being only B or S) in s 75. Should ‘to B or S, or to any other party,’ be replaced by ‘to either B or S or to both,’?

2.20.9 Allocation

(1)(b) We agree that this subclause adds to clarity. It permits the expenditure to form part of new available qualifying expenditure ‘for any subsequent chargeable period’; whereas s 25(5C) more restrictively refers to ‘the next following chargeable period’. Is this intended? Deferment to become available qualifying expenditure in any subsequent period at the taxpayer’s choice does seem to be permitted by 2.10.6(2).

2.20.11 Disposal value restricted

(4)(b) In line 6, should the words ‘in respect of that trade’ be deleted? This seems to have been inadvertently picked up from s 76A(10)(a) and (c), and should be omitted under the rewrite approach.

S 76A(10)(b) states an assumption that the person was within the charge to tax (in respect of the separate trade assumed for the purposes of that section). Should an assumption ‘that the person was within the charge to tax’ be stated in 2.20.11(4)?

2.21 Additional VAT liabilities and rebates

2.21.3 Additional VAT liability generates first-year allowance

(2) Equating the VAT liability to the original expenditure and saying that the taxpayer is entitled to an FYA for the period in which the liability accrues does not go far enough in our view. The additional liability could, it seems, fail to attract an FYA if it is incurred in a period for which FYAs are not given – see, for instance, 2.9.6(2)(a). We cannot imagine this was ever intended, even though it accords with s 22(1A) and (1B). In principle, any additional VAT liability should qualify for allowances in the same way as the original expenditure does, allowing for the impracticality of reopening earlier periods.

2.21.4 Exceptions to section 2.21.3

(1) In line 36, are the words ‘which is not protected leasing’ necessary? Subject to further extension in Finance Bill 2000, under s 22(3C), (3CA) or (3D), first-year allowances are available only to small and medium sized businesses until 11.7.2000 (or 11.5.2002 in Northern Ireland); but if the expenditure is expenditure on the provision of plant or machinery for leasing, first-year allowances are not available even then. 2.21.4 could be read as meaning that if

the plant or machinery is used for overseas leasing which is protected leasing (short-term leasing or the leasing of a ship, aircraft or transport container which is used for a qualifying purpose), then first-year allowances would be available (to small and medium sized businesses only); whereas this is precluded by s 22(6B)(d).

(3) Subsection (3) is evidently intended to apply where the additional VAT liability is incurred after the expiry of the 2.9.10(3) 'relevant period' (so that 2.9.10 cannot withdraw the first-year allowance on the original expenditure). Subsection (4) on the other hand deals with additional VAT liability incurred during that period when both the original expenditure and the additional VAT liability are treated as never having been Northern Ireland qualifying expenditure. This intention is not readily intelligible from the present wording. However, we read para 877 of the Commentary as meaning that an additional VAT liability incurred after the expiry of the 2.9.10(3) 'relevant period' *will* on reconsideration be treated as first-year qualifying expenditure, even if at that later time the primary use to which the plant or machinery is put is a use outside Northern Ireland or it is held for use otherwise than primarily in Northern Ireland; and that 2.21.4(3) is to be revised accordingly. In the revision, it would still be helpful to clarify that 2.21.4(3) applies to additional VAT liabilities incurred outside the 2.9.10(3) 'relevant period' and that 2.21.4(4) applies to those incurred within it.

(6) The effect of subclause (6) appears to be to allow any additional VAT liability incurred by B in respect of his expenditure under the relevant transaction (as reduced by the amount of any VAT rebate made to him) to be treated as part of his qualifying expenditure. A similar point arises in 2.21.10(7) in cases of sale and finance leasebacks. Is this intended?

Is it also necessary to exclude the application of 2.21.9 where 2.21.10 and 2.21.11 apply in the case of sale and finance leasebacks, in the same way as 2.20.6 is excluded by 2.20.6(4) where 2.20.13 and 2.20.14 apply instead?

2.21.6 Limit on disposal value where additional VAT rebate

(5) S 26(4) nets off any VAT rebate(s) received by each of the connected persons in order to arrive at the person's respective (net) capital expenditure incurred on the provision of the machinery or plant for the comparative purpose of identifying the greatest (net) capital expenditure incurred for the purposes of s 26(2). This is before reduction for any additional VAT rebates made specifically to him (unless already taken into account, because he in fact incurred the greatest net expenditure, and in arriving at that net amount). In 2.21.6(5), at line 25, 'the aggregate of any additional VAT rebates' presumably refers only to those rebates made to the person who 'incurred the greatest such expenditure' at line 28.

If in fact it is drafted to mean the total of the additional VAT rebates made to all the connected persons, then this would not seem to rewrite the meaning of s 26(3) and (4) correctly; s 26 takes the highest net expenditure incurred as the disposal value limit less rebates made to the seller unless already netted-off in arriving at the disposal value limit because his net expenditure was the highest. As 2.21.6(4)(b) refers to the additional VAT rebates made to any of the connected persons, it would perhaps be clearer to specify in 2.21.6(4)(5) that the aggregate additional VAT rebates referred to there means those made only

to the person who incurred the greatest net expenditure.

2.22 Giving effect to allowances and charges

2.22.3 Furnished holiday lettings business

(2) It is not clear what the reference to TA s 503 means without reference to that section. Para 922 of the Commentary refers to its relevance in restricting the use of losses from furnished holiday lettings businesses (TA s 503(3) is essentially at issue - adaptations to Chapter 1 Part X loss relief for income tax). It would be clearer if the relevant text could be incorporated into 2.22.3, as subsections which are intelligible in themselves.

2.22.7 Investment companies

(7) Apart from the fact that it would help to have thumbnail descriptions of ss 768B(8) and 768C(11), we are confused by the reference to those two sections. Incorporating s758B(8) is straightforward: allowances are split between the two subperiods where there has been a change of ownership etc. Incorporating s768C(11) is more difficult, however, since, when disallowing pre-entry management expenses following a change of ownership etc, it brings in s768B(8) *and* (9) (which deals with loan relationship debits). We do not understand why loan relationship debits are brought in for the one purpose and not for the other – or indeed if they are brought in, surreptitiously, for both purposes.

2.22.8-11 We commend the rewrite of these clauses as improving the intelligibility of TA s 434D.

2.22.10 Different giving effect rules for different categories of business

(2), (4) We had thought that Case VI was being dispensed with as a category of assessable income. The same applies to 2.12.12(5) (special leasing).

Incidentally, we do not find the heading particularly well expressed.

2.22.12 Special leasing of plant or machinery

(4) S73(3) provides, where for the whole or part of a chargeable period the lessee does not use the machinery or plant for the purpose of a trade carried on by him, that the allowance or a proportionate part of it is available 'primarily against income from the letting of that machinery or plant only'. In 2.22.12(4) this restriction would be more evident if 'only' was inserted after 'effect' in line 23.

We understand that the taxpayer can choose to set this restricted allowance against the specific income from the let plant or machinery concerned in priority to setting off allowances not so restricted. It would be helpful to make this clear in 2.22.12 as a minor rewrite change.

2.22.13 Excess allowance from special leasing: income tax

General Where an allowance is made under s 61 (machinery and plant on lease), s 73(2) provides that it is to be made by way of discharge or repayment of tax against income from 'the letting of machinery or plant' generally; but s 73(3) can restrict this effect, where the asset is not used wholly or partly for the lessee's trading purposes, so it is offset against income from the let asset only. For income tax purposes, s 141(2) provides that where the s 61 allowances exceeds the income 'of the specified class' for a year of assessment, the excess can be set-off against 'income of that class' in subsequent years. Presumably this does not apply to allowances restricted under s 73(3) as these are not set unrestrictedly against

income of 'the specified class' but restrictively against income from the let asset only; so that any excess allowance would be unrelieved.

If this interpretation is correct, 2.22.13 will need amendment as 2.22.13(1) presently permits relief in later years for all 2.22.12 excesses whether having suffered a restriction under 2.22.12(4) or not. 2.22.13(2) then permits an excess brought forward to be offset, without any restriction comparable to 2.22.12(4), against 'any special leasing of plant or machinery' income in later tax years. If the correct interpretation of the law is, however, that allowances restricted under s73(3) are not further restricted under s 141 in later years, then the drafting is correct.

2.22.14 Excess allowances from special leasing: corporation tax

General For corporation tax purposes, there is no equivalent of the s 73(3) restriction (set-off only against income from the particular asset let and not against class income, where the lessee does not use it wholly or partly for his trading purposes). Set-off against the class of income (from all machinery and plant on lease) is available. S 61(5) prohibits s 145(3) and (4) set-offs (against other income of the chargeable period and by carry-back to prior period(s)) and group relief. As s145(1) allows an unrestricted deduction against income of the specified class, it follows that an unrestricted carry-forward of any excess is allowed under s 145(2). This appears anomalous compared with the situation for income tax allowances, so we would like to check that we have understood the position correctly.

2.22.15 Special leasing: life assurance business

- Apart from prohibiting life assurance businesses from setting off excess allowances from special leasing against other profits of the same or prior period(s) and prohibiting group relief for them, TA s 434E(6) also provides that only such allowances as are referable to the company's basic life assurance and general annuity business can be given effect under CAA s 145(1), and then only against income referable to that business. We assume this will be taken into account when TA s434E is rewritten.

2.23 Supplementary provisions

2.23.1 Qualifying activities carried on in partnership

General This is admirably clear – in contrast to s78(3) and (4), which are about 100 and 150 words long, respectively.

2.23.3 ***Successions: general***

(3)(a) This subsection requires that the predecessor owned the property immediately before the succession. This is not an overt requirement in s 78(1), which it rewrites; but there can be no objection, as ownership is a basic requirement for expenditure to be qualifying expenditure under 2.1.1(2)(c).

2.23.4 Successions by beneficiaries

(2) As no time limit is given for the election, the normal statute bar of six years presumably applies. While otherwise we would favour having the normal self-assessment time limit in the interest of consistency, no doubt the reason for having the much longer limit is that estates may take a long time to administer. However, it is not clear how an election can be given effect after the window for a Revenue enquiry has closed, as the election is not within TMA Sch 1A.

(5)(a) We wonder if it would be possible to remove the whole of this subclause after the first four words and just have the unrelieved qualifying expenditure at the time of the succession.

2.23.5 Election where predecessor and successor are connected

General This clause, and the companion 2.23.6, is probably more commonly met than 2.23.4 (successions by beneficiaries), and is closely linked to 2 23.3 (successions: general). We would prefer them to come before 2.23.4, therefore. If necessary, 2.23.5 could be made subject to 2.23.4.

2.23.6 Effect of election

(3) S 77(4) strictly concerns only machinery or plant 'in use for the purposes of the trade' immediately before and after the time of succession; but it is sensible to have rewritten 'in use' as 'in use or provided and available for use'.

2.23.7 Plant used for business entertainment

(1) TA s577 is written in terms of disallowing entertainment expenditure incurred in trades though it is widened, for instance, under TA s 25A(2) to Schedule A businesses. We would like it confirmed that all other qualifying activities now subject to the disallowance were also subject to it originally.

(3), (5)(b) We do not object to the deletion of the words 'bona fide' in front of 'an employee' (or members of staff). We are not, however, happy withthe insertion of the word 'genuinely' in front of 'engaged in the management', as it gives the expression no meaning; either someone is engaged in management or is not.

(4) We do not consider 'which is a purpose of the qualifying activity to provide' is a proper substitute for the original 'which is his trade to provide' in TA s 557(10). It replaces fact with intent.

3 INDUSTRIAL BUILDINGS ALLOWANCES

3.2 What are industrial buildings

3.2.1 Meaning of industrial building

(2) We are surprised, as a matter of policy, that partnerships carrying on a profession are not entitled to IBAs. Occasions on which a partnership carries on a profession and uses an industrial building for it must be few and far between (vets may be an example) but we feel as a matter of principle that they should not be discriminated against. In particular, a partnership that has incorporated is deemed for tax purposes to be carrying on a trade, so there is unnecessary bias against remaining a partnership. To allow IBAs to partnerships carrying on a profession would also fit in with the general scheme of the rewrite under which the distinction between trades, professions and vocations is being toned down.

3.2.13 Buildings outside UK

- We find it surprising as a matter of policy that a UK resident letting an industrial building outside the UK should not be entitled to IBAs as he would if the building was in the UK.

3.5 Initial allowances

General We wondered if any purpose was served in calling the allowances initial allowances rather than first-year allowances, as for plant. It could be said that since initial allowances for IBA purposes is historic, apart from in the

diminishing number of enterprise zones within their first ten years, there would be no point in changing. On the other hand, we prefer consistent terminology to the familiar.

3.6 Writing-down allowances

3.6.1 Conditions of entitlement

(1)(b) We are not sure of the significance of '[if] other qualifying expenditure has been incurred on the building', or what part of the existing legislation it derives from. In any case we would like it made clear that, for example, professional fees relating to the construction of an industrial building qualify for allowances.

3.6.3 Calculation of amount after relevant event

General This colourless title obscures the important point that someone buying a second-hand building may be entitled to allowances. The text does not make this explicit either. It presents the allowance through the back door, as it were, by saying that 'the writing-down allowance for any chargeable period after the [relevant] event is given by the formula …'. Nothing has been stated earlier, so far as we are aware, to prepare one for something as basic as this. As a result, if someone asks 'can you get an allowance for a second hand building?', that person is going to have difficulty finding the answer. As we have pointed out in 2.3 of A above, this is the sort of thing that we believe should be included in an overview at the beginning of Part 3.

3.6.4 Allowance limited to residue

(2) There is no signpost to the meaning of the writing off of WDAs. It is not even referred to in 3.13.11 (index of defined expressions). We subsequently discovered it in Chapter 3.8. For the reasons we have given in A above, we would like to have a signpost to the definition when the expression is first used.

3.7 Balancing adjustments

3.7.3 Balancing events: ceasing to be qualifying hotel

(2), (3) Under (2), if a formerly qualifying hotel remains a non-qualifying hotel for two years, there is a notional sale at market value at the end of the two years. Under (3), if it becomes a qualifying hotel again within two years after the end of the period in which it temporarily falls out of use, it remains a qualifying hotel throughout. The application of the 'temporary disuse, provisions inevitably give rise to recomputations that do not fit easily with self assessment. Nevertheless, in the interest of simplifying the rules, we wonder if subclause (2) could be given the same 'two years and a bit' timescale as subclause (3).

3.7.7 Net qualifying expenditure

(3) This brings out a general point about definitions. Certain terms used in Chapter 3.7 are defined within Chapter 3.7, so once the reader has got used to the method it is not difficult for him to find, eg, that the meaning of 'net qualifying expenditure' as used in 3.7.5 is given in 3.7.7. The 'residue of qualifying expenditure', as used in 3.7.7, however, is defined in the next Chapter, under 3.8.1. This can be ascertained from the index of defined expressions in 3.13.11, of course, by those who are used to going to the end of the Part. But a signpost the first time a defined expression is used in a Chapter would be an additional aid, as we have pointed out under A above.

3.9 Enterprise zones

3.9.3 Qualifying use as a commercial building

(1) The problem we have with this subclause is that it is the main operating provision for buildings in an enterprise zone – ie it extends IBAs to commercial buildings – but it reads as though it is a continuation of the previous two definition clauses. Somehow it lacks impact, so the message can easily be lost. Perhaps the answer is to flag the point in 3.9.2.

3.9.5 Qualifying enterprise zone expenditure

General We find this clause confusing. Let us say we have identified *enterprise zone expenditure* under 3.9.2 and established *qualifying use* as a commercial building under 3.9.3. We might also have identified certain expenditure as *qualifying expenditure* under 3.9.4. We then discover in 3.9.5 what is meant by the *enterprise zone element of qualifying expenditure* and that this is also called *qualifying enterprise zone expenditure*.

The first problem is that it is difficult to see at this stage what edifice these building blocks are constructing. This is where the sort of overview we have seen in earlier rewrite drafts would be particularly helpful.

The second problem is that 3.9.5(1) introduces two new concepts (*enterprise zone element of qualifying expenditure* and *qualifying enterprise zone expenditure*) and says they are the same thing. This seems to be an unnecessary complication. Subclause (1) could simply say 'the meaning of qualifying enterprise zone expenditure is given in the rest of this section', and the following subclauses could be amended to avoid using the term 'enterprise zone element of qualifying expenditure' at all.

3.9.6 Entitlement to and amount of initial allowance

(1) Our problems continue. Saying that 'the condition of entitlement to' an FYA is something implies that we have already been warned that a condition will be imposed. We have been warned of this, but way back in 3.5.1, which not many people will remember or discover. Also, this subclause could be read as meaning that an initial allowance on anything (even plant for a small business, for instance) is subject to this condition. Generally, this subclause seems to be adrift from any context. Instead, it could say simply 'an initial allowance is given for qualifying enterprise zone expenditure'.

3.9.7 Balancing adjustment on realisation of capital value

(1), (2) These two subclauses also appear to be adrift. Say the taxpayer has constructed an industrial building in an enterprise zone and that for some reason his expenditure is not 'qualifying enterprise zone expenditure'. He will not be entitled to an initial allowance or the higher rate of writing down allowance, therefore. Despite this, however, he may realise capital value within the meaning of 3.9.11, so that he would be subject to a balancing charge or denied a balancing allowance under the ordinary IBA rules.

Perhaps this problem would be avoided if line 24 referred to '*qualifying* enterprise zone expenditure'.

3.11 Additional VAT and VAT rebates

3.11.3 Initial allowances: 1992-93 cases

(2) As with FYAs on plant expenditure, we are concerned that if the additional VAT liability in respect of original expenditure qualifying for an initial

allowance arises at a time when no initial allowance is available, no initial allowance is given on that VAT liability. See our comments under 2.21(3).

The same principle applies to enterprise zones in 3.11.4, though we see in subclause (1)(d) that the ten-year cut-off is made explicit. 3.11.5, though, gives rise to a repeat of the original problem where 3.11.3 does not apply.

3.12 How allowances and charges are given effect

3.12.4 Mining: carry back of excess balancing allowances

(3) The maximum period of carry back is 'five years'. This needs to be more precise – for instance the years are presumably neither tax years nor calendar years but periods of 365 days, and does the period run backwards from the beginning of the period in which the BA arises or from when the balancing event occurs?

Depending on the answer to this, it may become necessary in line 25 to include *part* of a period.

3.13 Supplementary provisions

3.13.4 Election to transfer at lower of market value and residue

(4)(b) We find it difficult to make any sense of this, either here or in the original. If it has any meaning it should be brought out.

Similarly, though it is actually possible to make sense of 3.13.5(4), that is only after a struggle. We hope these two provisions will be revised for the next draft.

4 AGRICULTURAL BUILDINGS

General There is nothing to alert the reader to the fact that allowances are given to a person who has acquired an existing building - and not just from the person who built it. They are given on qualifying expenditure (4.4.3), which means the construction expenditure per 4.2.1. Apart from the limitation under 4.2.5 to the transfer price if lower, therefore, the reader might think that only the person constructing the building is entitled to allowances. In fact, closer look reveals that there is no such limitation: there is nothing to stop one party (the transferee) getting allowances on expenditure by another party (the transferor). It is only later seen that a subsequent transferee gets allowances unless there is an election under 4.5.2. This is altogether quite different from the treatment of plant and industrial buildings (see, for instance, 3.4.3), so to most people it is unexpected. The result has to be deduced, and with some difficulty. It should be made explicit.

Possibly this problem is a casualty of the loss of the initial overviews in earlier rewrite drafts (see our comments under A above).

4.6 Further rules

4.6.2 Allowance after balancing event

(1) The WDA following a balancing event is, of course, given to the transferee. That is obvious when one thinks about it, but we would prefer to see it stated explicitly as an aid to faster understanding.

Similarly, in 4.6.3, where part of the land is transferred to someone else, the apportionment of the qualifying expenditure and of the allowances and charges

is between the transferor and transferee. It would make this provision easier to understand if, without complicating it, it were possible to say that the apportionment is between these two parties.

4.7 Supplementary provisions

4.7.1 Trades

- This clause could be regarded effectively as saying that if someone is carrying on a widget-making trade and also lets an agricultural building, the ABA is given as a deduction against the trading profits. 4.7.2(1) does not supersede that.

5 MINERAL EXTRACTION

5.1 Introduction

5.1.3 Meaning of mineral deposits

(2) As we have pointed out on the previous draft, we do not think that mineral deposits are intrinsically of a wasting nature. It is their extraction which makes them waste.

5.3 Qualifying expenditure on acquiring mineral asset

5.3.10 Meaning of first and earlier group owner

(1) This step-by-step approach makes it much easier to work out what effect the legislation has where there have been multiple transfers together with a changing group structure.

5.6 Supplementary provisions

5.6.2 Pre-trading expenditure

- This clause should probably be made subject to 5.5.4 (pre-trading exploration expenditure giving rise to balancing allowance).

6 SCIENTIFIC RESEARCH

6.1 Introduction

6.1.3 Scientific research related to a trade

(a) It is surprising that any research which leads to or facilitates a trade being set up apparently does not qualify: it has to be for an extension of the trade. The same wording is of course used in s 139(1)(d). On the assumption that research relating to the establishment of a trade does in practice qualify, which is consistent with 6.2.1(1)(b), 6.3.2(2) etc, it would be worth saying so here as a rewrite change.

An important part of s 139(1)(a) has been omitted: the extension to trades of the same class.

7 KNOW-HOW

7.1 Introduction

General We agree that the legislation will be clearer if TA s 530(6) and (8) are not rewritten (ref para 1187 of the Commentary). Paras 1188-1191 are also noted.

7.1.2 Meaning of know-how

General — We agree this definition should be addressed early, for the reason given in para 1195 of the Commentary.

(2) — The s 161(2) definition of 'mineral deposits' is effectively included in 5.1.3(1); but for the purposes of Part 5 (Mineral Extraction Allowances) the reference is restricted to mineral deposits of a wasting nature. We are not sure whether in practice this will be a material point, but this restriction is, through the 7.1.2(2) definition, also adopted for the purposes of Part 7. Is this intended? If not, for 'in Part 5' substitute 'in 5.1.3(1)', possibly with the additional words 'but ignoring 5.1.3(2)'.

7.1.4 Acquisition of know-how together with a trade

General — We agree the retention of the element of deeming (para 1198 of the Commentary).

(1) — TA s 531(2) can apply to a situation where a person disposes of know-how used only in part of a trade which is disposed of. 7.1.4(1) however refers to the disposal of know-how 'used in a trade', together with that trade or part of it, and this might be restrictively construed as referring only to know-how used throughout the trading activity and not just in the part of it disposed of. This may be a pedantic point as it is difficult to see how know-how used in an entire trade could be disposed of with part of the trade only; but any doubt might perhaps be avoided by rewording (1) as 'If a person disposes of know-how with a trade or part of that trade in which it is used, any consideration . . .'

The words 'and for the purposes of corporation tax, income tax and capital gains tax' in TA s 531(2) are omitted. Is there a reason for this? Those purposes are wider than 'for the purposes of this Act' in 7.1.4(1) at line 5.

7.2 Qualifying expenditure

7.2.1 Qualifying expenditure

(1)(c), (d) — As with our comments on 7.1.4(1), these subclauses can be construed as applicable only where the whole or part of the trade in which the know-how was used was acquired; and not as covering the situation where the know-how acquired was used only in the part of the trade acquired. Again a rewording 'he acquires the trade, or part of the trade, together with the know-how used in it' may resolve this.

7.3 Allowances and charges

7.3.5 Available qualifying expenditure

(1)(c) — This correctly rewrites TA s 530(4)(a); but it is not readily apparent what expenditure will fall within 7.3.5(1)(c) as qualifying expenditure previously incurred by a person but which has not previously formed part of his qualifying expenditure for a previous chargeable period. Could this include pre-commencement expenditure under 7.2.1(3), although even this would presumably be treated as falling within 7.3.5(1)(b)?

We assume that the reference to Clause 7.3.6(3) should be to Clause 7.3.5(3) (para 1210 of the Commentary).

7.4 Supplementary provisions

7.4.2 Index of defined expressions

- ‘Final chargeable period’ should be referenced more exactly to ‘section 7.3.3(4)’.

8 PATENTS

8.3 Allowances and charges

8.3.3 Writing-down allowance or balancing allowance

(4) It seems that it is also necessary to say that there is a final chargeable period when the rights have been wholly disposed of. Otherwise, if (say) the proceeds are £100 and the unrelieved qualifying expenditure £1,000, there would be no balancing charge. Instead there would be a 25% writing-down allowance for ever and a day.

8.4 Giving effect to allowances and charges

8.4.2 Non-trade expenditure

(4) Again (see our comments under 2.22.10), we thought that Case VI was being got rid of. Presumably, when the Bill on the Savings and Investment Income of Individuals is enacted, there will be a consequential alteration to the CA Bill.

8.4.3 Excess allowances: income tax

(2) The reason for the lack of symmetry between the income tax and corporation tax treatment of excess allowances is hard to understand. Although it would involve a policy change, we suggest that serious consideration should be given to allowing individuals a deduction against total income rather than just patent income, as companies are given under 8.4.4(3). Otherwise there is discrimination against those who choose to trade on their own or in partnership.

8.5 Expenditure before 1 April 1986

8.5.10 Giving effect to allowances and charges

General We do not understand why there is apparently no measure for giving effect to balancing *allowances*.

9 DREDGING

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10 ASSURED TENANCIES

10.1 Introduction

10.1.3 Manning of ‘approved body’

- The definition by cross-reference to the meaning given in s 56(4) of the Housing Act 1980 is not very helpful. It might make the definition a little clearer to add ‘(as specified in an order made by the Secretary of State)’ at the end of the sentence.

10.1.4 Expenditure on the construction of a building

- S 93(1) appears to treat capital expenditure on repairs as creating a newly constructed part of an existing building; whereas 10.1.4 does not make this fine distinction. Nothing seems to turn on this, however, the expenditure still being

expenditure on the construction of a building eligible for allowances.

Capital expenditure on repairs to a building was not defined in CAA 1990, and the absence of any definition continues into Part 10. It represents expenditure accounted for as revenue but which is disallowed as a deduction against taxable income profits, having particular regard to case law. It might be helpful to define it in these terms in 10.1.4. The same point arises in 3.1.4.

10.2 Relevant interest

10.2.5 ***Merger of leasehold interest***

(1) The word 'thereupon' in s 95(3) is more specific than the word 'becomes' in line 14 of 10.2.5(1). Whilst clearly the intention is that the word 'becomes' means at the time of the extinction, any doubt could be removed by rewording line 10 as 'If the relevant interest is a leasehold interest, on its extinction –'.

10.3 Qualifying expenditure

10.3.3 ***Capital expenditure on acquiring building unused***

General We have some difficulty in understanding the explanation in para 1340 of the Commentary; this appears to be that expenditure on the construction of a building deemed to have been incurred under s 91 does not fall within s 96 as appropriate capital expenditure (eligible for writing down allowances under s 85 (2)). We are in particular unclear how in these circumstances dwelling-houses built by developers have in practice attracted relief to date (was this always by concession?); but we have no objection to the rewrite change.

10.6 Balancing adjustments

10.6.2 ***Balancing events***

- Events within 10.2.5 and 10.4.3(1) are included within 'transfer of the relevant interest', and hence within 10.6.2(a). A 10.2.5(1)(a) event is presumably also within 10.6.2(b). The 10.2.6(4) termination of a lease, treated as a surrender, would also appear to fall within the scope of 10.2.5(2), and hence as a transfer of the relevant interest and a balancing event within 10.6.2(a). A 10.6.2(5) lease termination, treated as an assignment, is not expressly traceable into 10.6.2(a) other than on a reasonable assumption that such a deemed assignment would fall to be treated as a transfer of the relevant interest. This is, however, tortuous reasoning and it looks odd not to expressly include these events within the 10.6.2 list of balancing events, even though the current legislation does not.

  Despite what is said in 1369 of the Commentary, we believe it would make the legislation clearer if they were listed in 10.6.2; particularly as its opening sentence could well be construed by a reader as introducing an exhaustive list, and as 10.6.1(b) also specifically requires 'a balancing event' (which leads the reader to 10.6.2) to occur before a balancing adjustment can be made.

10.6.3 ***Proceeds from balancing events***

- We believe the Table should also deal with the balancing events within 10.2.5, 10.2.6(4) and (5) and 10.4.3(1) – see our comments on 10.6.2.

  The Table is a good visual feature, and helps the reader's understanding. We agree (para 1371 of the Commentary) that it is best to site it near to the list of events.

10.7 Writing-off of expenditure

10.7.3 ***Writing-off of writing down allowances***

General In s 85(1)(b), there is a requirement that, for writing down allowances to be given, the building is or includes one or more qualifying dwelling-houses 'at the end of' a chargeable period. This logically defers the timing of the writing-off to 'the end of the chargeable period', since only then could it be determined that this requirement was met (as followed in 10.7.3(1)). S 90(4) provides for the writing down allowance for a chargeable period in which a balancing event occurs to be written off in calculating the residue of expenditure immediately before that event, in order to determine any balancing allowance or charge. It accordingly follows that the balancing charge or allowance is treated as arising after the writing down allowance is given - presumably at the very end of the last day of the chargeable period. We assume that this forms the background to 10.7.3(2); but we wonder whether the wording of 10.7.3(2) is appropriate, specifically the opening words 'If a balancing event occurs at the end of a chargeable period,'. Surely the event can occur at any time in the chargeable period; but the balancing charge or allowance is always treated as arising at its end immediately after the writing down allowance for that same period is given?

Nothing seems to turn on the point; but an alternative interpretation could be that the balancing allowance or charge arises within the chargeable period at the time of the chargeable event, but that in calculating it the writing down allowance for that chargeable period is first deducted in arriving at the residue of qualifying expenditure for the purpose only of the balancing adjustment calculation (as seems to be supported by a reading of 10.7.5(2) and (3) originating in section 90 (6) and (7) respectively).

As presently worded, however, 10.7.3(2) provides that only where the balancing event actually occurs at the end of the chargeable period is that period's writing down allowance to be written off in determining the residue of qualifying expenditure for the purpose of determining any balancing adjustment, and this seems to be incorrect.

10.8 Supplementary provisions

10.8.3 ***Sale, exchange or surrender between connected persons***

General S 157(3) is not included in the rewrite (s 157 to have effect notwithstanding not being fully applicable). Why is this?

10.8.7 ***Transactions to obtain tax advantage***

(2) S 157 includes the obtaining of a 'deduction' or a greater deduction. We are not sure why any reference to this is omitted in 10.8.7(2), as 'deduction' does differ from 'allowance'.

11 CONTRIBUTIONS

11.1 Exclusion of expenditure met by contributions

General The heading to Chapter 11.1 makes clear that it is concerned with excluding expenditure met by (certain) contributions; but the sub-heading 'Rules excluding contributions' and the 11.1.1 heading 'The general rule excluding

contributions' confuse the issue. It is not contributions which are excluded, from the viewpoint of the person incurring expenditure, but that part of his *expenditure* which is met by the contribution(s). Similar comments apply to 11.1.2.

In this context, it is not clear what para 1404 of the Commentary means, in particular the second sentence. This seems to refer to the background to 11.1.3 - 5 (if this is what a reference to excluding a contribution from the expenditure means), which all broadly permit certain contributions to be treated as not excluding the expenditure which they meet.

If this is so, we have difficulty also in understanding para 1411. We assume the meaning to be as follows: the favourable exceptions in sections 11.1.3 - 5 are effectively integrated into the general rule in 11.1.1 through 11.1.1(3); they do not however apply to 11.1.2 in consequence of the history of its antecedent section s 134(8); therefore the general rule cannot be applied to 11.1.2 because 11.1.2 applies more restrictively in consequence of the exceptions in sections 11.1.3 to 11.1.5 not applying to it. If there is no evidence that this difference would have much practical effect (para 1411) then there is a case for applying the general rule to 11.1.2 as a proposed rewrite change.

11.1.2 Exclusion of contributions to dredging

(1) Part 9 (Dredging allowances) is concerned with a 'qualifying trade' rather than a 'trade'. In line 19, it may be appropriate to insert 'qualifying' before 'trade'.

(1)(c) The text here correctly rewrites the relevant part of s 134(8), but remains equally obscure. What are the circumstances envisaged in which some other person will contribute capital sums 'for purposes other than those of that trade'? If it means, for instance, it brings in a contribution from a ferry owner for the purposes of the ferry owner's trade, it should be possible to express it more clearly.

11.1.3 Northern Ireland regional development grants

(1)(a) There is no definition of 'Northern Ireland legislation'. There needs to be a reference to Schedule 1 and section 24(5) Interpretation Act 1978 as amended by Schedule 13 paragraph 3 Northern Ireland Act 1998 (Commentary para 1413).

(1)(b) In line 33, should the words 'or Part 1 of the Industry Act 1972' be added after '1982'? A reference to the 1972 Act presumably remains relevant for the purposes of the Treasury declaration.

We note from para1417 of the Commentary that further consideration is to be given to allowing recipients of Northern Ireland regional development grants to claim capital allowances on the amount of any such grant repaid.

11.1.5 Certain contributions which are not eligible for allowances

If FA 1990 s 126(4) (Pools payments for football ground improvements) is to be amended and not rewritten (see para 1421 of the Commentary), for the purpose of completeness it would be helpful to have an appropriate cross-reference to it in 11.1.5.

11.2.2 Plant and machinery

(1) We read the words 'for the purposes of that trade' in s 154(1) as referring to the trade actually carried on, in this context by the tenant (para 1434 of the

Commentary). We would not interpret it as meaning a contributor's trade of letting the plant or machinery to the tenant; but we note that this remains under consideration.

(3) S 155(6)(b) refers to the discontinuance as well as the transfer of the contributor's trade in whole or part; whereas 11.2.2(3) deals only with treating that trade as permanently discontinued if it is transferred in whole or in part. Is this intended? Or is the answer that 'permanent discontinuance' is dealt with more generally in Part 2?

12 SUPPLEMENTARY

12.1 Life assurance business

12.1.1, 2 *Management assets, investment assets*

General We have not looked at these clauses in any detail.

12.4 Partnerships, successions and transfers

12.4.1 *Application of sections 12.4.2 and 12.4.3*

S 152 does not apply to Part III (Dwelling-houses let on assured tenancies). In the absence of any trade, profession or vocation, TA ss 113 and 337(1) are not applicable in the case of dwelling-houses let on assured tenancies. In 12.4.1 it appears necessary to refer to this.

12.4.2 *Effect of partnership changes*

(2) This section is cleverly drafted on the basis of s 152(3), effectively treating the partnership as a continuing entity for capital allowances purposes which ceases only when all the partners change at the same time. A key to understanding 12.4.2 is the meaning of 'during the continuance of the trade' in (2). It might perhaps be helpful to also include in (2) a reference that a partnership cessation occurs only when all the persons carrying on the trade change (apart of course from an actual cessation of activity). It might also help to change the heading to 'Effect of partnership changes without a cessation'.

12.4.5 *Transfer of a United Kingdom trade to a company in another member State*

General This clause is likely to need some correction. 12.4.5(1)(a) is drafted on the basis that company B could be resident in the UK (the UK. being the 'another member State'). This underlies 12.4.5(1)(c) which is based on alternatives of company B being resident in the UK, or (by inference, if not UK-resident) carrying on the transferred trading activity through a U.K. branch or agency. This might be made clearer if the words 'if not resident in the UK,' were inserted in 12.4.5(1)(c)(ii) before 'carries' in line 5. An initial reading of (1)(a) can leave the reader with the impression that company B is non-UK resident, which then clashes with the (alternative) requirement in (1)(c)(i) that it should be UK-resident. At present 12.4.5(1)(a) needs careful reading in order to comprehend the whole of 12.4.5 correctly.

However, the implication of the heading to 12.4.5 is that company B is non-UK-resident, since a UK trade could only be transferred to a company in another member State if that State was not the UK. Company B could, of course, still be resident in both the UK and in another member State. If the intention is in fact that company B is a non-UK-resident company, then (1)(c)

will need revision (apart from adding ‘on’ after ‘carries’ in line 5). It might then be rewritten as ‘immediately after the transfer, company B carries on in the UK through a branch or agency a trade which consists of or includes the trade, or part of the trade, transferred’.

12.5 Miscellaneous

12.5.1 Apportionment where property sold together

(3) In lines 7 and 11, the words used are ‘just and reasonable’ apportionment, whereas section 150(1) CAA 1990 refers to ‘just’ apportionment. The former words are arguably more restrictive; but they are familiar in a taxation context, and it is helpful to move towards a standardised wording.

S 150(1) looks at an apportionment of the proceeds of sale from the seller’s point of view and then applies it to the purchaser. 12.5.1(3)(a) also looks at the apportionment from the seller’s point of view but 12.5.1(3)(b) looks at it afresh from the purchaser’s point of view. The apportionments could give two different results where they should be the same. We believe the approach used in the original should also be used in the rewrite.

12.5.2 Extensions of 12.5.1

(3) In line 28, is the reference to ‘transfer of property’ intended to cover exchanges of property and the surrenders of leasehold interests referred to in (2)(a) and (b) in the case of Parts 3, 4 and 10? If so, it might be clearer to add ‘(including its exchange or surrender)’ after ‘property’ in that line.

We note that further consideration is to be given to the best way of dealing with s 150(4).

12.6 Final provisions

12.6.1 Extended meaning of ‘sale’

General It is not ideal that this section relates to Parts 2 and 5 to 9 only; but we note that this remains under review. Whilst he might expect ‘sale’ to include ‘exchange’, the reader is left to research what the treatment of an exchange is for Parts 3, 4 and 10. Looking in Part 3, for example, this is not readily established. There is no reference to ‘sale’ or ‘exchange’ in the 3.13.11 index of defined expressions; there is a reference to ‘transfer’ in the 3.7.2 list of balancing events and in the 3.7.11 Table (line 25) which would include sale or exchange, but without any definition in 3.13.11 to confirm this (although this can be deduced from 3.13.3(1) which refers to ‘transfer’ otherwise than by way of ‘sale’ or ‘exchange’, and accordingly includes sale or exchange within ‘transfer’; and similarly from references in 3.13.4). A specific reference to an exchange to be treated as a sale is found only in 3.13.2, and there for the limited purposes of transactions between connected persons.

12.6.2 Meaning of ‘control’

(3) S161(2) defines control of a partnership by reference to a share of more than one-half of the partnership income or assets. 12.6.2(3) incompletely rewrites the section, as it omits any reference to the share of partnership assets.

12.6.4 Other definitions

General In s 161(2), the definition of ‘lease’ applies for the entire 1990 Act; whereas in the rewrite this definition is repeated in 3.13.9 (industrial buildings allowances), 4.7.6(1) (agricultural buildings allowances) and 10.8.8(1) (assured tenancy

allowances) and applies for the purposes of Parts 3, 4 and 10 only. To ensure that the application of this definition is throughout the Act, we would prefer the definition to appear in 12.6.4(1) with appropriate cross-references from 3.13.11, 4.7.8 and 10.8.10 (indices of defined expressions). We appreciate that this will be considered when the final location of definitions within the Act is being determined.

D. Detailed comments on drafting

1 INTRODUCTION

1.2 Exclusion of double relief

1.2.1 No double allowances

(b) 'The provision of any asset to the provision of which that expenditure relates' lacks flow, causing the reader to pause in order to understand it. The same applies to (2)(b) and (4)(b). That said, we are not sure how the wording can be improved.

1.2.3 Interaction between claims

(1)(a) 'Part 2' needs to have '(contributions)' added.

2 PLANT AND MACHINERY ALLOWANCES

2.1 Introduction

2.1.2 Part of and shares in plant

(1), (2) We suggest these should be combined, as they have 22 out of 24 words in common.

2.2 Qualifying activities

2.2.1 List of qualifying activities

(1)(f) The reference should be to s 55(*2*)(a).

2.3 Provision of plant or machinery

2.3.2 Structures, assets and works

Table B In item 2, it is unclear how much of the remainder of the sentence is governed by 'such as'. The use of semi-colons would solve the problem, as in Table C. The same applies to a lesser extent in item 3.

In item 7, Chapter 3.2.1 would be more specific than Chapter 3.2.

2.3.3 Expenditure unaffected by 2.3.1 and 2.3.2

Table C Regarding item 14, whether decorative assets are provided in hotels and restaurants for the *enjoyment* of the public is a matter of taste. (This is not intended as a serious comment.)

2.3.7 Provision after use for other purposes

(5) We find the meaning of this subclause, and of 2.3.8(5), somewhat opaque.

2.4.1 Plant acquired under hire purchase etc

(4) The last 14 words could be written more simply as 'that subsequent time'.

2.4.2 Ending of ownership

(1) 'That' plant implies the plant last referred to, ie under hire purchase etc in 2.4.1. We think that 2.4.2 is intended to have general application, in which case 'that' is not needed.

2.5 Special categories of expenditure

2.5.1 Application of this Part to special categories

(1) Paragraph 139 of the Commentary says that 2.5.1 gives the expenditure a nil

disposal value, but this is not actually stated in the clause. Instead, and logically, 2.10.15(2) says that no disposal value needs to be brought into account where there is a disposal.

(2) It would help to insert '(qualifying expenditure)' after 2.1.1(2).

2.5.2 Thermal insulation of industrial buildings

(1), (2) The words of these two subclauses are practically identical. We suggest they should be combined by inserting 'or an ordinary Schedule A business' after 'trade' in subclause (1).

2.6 Further provisions re qualifying expenditure

2.6.1 Election to treat expenditure on master version of film as capital

(7) It would help to insert at the end '(revenue deduction for preliminary or acquisition expenditure)'.

2.9 Qualification for first-year allowances

2.9.5 Conditions of entitlement

(1)(b) It would be helpful to have a signpost to the definitions of small company and small business in 2.9.13-15.

2.9.13 Meaning of small company

(6) This would read more naturally if ', in relation to a group,' were moved to before 'references'.

2.10 Allowances and charges

2.10.3 Determination of entitlement or liability

(1) Strictly, it should be 'the difference *if any* between …'.

2.10.6 New available qualifying expenditure

(3) There is room for doubt whether 'at some time in that period' qualifies 'owns' or 'incurred'.

2.10.10 Disposal values: general

- It would be useful to have a signpost here to 2.10.16, which limits the disposal value to the original cost and so on. (See also para 198 of the Commentary.)

2.10.13 Disposal value: software

Table Item 3 of column 1 is very wordy. And we think there should be an 'an' in front of 'in the open market'.

2.10.16 General limit on disposal value

(2) This contains a grammatical error.

2.11 Cars etc

2.11.8 Class pool

(2)(b) We suggest amending '2.11.1' to '2.11.1(3)(b)' to make it more specific.

2.11.9 Disposal to connected person

General This clause does not apply if an election is made under 2.23.5. Clause 2.23.5(b) provides for this; it would be helpful to have a similar cross-reference from 2.11.9 itself to 2.23.5.

(3) In the second line 28, 'capital' should probably be inserted before 'expenditure' to match subclause (2)(b).

2.11.12 Qualifying hire cars, etc

(3)(b) As s 36(2) refers to conditions in the plural, rather than in the singular here, would it be better to delete from the latter 'with the condition specified in' and replace it by 'complying with subsection (2)'?

2.12 Short-life assets

2.12.7 Disposal to connected person

(3)(a) We suggest 'on first-year allowances and other allowances' should be removed, as balancing charges are also restricted.

(4) Strictly, the election is under 2.12.1, not 3.

(6) This subclause might fit in better if it came before (2) and (3).

2.13 Long-life assets

2.13.2. Meaning of 'long-life asset'

(3)(b) ' … used or …' should presumably be deleted because it is the prospective situation that is being considered.

2.13.10 Exceeding the monetary limit

(4) 'ML' and 'NA' are perhaps more readily identifiable than 'L' and 'N'.

2.13.14 Later claims

General Could it be made clearer in some way that this clause is concerned with further expenditure upon an asset already treated as a long-life asset? Perhaps the insertion of 'additional' before 'qualifying' in line 26?

(3)(b) There should probably be an 'or' at the end of this.

2.13.15 Disposal value of long-life assets

(4)(a) '… a greater allowance' – than what?

2.13.16 Transitional provisions

(4) This sentence is almost 70 words long and would be improved by unscrambling it.

2.14 Overseas leasing

2.14.3 Protected leasing etc: an outline

(1)(b), (c) The language would be more direct if 'in the circumstances' were replaced by 'for a qualifying purpose'.

2.14.6 Writing down allowances at 10%

(3) We suggest putting '(contributions)' after '11.2.2'.

2.14.8 Excess allowances: standard recovery mechanism

(1)(a) It would be useful to have a signpost to the definition of a 'normal' writing down allowance in 2.14.23. Failing that, we suggest that the definition should be brought in earlier, as we had some difficulty tracing the definition and spent fruitless time trying to extract it from subclause (5).

(2)(a) The word 'in' is missing from the end of the first line, of course.

2.14.11 Prohibited allowances: standard recovery mechanism

(1)(a) Reversing 'balancing allowance' and 'writing-down allowance' would give a more natural sequence.

2.14.14 Joint lessees: first-year allowances

2.14.7. 2.9.2(4) does not in fact refer to 2.14.7 as well as 2.14.6.

2.14.15 Recovery of allowances in case of joint lessees

(3)(c) This sentence is over 60 words long and needs breaking up – as do subclauses (4) and (5).

(4) The word 'of' is missing after 'purpose' in the last line.

2.14.16 Certificate relating to protected leasing

(2)(c) The word 'if' seems a rather strange opening. We imagine that a certificate will always relate to a chargeable period. Perhaps the subclause should read 'all the items of plant … relevant to the chargeable period concerned'. The same point occurs in 2.14.17 and 18.

2.14.19 Short-term leasing

(1)(b) 'That person' is indeterminate. We suggest 'any one person for 30 days or more'.

2.14.20 Ships and aircraft

(1) ' … operating ships by a person who is … resident' [etc] is a rather unnatural construction. It would read more easily as '… operating ships, and the lessor is … resident' [etc]. The same applies in subclause (2) and in 2.14.21(1).

(2) This is identical to subclause (1), subject to the substitution of 'aircraft' and 'flight'. It is worth considering if the two can be merged, or the word-count can otherwise reduced.

2.14.22 Other qualifying purposes

(3)(a) We are mystified why the person should be identified as B rather than A. If it is B for buyer, that is (reasonably) obvious only to someone who has looked at other examples with both B the buyer and S the seller. To anyone else, the use of B is a meaningless distraction.

2.15 SHIPS

2.15.10 Further conditions for deferment

(2) The reference to 2.9.2 is wrong. Presumably it should be to 2.10.9.

(3) It would be useful to have a signpost to the definition of a qualifying ship in 2.15.25.

2.15.13 Amount taken into account in respect of old ship

(5) We find this subclause almost unintelligible. In particular, we assume from the punctuation that the phrase 'after … this section' governs when the election is made rather than the amount to be taken into account, but it takes time to work this out.

2.15.15 Deferments attributed to earlier expenditure first

(2) This is another sentence which is almost unintelligible.

The word 'of' needs inserting after 'in respect'.

2.15.16 Amount taken into account in respect of old ship

(4) Presumably this can apply where the expenditure is incurred by a company in the shipowner's group. If so, it would be helpful to say it.

2.15.20 Expenditure on new shipping

(1) The 'deferment relief rules' should be the 'deferment rules', as defined in

2.15.8(2).

2.15.21 Exclusions: ship previously owned

(2) We think this means that the ship is not regarded as a new one if the original owner buys it back from a third party, but this is not at all clear from the wording.

2.15.30 Connected persons

(1)(b), (c) So far as we are aware, no meaning has been given for either 'continuity is preserved' or 'treated as continuing'. Unless a common definition can be given for the Bill as a whole, presumably words are needed such as those in 2.14.12(1)(c), which would then fit in with 2.15.30(3).

2.15.32 Minor definitions

(1)(b) In order to avoid the reader playing hunt the slipper, the reference should be made to the specific references in Chapter 2.14.

2.16 Mining and oil industries

2.16.1 Meaning of mineral extraction trade etc

- Instead of referring to Part 5 in general for the meaning of the two terms it would be more helpful to refer specifically to 5.1.2 and 5.2.1.

2.16.4 Abandonment of plant for exploration and access

- If the abandonment takes place before any trade starts, no plant allowances is due; the plant is no longer owned, per 2.4.2. Clause 2.16.4 can only apply, therefore, where the plant is owned at the start of the trade and abandoned subsequently. We feel this should be stated so as to help the reader.

2.16.5-8 Ring fence trades

- 'Ring fence trade' only conveys the idea of being oil-related to the initiated. We suggest that the connection with oil should be brought into the heading.

2.17 Fixtures

2.17.1 Scope of Chapter

(3) We are not particularly happy with 'as a result of this Chapter'. Something can happen as a result of what is contained in a piece of writing but not as a result of something as passive as the piece of writing itself.

2.17.5 Person with interest in land

(2)(a) It might be possible to dispense with the words we have italicised in 'in consequence of *the* incurring *of* the expenditure'.

(3) If 'in the relevant land' was placed after 'is the interest', it would avoid misconstruing 'person concerned in the relevant land'.

2.17.8 Equipment lessor entitled to sever fixtures

(1)(e)(ii) The words 'in accordance with the equipment lease' appear unnecessary, seeing that (e) is prefaced by '[if] under the terms of the equipment lease'.

(1)(g) We prefer 'which' to 'who' when describing a company.

2.17.9 Elections: further provisions

(2)(a) Part of the wording ('the tax year for the chargeable period') is unnecessarily complicated. That used in 2.15.3(3) is simpler.

(3) This subclause (the equipment lessee not treated as the owner) is important but

could easily be lost sight of, coming after the administrative provisions for elections. Though at the expense of lengthening the text, we think it should be brought in and after 2.17.8(3) and 2.17.9(3).

2.17.17 Fixtures on which previous IBA claim made

(2)(a) There is room for doubt whether the expenditure is that of the former owner or the new owner. No doubt the latter is intended. 'That expenditure' would avoid any doubt. The same applies to 2.17 18(2)(a).

2.17.24 Person ceasing to have qualifying interest

(4)(b) Vol 3 needs amending to include s59(6) as part of the origin of this subclause, instead of being part of the origin of subclause (5).

We find the phrase 'the sale is not a price less than the market value' rather unnatural. We suggest 'the sale price is no less than the market value'. Even better, without the double negative, 'the sale price is at market value or above'.

(5) Since subclause (4) deals with a sale at market value or above, the supposition is that subclause (5) deals with sales at below market value. Where this not so, the reference in subclause (c) to a dual-resident company would not make sense: s26(1) only makes that reference in relation to a sale at below market value. To avoid the reader having to struggle to this conclusion, as we did, we believe it should be made explicit.

2.17.26 Election for alternative value

(8) It may seem pedantic to point this out, but 'purchaser' is not actually given a 'meaning' in 2.17.24. Instead, the purchaser is *referred to* in that clause, as per s59B(6). The same applies to 'lessee' in 2.17.27, and to 'purchaser' and 'lessee' in 2.17.28. This is a general point we have referred to in A above.

2.17.32 Fixtures beginning to be used for other purposes

(2) We did not find this particularly easy to follow.

2.17.35 Amendment of returns

(1)(b) We do not think it really appropriate in para 690 of the Commentary to describe these clauses as anti-avoidance provisions.

2.18 Part use for qualifying activity

2.18.5 Reduction of balancing allowances and balancing charges

(1) In line 36, insert 'for any chargeable period' before 'must'.

2.20 Anti-avoidance

2.20.1 Relevant transactions: sale, hire-purchase (etc.) and assignment

(3) In lines 37 and 1, it would be simpler to replace 'incurred capital expenditure on the provision of plant or machinery by purchasing' by 'purchased'.

In line 2, the insertion of 'where S was the donor' after 'S' might be appropriate.

2.20.4 Sale and leaseback

The term 'leaseback' used in the heading is narrower than the ambit of the clause. We suggest either that 'etc' should be added or that it should read instead as 'Continued use by original owner'. Ss 75 and 76(1) are worded by reference to continuity of use by the 'seller' or a person connected with him, which is presumably intentionally wider than formal lease arrangements, and

this wording is correctly rewritten in essence in 2.20.4(1)(b)(ii).

2.20.6 Restriction on B's qualifying expenditure

(1) In line 10, would it be more precise to replace '(a term defined below)' by '(as defined in this section)'? Otherwise it is (just) conceivable that someone could argue that the definition of a later clause was the proper one. This is, of course a recurring point (eg D and E in 2.21.9(2)).

2.20.7 Meaning of 'finance lease'

(3) S 82A(2) specifically referred to and defined 'consolidated group accounts'. 2.20.7(3) in effect refers to these, but without this description. It might help ready understanding if the words '(consolidated group accounts)' were inserted before 'which' in line 8, leaving the definition of these to flow from a reading of (3)(a) and (b).

2.20.13 Restriction on B's qualifying expenditure

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

(4) In line 13, the cross-reference is more specifically to '2.20.11(3)'.

2.21 Additional VAT liabilities and rebates

2.21.4 Exceptions to section 2.21.3

(4) We assume the reference in para 878 of the Commentary to '2.21.5(4) and (5)' to be to '2.21.4(4) and (5)'.

(5) In line 19, the reference is more precisely to '2.9.10(2)'.

2.21.9 Restriction on B's qualifying expenditure: general

(4)(a) In line 35, the word 'sale' is used; whereas in 2.20.6(2)(a) at line 14 it is 'purchase'. Why the difference?

(4)(b) In line 37, the words used are 'assignment within' (2.20.1(1)(c)); whereas in 2.20.6(2)(b) the words used are 'assignment referred to'. Why the difference?

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

(1)(b) In line 32, should ', or an additional rebate has been made to' be inserted before 'B'?

(3) In line 36, 'subsection (6)' should be 'subsection (7)'.

Should the calculation of 'E' also take into account any reduction for the amount of any additional VAT rebate made to B in respect of his expenditure on the provision of the plant or machinery?

(4)(a) In line 3, the word 'purchase' is used (as in 2.20.6(2)(a)). Please see also comments on 2.21.9(4)(a) above.

(4)(b) In line 6, the words 'assignment referred to' are used (as in 2.20.6(2)(b)). Please see also comments on 2.21.9(4)(b) above.

(6) In line 19, should the reference more specifically be to '2.20.11(3)'?

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

Should 2.21.11 make appropriate reference also to any additional VAT rebates made to B or, if different, the lessor and persons connected with the lessor?

(b)(ii) It is presumably necessary to provide, as in 2.20.14(3), that the lessor and persons connected with the lessor are to be treated as the same person?

2.21.9 Restriction on B's qualifying expenditure: general

(1) Presumably the short description of 2.20.6 should follow the first occasion on which the clause is mentioned, not the second. A like point arises in 2.21.10(1).

2.22 Giving effect to allowances and charges

2.22.6 Mines, transport undertakings, etc

- In line 12, the reference is more precisely to 'section 55(2) of ICTA'.

  Ready intelligibility, but at greater length of text, could be achieved by deleting the words from 'concern' in line 11 to 'etc.)' in line 12 and inserting 'of the following concerns -' and then setting out inset (a) to (g) in section 55(2) of ICTA before 'the allowances or charge . . ..' currently in lines 12 and 13.

2.22.7 Investment companies

(2) In line 25, delete the first word 'effect'.

(4) In line 29, should '(1) to (3)' be replaced by '(2) and (3)'?

(7) Why is 2.22.7 made subject to TA s 768C(11)? Is this intended?

2.22.8 Introductory

(2) In lines 8 and 9, as a more precise reference, replace 'Chapter 12.1 (life assurance business)' by 'Section 12.1.1'.

2.22.10 Different giving effect rules for different categories of business.

General We note that the references to 'allowances' and 'charges' are plural; whereas they are singular in TA s 434D(3) and (5).

2.22.11 Supplementary

(2)(b) In line 38, delete 'management'.

2.22.12 Special leasing

(1) It would help to have a cross-reference to the definition of special leasing.

(1), (5) The contrast between *the* allowance and *any* charge is slightly confusing.

(4) What we think this is trying to say is that if the lessee does not use the plant for a qualifying activity for part or all of the period, part or all (respectively) of the allowance is given against the lessor's income from the special leasing to that lessee only rather than his income from special leasing generally. Restricting the allowance so that it is given against the specific income from that lessee is not something that the reader readily picks up from the words 'the lessor's income … from that special leasing'.

2.22.13 Excess allowances: income tax

(2) We wonder if it is necessary to say that the excess allowances are deducted from *or set off against* the person's income.

2.22.14 Excess allowance from special leasing: corporation tax

(5)(a) In line 26, 'subsection (2)' should be 'subsection (3)'.

2.22.15 Special leasing: life assurance business

- In line 5, 'section 2.22.12' should be 'section 2.22.14'.

2.23 Supplementary provisions

2.23.3 Successions: general

(2) The property referred to here is that described in subclause (3) only. We therefore suggest the particular 'the property referred to in subsection (3) below' rather than the unnecessarily general 'the property to which this section applies'.

2.23.7 Use of plant or machinery for business entertainment

(5) In line 29, the word 'genuinely' is not included in TA s 577(7)(c). To include it now will confuse rather than clarify, and it should be deleted.

2.23.9 Connected persons

- It would be more natural to list the exceptions in order of clause number.

2.23.10 Index of defined expressions

At line 30, the definition of mineral exploration and access is in 'section 5.2.1' and not 'section 2.23.9'.

3 INDUSTRIAL BUILDINGS ALLOWANCES

3.3 Relevant interest in building

3.3.9 Interpretation etc

(2)(a) An 'or' seems to be missing after 'superior landlord' in the second line.

3.6 Writing-down allowances

3.6.1 Conditions of entitlement

(2)(b) As this is the first mention of 'residue of qualifying expenditure', a signpost to 3.8.1 would be useful.

3.6 3 Amount after relevant event

(2) We think this would be better before (1), since the reader needs to know what a relevant event is before calculating the WDA (if necessary).

3.9 Enterprise zones

3.9.4 Building acquired within two years of first use

(2) The last phrase in (2)(c) ('subject to the following provisions of this section') does not seem to say anything different from the last paragraph of this subclause ('to the extent provided by the following provisions of this section'), and both qualify 'relevant acquisition expenditure' which is 'qualifying expenditure'.

3.9.12 Payments more than seven years after agreement

(2)(c) We like the use of commas here: 'would be, or be treated as' paid'. On a number of similar phrases elsewhere (eg **example**), commas are not used, which interrupts the flow of the sentence.

3.11 Additional VAT and VAT rebates

3.11.9 Rebates and balancing adjustments

(4) The reference to 3.7.2(2) is wrong.

3.13 Supplementary provisions

3.13.4 Election for lower of market value and residue

(1) The piece in brackets in lines 20 and 21 is not a description of 3.13.2(1). No

doubt the (1) needs removing.

3.13.11 Index of defined expressions

- We find the selection here somewhat eclectic. For instance, it includes some but not all expressions in inverted commas (not 'interest in land', for instance) and it includes some but not all of the expressions defined in 3.13.9.

4 AGRICULTURAL BUILDINGS

4.4 Writing down allowances

4.4.2 Meaning of writing down period

(1) '25 years beginning with the chargeable period' is indeterminate: does it run from the start of the period, the end or what?

4.5 Balancing adjustments

4.5.5 Residue of qualifying expenditure

Step 3 We suggest 'any' in front of 'balancing charges', since such occasions are likely to be exceptional.

4.5.9 Transfers subject to subordinate interest

(3) A comma is needed after 'is one' in line 27.

5 MINERAL EXTRACTION

5.3 Expenditure on acquiring mineral asset

5.3.4 Mineral asset expenditure that is qualifying expenditure

(2) The reference should presumably be to 5.3.10, not 9.

5.3.9 Limit on expenditure

(5) Here and elsewhere in this Chapter there are square-bracketed references to ss 157 and 158. References to the CA Bill can now be substituted. The same applies to FA97 Sch 12 para 11 in 5.5.12(1)(d).

5.5 Allowances and charges

5.5.16 Disposal value

Table The reference in para 1145 of the Commentary should be to this clause, not 5.5.17.

5.5.4 Circumstances giving rise to BA

(1)(b) 'Pre-trading expenditure on plant and machinery' has a special meaning given in 5.2.6. Having a signpost to this would avoid people thinking that (1)(b) is stating the obvious for plant in general.

5.5.19 Disposal value: interest in land

(2), (3) We wonder if a common definition can be used for this clause, 5.3.5 and 5.4.3.

5.6 Supplementary provisions

5.6.3 Asset owned by previous trader

(3) It defeats us why the acronym PTMEA has been chosen.

5.6.5 Minor definitions

- 'Qualifying expenditure' is defined, both here and in 5.6.6, by reference to

separate clauses. This takes us on a roundabout, via 5.1.4, to the same thing.

5.6.6 Index of defined expressions

- 'Restoration' is defined in 5.4.3, not 5.3.3.

6 SCIENTIFIC RESEARCH

6.2 Qualifying expenditure

6.2.1 Qualifying expenditure

(1)(b) We are not sure why it should be necessary for a trade both to be set up and commenced; commencing would seem sufficient.

6.3 Balancing charges

6.3.8 Disposal receipt: ceasing to own asset

General While we do not think anything hangs on it, we note the discrepancy between sums that the person *has to* bring into account in 6.3.4(1)(a), sums which *are to be* brought into account in 6.3.6(1)(a), the disposal value which *is required to be* brought into account in 6.3.7(1) and the disposal value which *must be* brought into account in 6.3.8(1), and so on. It is of course possible that similar variations have occurred elsewhere without us noticing them. In any case, we doubt if it is necessary to make any change.

(1) The word 'brought' is missing after 'be' in line 23.

6.4 Supplementary provisions

6.5.3 Effect of election

(4)(b) We doubt if 'or deductions' in square brackets is needed.

7 KNOW-HOW

7.1 Introduction

7.1.2 Meaning of know-how

(1) In line 19, 'industrial information or techniques' originates from 'industrial information and techniques' in TA s 533(7). Is there any reason to change from 'and' to 'or'?

In line 20, insert 'in' after 'assist' as a smoother introduction to (a), (b) or (c); 'in' being the introductory word consistently used in TA s 533(7).

7.3 Allowances and charges

7.3.5 Available qualifying expenditure

Comme ntary We assume that the reference in para 1210 to Clause 7.3.6(3) should be to Clause 7.3.5(3).

7.3.6 Disposal receipts for know-how

How is TA s 531(8) (the giving of an undertaking for consideration, in connection with a disposal of know-how) reflected in the rewrite?

8 PATENTS

8.1 Introduction

8.1.3 Acquisition of patent rights

(1), (2) (a) While it is perhaps difficult to avoid the long sentence and the close repetition of 'in respect of' in (1), repeating the greater part of it in (2) is not only rather tedious. It also has the reader searching for any difference between the two. We would prefer the simple 'incurs expenditure on obtaining such a right'.

8.2 Qualifying expenditure

8.2.1 Qualifying expenditure

- We suggest that the expenditure should be limited to that incurred from 1 April 1986 so that people are on notice that there is a different regime for earlier expenditure (under 8.5).

8.3 Allowances and charges

8.3.3 Writing-down allowance and balancing charge

(2) In line 33, a comma is required after 'if', given that there is one after 'expenditure'.

8.3.5 Available qualifying expenditure

(3) Here and elsewhere (eg 7.3.5(1)), we still prefer carried forward *from* a period and brought forward *to* a period.

8.4 Giving effect to allowances and charges

8.4.4 Excess allowances: corporation tax

(2) Perhaps this could be simplified along the lines of 8.4.3(2), for income tax.

8.5 Expenditure before 1 April 1986

8.5.10 Giving effect to allowances and charges

(4) It would be easier to understand what this subclause is saying if it started with allowances and charges on non-trade expenditure. Otherwise lines 28 and 29 appear more as a description of Chapter 8.3 than as what the subclause is talking about.

8.6 Interpretation

8.6.3 Capital expenditure and capital sums

General It would help to have the usual thumbnail description of sections 348, 349 and 524.

9 DREDGING

- -

10 ASSURED TENANCIES

10.3 Qualifying expenditure

10.3.2 ***Capital expenditure on construction***

(a) In line 19, from 'which' to the end, we suggest 'will be or include …'. This would reflect the possible plurality of dwelling-houses in s 85(1)(b).

(b) In line 21, should 'was or' be omitted? These words add nothing to a provision which requires no transfer at any time before use.

We agree the use of ‘transfer’ and ‘transferred’ (ref para 1338 of the Commentary).

10.3.3 Capital expenditure on acquiring building unused

(1) In line 29, replace words after ‘which’ to the comma by ‘will be or include …’.

In line 30, omit ‘was or’.

10.3.4 Capital expenditure on acquiring building unused after construction expenditure by developer

(1) In line 11, replace words after ‘which’ to the end of the line by ‘will be or include …’.

In lines 13, 19 and 23 replace ‘was’ by ‘is’.

10.4 Qualifying dwelling houses

10.4.1 Requirements relating to the landlord

(2)(b) In line 8, insert ‘or’ after ‘on’.

10.5 Writing-down allowances

10.5.2 Basic rule for calculating amount of allowance

(1) The sentence might be shortened if in line 3 the words after ‘to’ to the end were replaced by ‘each dwelling-house’.

10.5.3 Calculation of amount after transfer of relevant interest

(2) In line 20 replace ‘event’ by ‘transfer’. The section deals with the transfer of a relevant interest, and the word ‘transfer’ is otherwise used consistently throughout this section.

(3) In line 25 replace the first ‘further’ by ‘later’.

Would it then be preferable to begin line 25 with ‘On each later such transfer,’ to provide more clearly for any sequence of these (although this is not so expressly dealt with in the originating s 85(3))?

10.6 Balancing adjustments

10.6.5 Dwelling-house not a qualifying dwelling-house throughout

(4) At lines 25 and 26, because differences can go either way, the final sentence might read better as ‘The amount of the balancing charge is the amount by which the total of those allowances exceeds the adjusted net cost.’ Even if the double formula would necessarily prevent the difference from going the other way, a wet towel over the head would be needed to be sure that this was so.

10.6.7 Recovery of old initial allowances made on incorrect assumptions

(2) In line 11, insert ‘of’ after ‘respect’.

10.7 Writing-off of expenditure

10.7.4 Writing-off of expenditure for periods when building not used as qualifying dwelling-house

(2) We would rewrite this as ‘In ascertaining that residue, an amount equal to the assumed writing-down allowances in subsection (3) is to be treated as written off the qualifying expenditure attributable to the dwelling-house.’

(3) We would rewrite this as ‘ “Assumed writing-down allowances” means the writing-down allowances that would have been made had the building or part

been a qualifying dwelling-house throughout the period when it was not a qualifying dwelling house. Regard shall be had to the appropriate rate or rates and to any transfer in respect of which section 10.5.3 applied.'

10.8 Supplementary provisions

10.8.6 Effect of election

(3) In lines 24 and 25, we suggest the bracketed thumbnail sketch for 10.8.5 is not needed since that clause comes immediately before the current one.

10.8.10 Index of defined expressions

In line 11, the reference should be to 'section 10.7.6(3)'.

In line 12, we suggest replace 'net' by 'relevant'.

In line 24, the reference should be to 'section 10.8.3'.

In line 25, is the reference to 10.8.7(3) appropriate?

Generally, sections 10.8.3, 10.8.4 and 10.8.7 relate more directly to transfers treated as being at market value rather than to 'sale (of relevant interest)'.

11 CONTRIBUTIONS

General We have noticed than at the very top of pages 194, 196 and 198, Part 11 is described as 'Supplementary provisions'.

11.2 CONTRIBUTION ALLOWANCES

11.2.2 Plant and machinery

(1)(a) In line 21, should 'and' be inserted after the comma (as in 11.2.3(1)(a))?

11.2.3 Industrial buildings

(1) In line 34, 'contributors' should no doubt be 'contribution' (as in 11.2.2(1)).

(1)(a) In line 38, the word 'similar' is an odd choice. Would 'identical' be better?

(2) 'Section 3.6.3' needs a thumbnail sketch '(calculation of amount after relevant event)'. Although that is fairly meaningless on its own, it is probably sufficient for most readers to realise they do not have to look it up.

11.2.4 Agricultural buildings

(1)(a) Again, in line 13, the word 'similar' is an odd choice. Would 'identical' be better?

11.2.5 Mineral extraction

(1)(a) Once more, in line 25, the word 'similar' is an odd choice. Would 'identical' be better?

11.2.7 Effect of transfer of contributing landlord's interest in land

(1) In line 14, insert 'allowance' after 'writing-down', and preferably insert a comma after 'interest' in line 13.

12 SUPPLEMENTARY

12.2 Additional VAT liabilities and rebates: Interpretation, etc

12.2.2 'Additional VAT liability' and 'additional VAT rebate'

(1) In line 1, insert 'scheme' after 'legislation'.

12.2.4 Chargeable period in which additional VAT liability or rebate accrues

(1) The link from 12.2.3 to 12.2.4 might be more obvious if, in line 19, 'an' was replaced by 'the', and in line 20 'in 12.2.3(1)' was inserted after 'rebate'.

12.3 Provisions relating to oil and oil licences

12.3.4 Oil licence relating to an undeveloped area

(2)(a) In line 10, insert 'has' after 'development'.

(2)(b) In line 12, insert 'has' after 'development'.

12.4 Partnerships, successions and transfers

12.4.1 Application of sections 12.4.2 and 12.4.3

- We suggest that, in line 32, the second 'and' be replaced by a comma and, in line 33, 'and Part 10 (assured tenancy allowances).' be added at the end of the sentence.

12.4.4 Transfer of insurance company business

(1) In line 35, are the words 'a transfer' needed in view of the introductory words 'the transfer is'?

(4)(b) The words 'predecessor' and 'successor' are introduced; whereas in s 152A(2) 'transferor' and 'transferee' are consistently used. We prefer the latter treatment; but hold no strong view.

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

(1)(c) In line 5, insert 'on' after 'carries'.

In line 6, is the comma needed after 'of'?

(2)(b) The wording is cumbersome. We suggest the deletion of 'in relation to those assets' in line 13; or perhaps rewrite as 'in relation to assets included in the transfer, anything done to or by company A before the transfer is to be treated after the transfer as having been done to or by company B'.

(3) In line 15, the reference is more accurately to '(2)(b)'.

(4) This subsection is correctly rewritten; but lengthy. Could it perhaps be shortened by deleting lines 20-23 and inserting 'subsection (3)'?

(5) In line 25 why is the word 'another' used? Should it be 'a', as in TCGA s 140A(7)?

12.5 Miscellaneous

12.5.2 Extensions of 12.5.1

Commentary In paragraph 1542 we assume that the references to '12.5.1(3)' and '12.5.1(2)' should be to '12.5.2(3)' and '12.5.2(2)'.

(4) For the avoidance of all doubt we would prefer to see 'in or' inserted after 'land' in line 34.

12.5 Miscellaneous

12.5.5 ***Companies not resident in the United Kingdom***

(2) This subsection is not readily intelligible. Might it be clarified as follows:-
'Allowances related to any source of income –
(a) within subsection (1)(a) are to be given effect against income

chargeable to corporation tax, and
(b) within subsection (1)(b) are to be given effect against income chargeable to income tax.'?

12.6 Final Provisions

12.6.3 Meaning of 'the Inland Revenue' etc

(2) There needs to be a cross-reference in 2.9.11 (Disclosure of information) itself to this extended meaning of 'Inland Revenue'.

12.6.4 Other definitions

(1) In line 23, delete 'non-' and insert 'dual'.

How has s 161(3) and (8) been dealt with in the rewrite?

In volume 3, p66 at Existing provision 161(9), the rewritten provision reference should presumably be '2.10.4(2)' and not '2.10.4(6)'.

12.6.5 Index of defined expressions

The definition of 'life assurance business' is somewhat tortuous. The definition in TA s 431(2) is not very helpful. Is the intention, through the references both to TA s 431(2) and to 12.1.1(4), to define it as comprising annuity business, pension business, life reinsurance business and overseas life assurance business? Confirmation is sought that all these are within the TA s 431(2) definition of 'life assurance business' which applies for the purposes of the CA Bill. If so, the reference in 12.6.5 should be to 12.1.1(5) only.

It would be preferable to rewrite the definition of 'overseas property business' and set it out separately in 12.6.4. This might be based on the wording of TA s 65A(4) which, taken out of the income tax context, would cover companies within 'person'.

14-13-36
MPW
2.5.00