Draft Regulations laid before the House of Commons under section 30(11) of the Finance Act 2019, for approval by resolution of that House.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No.

INCOME TAX

CORPORATION TAX

The Capital Allowances (Structures and Buildings Allowances) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 1

The Treasury make these Regulations in exercise of the powers conferred by section 30(1) to (10), (12) and (13) of the Finance Act 2019(**a**).

In accordance with section 30(11) of that Act, a draft of this instrument has been laid before the House of Commons and approved by a resolution of that House.

Citation and commencement

1. These Regulations may be cited as the Capital Allowances (Structures and Buildings Allowances) Regulations 2019 and come into force on the day after the date on which they are made.

Amendment to the Capital Allowances Act 2001

2. After section 270 of the Capital Allowances Act 2001(**b**) insert—

"PART 2A

STRUCTURES AND BUILDINGS ALLOWANCES

CHAPTER 1

INTRODUCTION

270AA Structures and buildings allowances

(1) This Part applies if—

(**a**) 2019 c. 1.
(**b**) 2001 c. 2.

(a) the construction of a building or structure begins on or after 29 October 2018,

(b) qualifying expenditure is incurred, on or after that date, on its construction or acquisition, and

(c) the first use of the building or structure, after the qualifying expenditure is incurred, is non-residential use.

(2) A person is entitled to an allowance, in relation to a qualifying activity, for a chargeable period if—

(a) in respect of any day during that chargeable period—

(i) the person has the relevant interest in the building or structure in relation to the qualifying expenditure, and

(ii) the building or structure is in non-residential use; and

(b) that day falls—

(i) after the later of the day on which the building or structure is first brought into qualifying use by the person and the day on which the qualifying expenditure is incurred (in either case, whether the day is in the same or an earlier chargeable period), and

(ii) within the period of 50 years beginning with the later of the day on which the building or structure is first brought into non-residential use and the day on which the qualifying expenditure is incurred.

(3) A building or structure which—

(a) is not in use, but

(b) was, immediately before it fell into disuse, in non-residential use,

is treated, for the purposes of subsection (2)(a)(ii), as continuing to be in non-residential use.

(4) A person ceases to be entitled to an allowance under this section if the building or structure is demolished.

(5) The basic rule is that the allowance, in relation to a qualifying activity, for a chargeable period of one year is 2% of the qualifying expenditure.

(6) In this section—

"qualifying activity" has the meaning given by section 270CA;

"qualifying expenditure" has the meaning given by section 270BA;

"qualifying use" has the meaning given by section 270CE;

"relevant interest" is to be construed in accordance with Chapter 4;

"residential use" and "non-residential use" have the meaning given by section 270CF.

(7) This section is subject to the following provisions of this Part.

270AB Date on which construction begins

For the purposes of section 270AA(1)(a), the construction of a building or structure is treated as beginning before 29 October 2018 if any contract for works to be carried out in the course of the construction of that particular building or structure (whether or not the contract also relates to the construction of other buildings or structures) is entered into before that date.

CHAPTER 2

QUALIFYING EXPENDITURE

Meaning of "qualifying expenditure"

270BA Meaning of "qualifying expenditure"

In this Part "qualifying expenditure" means expenditure which—

(a) is qualifying capital expenditure under any of sections 270BB to 270BE (expenditure on construction or purchase), and

(b) is not excluded expenditure under—

(i) section 270BG (acquisition or alteration of land),

(ii) section 270BH (market value rule), or

(iii) section 270BI (provision of plant or machinery).

Qualifying expenditure incurred on construction

270BB Capital expenditure incurred on construction

(1) If—

(a) capital expenditure is incurred on the construction of a building or structure, and

(b) the relevant interest in the building or structure has not been sold or, if it has been sold, it has been sold only after the building or structure has been brought into non-residential use,

the capital expenditure is qualifying capital expenditure.

(2) Subsection (3) applies where capital expenditure as mentioned in subsection (1)(a) is incurred in relation to a building or structure—

(a) after it has been brought into qualifying use, and

(b) on different days (whether or not in the same chargeable period).

(3) The expenditure may be treated for the purposes of this Part as being incurred—

(a) on the latest day on which qualifying capital expenditure on the construction is incurred,

(b) on the first day of the chargeable period following the period in which the day mentioned in paragraph (a) falls, or

(c) on the first day of the chargeable period following the period in which the day on which the expenditure is incurred falls.

Qualifying expenditure incurred on purchase

270BC Sale of unused buildings or structures (other than by a developer)

(1) This section applies if—

(a) capital expenditure is incurred on the construction of a building or structure,

(b) the relevant interest in the building or structure is sold before the building or structure is first used,

(c) a capital sum is paid by the purchaser for the relevant interest, and

(d) section 270BD (sale by a developer: unused buildings or structures) does not apply.

(2) The lesser of—

(a) the capital sum paid by the purchaser for the relevant interest, and

(b) the capital expenditure incurred on the construction,

is qualifying capital expenditure.

(3) Where this section applies, the qualifying expenditure is to be treated as incurred by the purchaser when the capital sum is paid.

(4) If the relevant interest is sold more than once before the building or structure is first used, subsection (2) has effect only in relation to the last of those sales.

270BD Sale by a developer: unused buildings or structures

(1) This section applies if—

(a) expenditure is incurred by a developer on the construction of a building or structure, and

(b) the relevant interest in the building or structure is sold by the developer in the course of the development trade before the building or structure is first used.

(2) If—

(a) the sale of the relevant interest by the developer was the only sale of that interest before the building or structure is first used, and

(b) a capital sum is paid by the purchaser for the relevant interest,

the capital sum is qualifying capital expenditure.

(3) If—

(a) the sale by the developer was not the only sale before the building or structure is first used, and

(b) a capital sum is paid by the purchaser for the relevant interest on the last sale before the building or structure is first used,

the lesser of that capital sum and the sum paid for the relevant interest on its sale by the developer is qualifying capital expenditure.

(4)Where this section applies, the qualifying expenditure is to be treated as incurred by the purchaser when the capital sum referred to in subsection (2)(b) or (3)(b) is paid.

270BE Sale by a developer: used buildings or structures

(1) This section applies if—

(a) expenditure is incurred by a developer on the construction of a building or structure, and

(b) the relevant interest is sold by the developer in the course of the development trade after the building or structure has been used.

(2) This Part has effect in relation to the person to whom the relevant interest is sold (and any person who subsequently acquires the relevant interest) as if the expenditure on the construction of the building or structure had been qualifying capital expenditure.

270BF Meaning of references to carrying on trade as a developer

For the purposes of sections 270BD, 270BE and 270BJ—

(a) a developer is a person who carries on a trade which consists in whole or part in the construction of buildings or structures with a view to their sale, and

(b) an interest in a building or structure is sold by the developer in the course of the development trade if the developer sells it in the course of the trade or (as the case may be) that part of the trade that consists in the construction of buildings or structures with a view to their sale.

Excluded expenditure

270BG Acquisition or alteration of land etc

(1) Expenditure incurred—

(a) on the acquisition of land or rights in or over land, or

(b) on altering land,

is "excluded expenditure" for the purposes of this Part.

(2) Expenditure incurred on, or in connection with, seeking planning permission (including fees and related costs) is "excluded expenditure" for the purposes of this Part.

(3) In subsection (1), the reference to expenditure incurred on an acquisition includes a reference to—

(a) fees,

(b) stamp duty land tax, land and buildings transaction tax or land transaction tax, and

(c) other incidental costs attributable to the acquisition.

(4) For the purposes of subsection (1), "altering land" means—

(a) land reclamation,

(b) land remediation, and

(c) landscaping (other than so as to create a structure).

(5) In this section "land remediation" means—

(a) in relation to land which is in a contaminated state—

(i) activities in respect of which conditions A to C in section 1146 of CTA 2009(**a**) (contaminated land remediation) are met, and

(ii) relevant preparatory activity as defined in subsection (4) of that section;

(b) in relation to land which is in a derelict state—

(i) activities in respect of which conditions A and B in section 1146A of CTA 2009(**b**) (derelict land remediation) are met, and

(ii) relevant preparatory activity as defined in subsection (5) of that section.

(6) In subsection (5), references to land in a contaminated or derelict state have the same meaning as they have for the purposes of Part 14 of CTA 2009 (remediation of contaminated or derelict land).

(7) Subsection (1)(b) is subject to section 270BK (preparation of sites).

(8) In this section, except in subsections (4)(b), (5) and (6), "land" does not include buildings or structures.

(9) In this section—

"planning permission" has the meaning given by the relevant planning enactment;

"relevant planning enactment" has the meaning given by section 436(2).

270BH Market value rule

(1) Expenditure is "excluded expenditure" for the purposes of this Part if, and to the extent that, it exceeds—

(a) in a case where the qualifying capital expenditure under section 270BC or 270BD is the capital sum paid for the relevant interest in the building or structure, the market value of the interest (see section 577(1)), or

(**a**) The Corporation Tax Act 2009 (c. 4). Section 1146 was amended by paragraph 6 of Schedule 7 to the Finance Act 2009 (c. 10).

(**b**) Section 1146A was inserted by paragraph 7 of Schedule 7 to the Finance Act 2009.

(b) in any other case, the market value amount of the works, services and other matters to which it relates.

(2) The "market value amount" means the amount of expenditure which it would have been normal and reasonable to incur on the works, services or other matters—

(a) in the market conditions prevailing when the expenditure was incurred, and

(b) assuming the transaction as a result of which the expenditure was incurred was between persons dealing with each other at arm's length in the open market.

270BI Provision of plant or machinery

Expenditure which is capital expenditure on the provision of plant or machinery for the purposes of Part 2 (plant and machinery allowances) is "excluded expenditure" for the purposes of this Part.

Expenditure treated as expenditure on construction

270BJ Expenditure on renovation, conversion or incidental repairs

(1) This Part has effect in relation to expenditure incurred by a person—

(a) on the renovation or conversion of a part of a building or structure, or

(b) on repairs to a part of a building or structure that are incidental to the renovation or conversion of that part,

as if it were expenditure on the construction of that part of the building or structure for the first time.

(2) For the purposes of subsection (1), sections 270AA(1)(a) and 270AB have effect, in relation to a building or structure that has been brought into use before 29 October 2018, as if the renovation or conversion of, or repairs to, part of the building or structure were the construction of that part for the first time.

(3) For the purposes of subsection (1), expenditure incurred as mentioned in subsection (1)(a) or (b) for the purposes of a qualifying activity is to be treated as capital expenditure if it is not expenditure that may be allowed to be deducted in calculating the profits of the qualifying activity for tax purposes.

270BK Preparation of sites

(1) This section applies if a person incurs capital expenditure, other than expenditure on altering land (within the meaning of section 270BG(4)), for the purposes of preparing land as a site for the construction of a building or structure.

(2) This Part has effect in relation to the expenditure as if it were capital expenditure on the construction of the building or structure.

(3) For that purpose, sections 270AA(1)(a) and 270AB have effect as if the preparation of the land mentioned in subsection (1) were the construction of the building or structure.

Supplementary provision about expenditure

270BL Apportionment of sums partly referable to non-qualifying assets

(1) If, for the purposes of this Part, an item of expenditure falls to be apportioned between qualifying expenditure and other expenditure, the apportionment is to be made on a just and reasonable basis.

(2) If the sum paid for the sale of the relevant interest in a building or structure is attributable—

(a) partly to assets representing expenditure for which an allowance can be made under this Part, and

(b) partly to assets representing other expenditure,

only so much of the sum as on a just and reasonable apportionment is attributable to the assets referred to in paragraph (a) is to be taken into account for the purposes of this Part.

270BM Evidence of the amount of expenditure

For the purposes of this Part—

(a) the expenditure on the construction of the building or structure is the sum of those items of expenditure the actual amount of which can be shown, and

(b) where there are no such items, the amount of expenditure is taken to be nil.

270BN Expenditure incurred before qualifying activity carried on

For the purposes of this Part, if a person incurs expenditure for the purposes of a qualifying activity—

(a) on or after 29 October 2018, and

(b) before the date on which the person starts to carry on that activity,

the expenditure is to be treated as if it were incurred by the person on the date mentioned in paragraph (b).

CHAPTER 3

QUALIFYING USE AND QUALIFYING ACTIVITIES

Qualifying activities

270CA Qualifying activities

Each of the following is a qualifying activity for the purposes of this Part—

(a) a trade,

(b) an ordinary UK property business,

(c) an ordinary overseas property business,

(d) a profession or vocation,

(e) the carrying on of a concern listed in section 12(4) of ITTOIA 2005(**a**) or section 39(4) of CTA 2009 (mines, quarries and other concerns), and

(f) managing the investments of a company with investment business,

but only to the extent that the profits or gains from the activity are, or (if there were any) would be, chargeable to tax.

270CB Property businesses

In section 270CA, "ordinary UK property business" and "ordinary overseas property business" have the same meaning as in Part 2 (see sections 16 and 17A(**b**)).

(**a**) The Income Tax (Trading and Other Income) Act 2005 (c. 5).

(**b**) Section 16 was amended by paragraph 527 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005, paragraph 477 of Schedule 1, and Part 1 of Schedule 3, to the Corporation Tax Act 2009 and paragraph 12(4) of Schedule 14 to the Finance Act 2011 (c. 11) and section 17A was inserted by paragraph 12(6) of that Schedule.

270CC Foreign permanent establishments

A business carried on through one or more permanent establishments outside the United Kingdom by a company in relation to which an election under section 18A of CTA 2009(**a**) (exemption for profits or losses of foreign permanent establishments) has effect—

(a) is an activity separate from any other activity of the company, and

(b) is to be regarded for the purposes of this Part as an activity all the profits and gains from which are not, or (if there were any) would not be, chargeable to tax.

270CD Companies with investment business

(1) For the purposes of this Part, managing the investments of a company with investment business consists of pursuing those purposes expenditure on which would be treated as expenses of management within section 1219 of CTA 2009(**b**).

(2) In this Part "company with investment business" has the same meaning as in Part 16 of CTA 2009 (see section 1218B of that Act(**c**)).

Qualifying use

270CE Qualifying use

(1) A building or structure is in "qualifying use" for the purposes of this Part if it is in non-residential use for the purposes of a qualifying activity carried out by the person who has the relevant interest in the building or structure.

(2) But a building or structure is not treated for the purposes of subsection (1) as being in use for the purposes of a particular activity if the extent to which it is in use for those purposes is insignificant.

(3) The extent to which a building or structure is in use for the purposes of a particular activity is to be determined on a just and reasonable basis.

(4) Section 270EB makes provision for the calculation of the allowance in the case of a building or structure that is put to multiple uses.

270CF Exclusion: residential use

(1) For the purposes of this Part, a building or structure is in "residential use" if—

(a) it is used by any person as, or for purposes ancillary to use as—

(i) a dwelling-house,

(ii) residential accommodation for school pupils,

(iii) student accommodation (see subsection (3)),

(iv) residential accommodation for members of the armed forces,

(v) a home or other institution providing residential accommodation (whether for children or adults), except where the accommodation is provided with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder, or

(vi) a prison or similar establishment, or

(b) it falls within—

(**a**) Section 18A was inserted by paragraph 4 of Schedule 13 to the Finance Act 2011 and amended by paragraph 3 of Schedule 20 to the Finance Act 2012 (c. 14), section 76(7) of the Finance Act 2016 (c. 24) and paragraph 111 of Schedule 1 to the Finance Act 2019 (c. 1).

(**b**) Section 1219 was amended by paragraph 683 of Schedule 1 to the Corporation Tax Act 2010 (c. 4).

(**c**) Section 1218 was renumbered section 1218B by paragraph 21(4) of Schedule 18 to the Finance Act 2013 (c. 29).

(i) paragraph 4 of Schedule 14 to the Housing Act 2004(**a**) (buildings in England or Wales occupied by students and managed or controlled by educational establishment etc), or

(ii) any corresponding provision having effect in Scotland or Northern Ireland,

(and a building or structure is in "non-residential use" if it is in use which is not residential use).

(2) A building or structure that is situated on land that is, or is intended to be, occupied or enjoyed with a building or structure that is in residential use as a garden or grounds is to be treated for the purposes of this Part as being in residential use.

(3) For the purposes of this Part, a building or structure is in use as student accommodation if—

(a) the accommodation is purpose-built, or is converted, for occupation by students, and

(b) the accommodation is available for occupation by students on at least 165 days of each calendar year.

(4) For the purposes of subsection (3), accommodation is occupied by students if it is occupied exclusively or mainly by persons who occupy it for the purpose of undertaking a course of education (otherwise than as school pupils).

(5) Any part of a building or structure that is used as a dwelling-house (whether or not it is also used for any other purposes) is not in qualifying use.

270CG Use for the purposes of a property business

(1) A building or structure is to be treated, for the purposes of this Part, as being used for the purposes of an ordinary UK property business or an ordinary overseas property business during any period in respect of which subsection (2) applies.

(2) This subsection applies in relation to a building or structure if the person with the relevant interest is entitled, under the terms of a lease or otherwise, to rents, or other receipts, in respect of the building or structure of such amounts as may reasonably have been expected to have been payable if the transaction had been between persons dealing with each other at arm's length in the open market.

(3) For the purposes of this section, "rents" and "other receipts" have the same meaning as in section 266 of ITTOIA 2005.

CHAPTER 4

THE RELEVANT INTEREST IN THE BUILDING OR STRUCTURE

270DA General rule as to what is the relevant interest

(1) The relevant interest in relation to any qualifying expenditure is the interest in the building or structure to which the person who incurred the expenditure on its construction was entitled when the expenditure was incurred.

(2) Subsection (1) is subject to the following provisions of this Chapter and to sections 270FB (highway undertakings) and 270IG (provisions applying on termination of lease).

(3) If—

(a) the person who incurred the expenditure on construction was entitled to more than one interest in the building or structure when the expenditure was incurred, and

(b) one of those interests was reversionary on all the others,

the reversionary interest is the relevant interest.

(**a**) 2004 c. 34.

(4) For the purposes of section 270AA(2), on the sale of the relevant interest in a building or structure, the seller (and not the purchaser) is treated as the person who has the relevant interest on the day of transfer.

270DB Interest acquired on completion of construction

For the purposes of determining the relevant interest, a person who—

(a) incurs expenditure on the construction of a building or structure, and

(b) is entitled to an interest in the building or structure on or as a result of the completion of the construction,

is treated as having had that interest when the expenditure was incurred.

270DC Effect of creation of subordinate interest

(1) An interest does not cease to be the relevant interest merely because of the creation of a lease or other interest to which that interest is subject.

(2) This is subject to section 270DD (leases granted for 35 years or more).

270DD Leases granted for 35 years or more

(1) This section applies if—

(a) qualifying capital expenditure has been incurred on the construction or acquisition of a building or structure,

(b) a lease of the building or structure is granted out of the interest which is the relevant interest in relation to the qualifying expenditure, and

(c) the effective duration of the lease is equal to, or exceeds, 35 years.

(2) If the market value of the retained interest in the building or structure is less than one third of the capital sum given as consideration for the lease—

(a) the lessee is treated, for the purposes of this Part, as acquiring the relevant interest in the building or structure on the grant of the lease, and

(b) on the expiry or surrender of the lease, the lessor is treated, for the purposes of this Part, as acquiring the relevant interest from the lessee.

(3) The capital sum given as consideration for the lease is treated for the purposes of subsection (2) as excluding the amount, in respect of any premium required to be paid under the lease, that is brought into account as a receipt in calculating the lessor's profits for the purposes of ITTOIA 2005 or CTA 2009 (determined in accordance with section 277 of ITTOIA 2005 or section 217 of CTA 2009).

(4) For the purposes of this section, the "effective duration" of a lease is to be determined in accordance with section 303 of ITTOIA 2005(**a**) or section 243 of CTA 2009.

270DE Merger of leasehold interest

(1) Subsection (2) applies if the relevant interest is a leasehold interest which is extinguished on the person entitled to the interest acquiring the interest which is reversionary on it.

(2) The interest into which the leasehold interest merges becomes the relevant interest when the leasehold interest is extinguished.

(**a**) Section 303 was amended by paragraph 626 of Schedule 1 to the Corporation Tax Act 2009 (c. 4).

CHAPTER 5

CALCULATING THE ALLOWANCE: SUPPLEMENTARY PROVISION

270EA Proportionate adjustment in certain cases

(1) This section applies if a person is entitled to an allowance under section 270AA(2) for a chargeable period.

(2) If the chargeable period is more or less than one year, the allowance is proportionately increased or reduced.

(3) If—

(a) the conditions in section 270AA(2)(a) and (b) are met on some, but not all, days during the chargeable period, or

(b) entitlement to the allowance ceases under section 270AA(4) on any day during the chargeable period,

the allowance is proportionately reduced.

270EB Multiple uses

(1) This section applies if—

(a) a person is entitled to an allowance under section 270AA(2) by reference to a building or structure for a chargeable period, and

(b) the building or structure is put to multiple uses.

(2) The allowance, in relation to a qualifying activity, for a chargeable period of one year is 2% of the appropriate proportion of the qualifying expenditure.

(3) A building or structure is "put to multiple uses" if—

(a) the building or structure is used for the purposes of two or more qualifying activities,

(b) part of the building or structure is in use for the purposes of a qualifying activity and part of the building or structure is in use for the purposes of another activity, or

(c) part of the building or structure, which is not an area within a dwelling-house, is used both for the purposes of a qualifying activity and for the purposes of another activity.

(4) For the purposes of subsection (2), the "appropriate proportion" of the qualifying expenditure is the amount of that expenditure that would be apportioned to the qualifying activity if that expenditure were apportioned, on a just and reasonable basis, between all the activities for which the building or structure is used, having regard (in particular) to the extent to which the building or structure is used for each activity in the chargeable period.

270EC Research and development

(1) This section applies if a person (the "seller") sells the relevant interest in a building or structure, in respect of which qualifying expenditure has been incurred, to another person (the "purchaser").

(2) Subsection (3) applies if the purchaser is entitled to an allowance in respect of qualifying expenditure incurred on the acquisition of the building or structure under Part 6 (research and development allowances).

(3) The total amount of the allowance available to the purchaser under this Part by reference to the building or structure is limited to—

(a) the amount of qualifying expenditure (within the meaning of section 270BA) incurred on the construction or acquisition of the building or structure, less

(b) the total of—

(i) the amount of the allowance under this Part to which an entitlement arose by reference to the building or structure before its sale (or would have arisen if the building or structure had been in continuous qualifying use since it was first brought into non-residential use), and

(ii) the amount of the allowance under Part 6 to which the purchaser is entitled in respect of qualifying expenditure incurred on the acquisition of the building or structure.

(and section 270AA(2)(b)(ii) is subject to this subsection).

(4) Subsection (5) applies if—

(a) the seller was entitled to an allowance in respect of qualifying expenditure incurred by the seller on the acquisition of the building or structure under Part 6 (research and development allowances), and

(b) the purchaser is not entitled to an allowance under that Part in respect of the qualifying expenditure incurred by the purchaser on the acquisition of the building or structure.

(5) The total amount of the allowance available to the purchaser is limited to the lower of—

(a) the amount which is equal to—

(i) the amount of qualifying expenditure (within the meaning of section 270BA) incurred on the construction or acquisition of the building or structure, less

(ii) the amount of the allowance under this Part to which an entitlement arose by reference to the building or structure before its sale (or would have arisen if the building or structure had been in continuous qualifying use since it was first brought into non-residential use), and

(b) the capital sum paid by the purchaser for the relevant interest.

(and section 270AA(2)(b)(ii) is subject to this subsection).

(6) Section 7 (no double allowances) is to be ignored for the purposes of determining the amounts referred to in subsections (3)(b)(i) and (ii) and (5)(a)(i) and (ii).

CHAPTER 6

HIGHWAY UNDERTAKINGS

270FA Carrying on of highway undertakings

(1) For the purposes of this Part, the carrying on of a highway undertaking is to be treated as the carrying on of an undertaking by way of trade; and accordingly references in this Part to a trade include a highway undertaking.

(2) For the purposes of this Part, a person carrying on a highway undertaking is to be treated as occupying, for the purposes of the undertaking, any road in relation to which it is carried on.

(3) In this Chapter "highway undertaking" means so much of any undertaking relating to the design, building, financing and operation of roads as is carried on—

(a) for the purposes of, or

(b) in connection with,

the exploitation of highway concessions.

(4) In this Chapter "highway concession", in relation to a road, means—

(a) a right to receive sums from a public body because the road is or will be used by the general public, or

(b) if the road is a toll road, the right to charge tolls in respect of the road.

(5) In subsection (4) "public body" means the Crown or any government or public or local authority (whether in the United Kingdom or elsewhere).

270FB The relevant interest

(1) For the purposes of Chapter 4 (the relevant interest in the building or structure) as it applies to expenditure incurred on the construction of a road, a highway concession is not to be treated as an interest in the road.

(2) But if the person who incurred the expenditure on the construction of the road—

(a) was not entitled to an interest in the road when the person incurred the expenditure, but

(b) was at that time entitled to a highway concession in respect of the road,

the highway concession is to be treated as the relevant interest in relation to that expenditure.

270FC Cases where highway concession is to be treated as extended

(1) A highway concession in respect of a road is to be treated as extended if—

(a) the person entitled to the concession takes up a renewed concession in respect of the whole or a part of the road, or

(b) that person or a person connected with that person takes up a new concession in respect of—

(i) the whole or a part of the road, or

(ii) a road that includes the whole or a part of the road.

(2) But the concession is to be treated as extended only—

(a) to the extent that the concession which has in fact ended, and the renewed or new concession, relate to the same road, and

(b) for the period of the renewed or new concession.

(3) A person who has ceased to be entitled to a highway concession is treated, for the purposes of this section, as taking up a renewed or new concession if—

(a) the person is granted a renewed or new concession, or

(b) the arrangements for the concession otherwise continue (whether or not those arrangements are legally enforceable).

(4) For the purposes of subsection (3), it does not matter whether the concession is renewed or replaced, or the arrangements for the concession continue, on the same terms or on modified terms.

CHAPTER 7

ADDITIONAL VAT LIABILITIES AND REBATES

Introduction

270GA Introduction

For the purposes of this Chapter—

(a) "additional VAT liability" and "additional VAT rebate" have the meaning given by section 547,

(b) the time when—

(i) a person incurs an additional VAT liability, or

(ii) an additional VAT rebate is made to a person,

is given by section 548, and

(c) the chargeable period in which, and the time when, an additional VAT liability or an additional VAT rebate accrues are given by section 549.

Additional VAT liabilities

270GB Additional VAT liabilities

(1) This section applies if—

(a) a person is entitled to an allowance under this Part by reference to qualifying expenditure incurred by that person, and

(b) the person incurs an additional VAT liability in respect of the qualifying expenditure.

(2) Subsection (3) applies for the purposes of calculating an allowance under this Part to which the person mentioned in subsection (1) is entitled—

(a) for the chargeable period in which the additional VAT liability accrues, and

(b) for any subsequent chargeable period.

(3) The amount of qualifying expenditure is treated as being increased, at the beginning of the chargeable period in which the additional VAT liability accrues, by the amount of the liability.

(4) If, immediately before the end of the period mentioned in section 270AA(2)(b) (the "allowance period"), the person who is entitled to an allowance under this Part by reference to qualifying expenditure is the person who incurred that expenditure, that person is entitled to an additional amount of allowance for the chargeable period in which the allowance period ends.

(5) The additional amount of allowance is the amount of the difference between—

(a) the amount of the additional VAT liability, and

(b) the total amount of the allowance to which the person has been entitled during the allowance period in respect of the additional VAT liability.

(6) But if an additional VAT rebate is made to the person in respect of the qualifying expenditure by reference to which this section applies, subsection (5) is subject to section 270GC(4) (limit on total allowance).

Additional VAT rebates

270GC Additional VAT rebates

(1) This section applies if—

(a) a person is entitled to an allowance under this Part by reference to qualifying expenditure incurred by that person, and

(b) an additional VAT rebate in respect of the qualifying expenditure is made to the person.

(2) Subsection (3) applies for the purposes of calculating an allowance under this Part to which the person mentioned in subsection (1) is entitled for—

(a) the chargeable period in which the additional VAT rebate accrues, and

(b) any subsequent chargeable period.

(3) The amount of qualifying expenditure is treated as being reduced, at the beginning of the chargeable period in which the additional VAT rebate accrues, by the amount of the rebate.

(4) The total amount of the allowance available under this Part by reference to the qualifying expenditure incurred by the person mentioned in subsection (1) is limited to—

(a) the amount of qualifying expenditure (including the amount of any additional VAT liability which is treated as qualifying expenditure under section 270GB), less

(b) the amount of any additional VAT rebate by reference to which this section applies,

(and sections 270AA(2)(b)(ii) and 270GB(5) are subject to this subsection).

CHAPTER 8

GIVING EFFECT TO ALLOWANCES

Trades

270HA Trades

If the qualifying activity of a person who is entitled to an allowance for a chargeable period is a trade, the allowance is to be given effect in calculating the profits of that person's trade, by treating the allowance as an expense of the trade.

Property businesses

270HB Ordinary UK property businesses and ordinary overseas property businesses

If the qualifying activity of a person who is entitled to an allowance for a chargeable period is—

(a) an ordinary UK property business, or

(b) an ordinary overseas property business,

the allowance is to be given effect in calculating the profits of that business by treating the allowance as an expense of that business.

Activities analogous to trades

270HC Professions and vocations

If the qualifying activity of a person who is entitled to an allowance for a chargeable period is carrying on a profession or vocation, the allowance is to be given effect in calculating the profits or gains of that person's profession or vocation by treating the allowance as an expense of the profession or vocation.

270HD Mines, transport undertakings etc

If the qualifying activity of a person who is entitled to an allowance for a chargeable period is a concern listed in section 12(4) of ITTOIA 2005(**a**) or section 39(4) of CTA 2009(**b**) (mines, transport undertakings etc) the allowance is to be given effect in calculating the profits of the concern under Chapter 2 of Part 2 of ITTOIA 2005 by treating the allowance as an expense of the concern.

(**a**) The Income Tax (Trading and Other Income) Act 2005 (c. 5).
(**b**) The Corporation Tax Act 2009 (c. 4).

Companies with investment business

270HE Companies with investment business

(1) This section applies if the qualifying activity of a person entitled to an allowance for a chargeable period is managing the investments of a company with investment business.

(2) The allowance is, as far as possible, to be given effect by deducting the amount of the allowance from any income for the period of the business; and section 1233 of CTA 2009 (addition of allowances to company's expenses of management) applies only so far as it cannot be given effect in this way.

(3) Except as provided by subsection (2), the Corporation Tax Acts apply in relation to the allowance as if it were required to be given effect in calculating the profits of that person's trade for the purposes of Part 3 of CTA 2009.

(4) Corresponding allowances in the case of the same building or structure are not to be made under this Part both under this section and in any other way.

(5) Expenditure to which this section applies is not to be taken into account otherwise than under this Part or as provided by section 1233 of CTA 2009.

(6) This section is subject to sections 682(3) and 699(3) of CTA 2010(**a**).

Long-term business

270HF Application of sections 270HG and 270HH

(1) Sections 270HG and 270HH apply if a company which is carrying on any long-term business is entitled to an allowance under this Part for a chargeable period in respect of a relevant interest in a building or structure consisting of a management asset.

(2) In this section and section 270HG, "management asset" has the same meaning as in Chapter 1 of Part 12 (long-term business).

270HG Apportionment of allowances

(1) This section applies if the long-term business of the company consists of—

(a) basic life assurance and general annuity business, and

(b) non-BLAGAB long-term business.

(2) Any allowance under this Part to which the company is entitled for a chargeable period in respect of a management asset must be apportioned between the businesses in accordance with Chapter 7 of Part 2 of FA 2012(**b**).

270HH Different giving effect rules for BLAGAB

(1) This section applies if a company—

(a) carries on basic life assurance and general annuity business, and

(b) is charged to tax in accordance with the I-E rules in respect of that business.

(2) Any allowance under this Part to which the company is entitled in respect of the basic life assurance and general annuity business is to be given effect by treating it for the purposes of section 76 of FA 2012 as a deemed BLAGAB management expense for the chargeable period in question.

(**a**) The Corporation Tax Act 2010 (c. 4).
(**b**) The Finance Act 2012 (c. 14).

270HI Supplementary

(1) An allowance to which sections 270HG and 270HH apply is not to be given effect otherwise than in accordance with those sections.

(2) Subsection (1) does not prevent any allowance which is to be given effect under those sections from being taken into account in any calculation for the purposes of—

(a) section 93(5) of FA 2012 (minimum profits test), or

(b) section 103 of FA 2012 (rules for determining policyholders' share of I-E profit).

CHAPTER 9

SUPPLEMENTARY PROVISIONS

Evidence of qualifying expenditure etc

270IA Evidence of qualifying expenditure etc

(1) This section applies if a person (the "current owner") is entitled to an allowance for a chargeable period under section 270AA by reference to a building or structure.

(2) For the purposes of determining the amount of the allowance, the amount of the qualifying expenditure is treated as nil unless, before the current owner first makes a claim for an allowance under this Part, the allowance statement requirement is met.

(3) The "allowance statement requirement" is met if—

(a) in a case where the current owner incurred the qualifying expenditure in relation to the building or structure, the current owner makes an allowance statement;

(b) in any other case, the current owner obtains (directly or indirectly) an allowance statement (or a copy of it) from any person who has previously been entitled to a relevant interest in the building or structure.

(4) In this section an "allowance statement" means a written statement, identifying the building or structure to which it relates, of—

(a) the date of the earliest written contract for the construction of the building or structure,

(b) the amount of qualifying expenditure incurred on its construction or purchase, and

(c) the date on which the building or structure is first brought into non-residential use.

Anti-avoidance

270IB Anti-avoidance: general

(1) This section applies if at any time—

(a) avoidance arrangements exist in relation to a building or structure (whether or not a person with a relevant interest in the building or structure is party to them), and

(b) as a result of those arrangements, a person would, but for this section, obtain a tax advantage under this Part.

(2) The tax advantage is to be counteracted by making such adjustments as are just and reasonable.

(3) Adjustments made under this section may affect the tax treatment of persons other than the person in relation to whom the tax advantage is counteracted.

(4) In subsection (1)(a) "avoidance arrangements" means arrangements the main purpose, or one of the main purposes, of which is to obtain a tax advantage (for any person) under this Part.

(5) References in this section to obtaining a tax advantage under this Part include obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained.

(6) In subsection (4) "arrangements" includes any agreement (including an agreed valuation), understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

Co-ownership authorised contractual schemes

270IC Co-ownership schemes: carrying on qualifying activity

(1) This section applies where the participants in a co-ownership authorised contractual scheme together carry on a qualifying activity.

(2) Each participant in the scheme is for the purposes of this Part to be regarded as carrying on the qualifying activity.

(3) Subsection (2) applies in relation to a participant only to the extent that the profits or gains arising to the participant from the qualifying activity are, or (if there were any) would be, chargeable to tax.

(4) But in determining for the purposes of subsection (1) whether or to what extent the participants in a co-ownership authorised contractual scheme together carry on a qualifying activity, assume that profits or gains arising to all participants from the qualifying activity are, or (if there were any) would be, chargeable to tax.

270ID Co-ownership schemes: election

(1) The operator of a co-ownership authorised contractual scheme may make an election under this section if an election under section 262AB(**a**) (plant and machinery allowances: co-ownership schemes) has been made, before the relevant date, in relation to the scheme (whether or not that election has subsequently been withdrawn in accordance with section 262AEA(**b**)).

(2) The election must specify an accounting period of the scheme as the first accounting period in relation to which the election has effect.

(3) But the election may not specify an accounting period ending—

(a) more than 12 months before the election is made, or

(b) more than 12 months after the end of the accounting period in which a building or structure which is subject to the scheme, and by reference to which an allowance is available under this Part, is first brought into qualifying use.

(4) The first accounting period must not be longer than 12 months.

(5) The election has effect for that first accounting period and all subsequent accounting periods of the scheme.

(6) The election is irrevocable.

(7) The election is made by notice to an officer of Revenue and Customs.

(8) For the purposes of this section and section 270IE, the "relevant date" is the date on which this Part comes into force.

270IE Co-ownership schemes: calculation of allowance after an election

(1) This section applies if—

(a) an election under section 270ID, or

(**a**) Sections 262AA to 262AF were inserted by section 40 of the Finance (No. 2) Act 2017 (c. 32).
(**b**) Section 262AEA is inserted by regulation 3(8).

(b) an election under section 262AB (plant and machinery allowances: co-ownership schemes) made on or after the relevant date,

has effect for an accounting period of a co-ownership authorised contractual scheme ("the relevant period").

(2) The operator of the scheme is to calculate the allowances that would be available to the scheme under this Part in relation to the relevant period on the basis of the assumptions in subsection (3).

(3) The assumptions are—

(a) the scheme is a person;

(b) the relevant period is a chargeable period for the purposes of this Act;

(c) any qualifying activity carried on by the participants in the scheme together is carried on by the scheme;

(d) property which was subject to the scheme at the beginning of the first accounting period for which the election has effect—

(i) ceased to be owned by the participants at that time, and

(ii) was acquired by the scheme at that time;

(e) any property which became subject to the scheme at a time during an accounting period for which the election has effect was acquired by the scheme at that time;

(f) property which ceased to be subject to the scheme at any such time ceased to be owned by the scheme at that time.

(4) The operator of the co-ownership authorised contractual scheme must allocate to each participant in the scheme a proportion (which may be zero) of the allowances calculated under this section.

(5) The allocation is to be on the basis of what is just and reasonable.

(6) In determining what is just and reasonable—

(a) regard is to be had in particular to the relative size of each participant's holding of units in the scheme;

(b) no regard is to be had to—

(i) whether or to what extent a participant is liable to income tax or corporation tax, or

(ii) any other circumstances relating to a participant's liability to tax.

(7) If the participants in the scheme together carry on more than one qualifying activity, the calculation and allocation under this section are to be made separately for each activity.

(8) The proportion of an allowance allocated by the operator to a participant under this section for a qualifying activity is the total amount of the allowance available to the participant under this Part in relation to the relevant period by virtue of carrying on that activity as a participant in the scheme.

(9) For the purposes of subsection (3)(c), assume that profits or gains arising to all participants from the qualifying activity are, or (if there were any) would be, chargeable to tax.

(10) For the purposes of section 270IA (evidence of qualifying expenditure etc), the operator of a co-ownership scheme may be treated as—

(a) the "current owner" in relation to property which is subject to the scheme, or

(b) the "previous owner" in relation to property which has ceased to be subject to the scheme.

270IF Co-ownership schemes: definitions relating to schemes

Section 262AF (co-ownership schemes: definitions relating to schemes) applies for the purposes of sections 270IC to 270IE as it applies for the purposes of sections 262AA to 262AF.

Leases

270IG Treatment of leases

(1) This section applies for the purposes of this Part.

(2) A lease is treated as continuing if it is renewed, extended or replaced.

(3) If a lease is terminated and, with the consent of the lessor, the lessee of a building or structure remains in possession of the building or structure after the termination without a new lease being granted to the lessee, the lease is treated as continuing so long as the lessee remains in possession.

(4) If, on the termination of a lease, a new lease is granted to the lessee as a result of the exercise of an option available to the lessee under the terms of the first lease, the second lease is treated as a continuation of the first.

(5) If, on the termination of a lease, the lessor pays a sum to the lessee in respect of a building or structure comprised in the lease, the lease is treated as if it had come to an end by surrender in consideration of the payment.

(6) If—

(a) on the termination of a lease, another lease is granted to a different lessee, and

(b) in connection with the transaction that lessee pays a sum to the person who was the lessee under the first lease,

the two leases are to be treated as if they were the same lease which had been assigned by the lessee under the first lease to the lessee under the second lease in consideration of the payment.

270IH Meaning of "lease" etc

(1) In this Part "lease" includes—

(a) an agreement for a lease if the term to be covered by the lease has begun,

(b) any tenancy, and

(c) in the case of land outside the United Kingdom, an interest corresponding to a lease,

but does not include a mortgage (and "lessee", "lessor" and "leasehold interest" are to be read accordingly).

(2) In the application of this Part to Scotland—

(a) "leasehold interest" (or "leasehold estate") means the interest of a tenant in property subject to a lease, and

(b) any reference to an interest which is reversionary on a leasehold interest or on a lease is to be read as a reference to the interest of the landlord in the property subject to the leasehold interest or lease.".

Further amendments to the Capital Allowances Act 2001

3.—(1) The Capital Allowances Act 2001(**a**) is amended as follows.

(2) In section 1(**b**) (capital allowances), in subsection (2), after paragraph (a) insert—

"(aa) Part 2A (structures and buildings allowances);".

(3) In section 2(**c**) (general means of giving effect to capital allowances), in subsection (3), after the entry in the list for sections 247 to 262A of CAA 2001 (plant and machinery allowances) insert—

"sections 270HA to 270HI (structures and buildings allowances);".

(4) In section 3(**d**) (claims for capital allowances), after subsection (2) insert—

"(2ZA) Any claim for an allowance under Part 2A (structures and buildings allowances) must be separately identified as such in the return.".

(5) In section 6E(**e**) (giving effect to allowances and charges: NI rate activity cases), in subsection (1), after paragraph (a) insert—

"(aa) an allowance under Part 2A (structures and buildings allowances),".

(6) In section 7 (no double allowances), after subsection (1) insert—

"(1A) In subsection (1), the reference to capital expenditure includes a reference to expenditure that is treated as capital expenditure for the purposes of section 270BJ(1) (structures and buildings allowances: expenditure on renovation, conversion and incidental repairs).".

(7) In section 262AB (plant and machinery allowances: co-ownership schemes: elections)—

(a) in subsection (5), at the end insert "(subject to section 262AEA)", and

(b) at the end insert—

"(7) See sections 262AC to 262AE and sections 270ID and 270IE for provision about the effect of an election.".

(8) After section 262AE insert—

"262AEA Co-ownership schemes: withdrawal of election

(1) This section applies if—

(a) an election under section 262AB has been made in relation to the scheme before the relevant date (within the meaning of section 270ID(8)), and

(b) an allowance under Part 2A (structures and buildings allowances) is available by reference to a building or structure which is subject to the scheme.

(2) The operator of the scheme may, by notice to an officer of Revenue and Customs, withdraw the election.

(3) The notice of withdrawal may not be given more than 12 months after the end of the accounting period in which the building or structure mentioned in subsection (1)(b) is first brought into qualifying use for the purposes of that Part.

(**a**) 2001 c. 2.

(**b**) Section 1 was relevantly amended by paragraph 2 of Schedule 27 to the Finance Act 2008 (c. 9) and paragraph 38(2) of Schedule 39 to the Finance Act 2012 (c. 14).

(**c**) Section 2 was amended by paragraph 3 of Schedule 6 to the Finance Act 2005 (c. 7), paragraph 2 of Schedule 25, and paragraph 3 of Schedule 27, to the Finance Act 2008, paragraph 475 of Schedule 1 to the Corporation Tax Act 2009 (c. 4) and paragraph 38(3) of Schedule 39 to the Finance Act 2012.

(**d**) Section 3 was amended by paragraph 4 of Schedule 6 to the Finance Act 2005 and paragraph 3 of Schedule 25, and paragraph 4 of Schedule 27, to the Finance Act 2008.

(**e**) Section 6E is prospectively inserted by paragraph 2 of Schedule 1 to the Corporation Tax (Northern Ireland) Act 2015 (c. 21) and is amended by paragraph 24(c) of Schedule 7 to the Finance (No. 2) Act 2017.

(4) The election ceases to have effect for the accounting period in which the notice of withdrawal is given and all subsequent accounting periods of the scheme.

(5) If an election is withdrawn under this section—

(a) the property which was subject to the scheme at the beginning of the accounting period in which the notice of withdrawal is given is treated for the purposes of this Part—

(i) as ceasing to be owned by the scheme at that time, and

(ii) as being acquired by the participants at that time in such proportions as are just and reasonable, and

(b) the disposal value to be brought into account in relation to the cessation of ownership is the tax written-down value.

(6) Subsections (6) and (9) to (11) of section 262AC apply for the purposes of this section as they apply for the purposes of that section.".

(9) In section 536 (contributions not made by public bodies and not eligible for tax relief)—

(a) in subsection (1), after "the expenditure" insert "(but see subsection (6))", and

(b) at the end insert—

"(6) Subsection (1) does not apply for the purposes of Part 2A (structures and buildings allowances).".

(10) In section 537(**a**) (conditions for contribution allowances)—

(a) in subsection (1), after "2" insert ", 2A",

(b) in subsection (2)(b)(ii), after "allowances under Part 2" insert ", 2A",

(c) in the heading, after "2," insert "2A,", and

(d) in the italic heading before the section, after "2" insert ", 2A".

(11) After section 538 insert—

"538A Buildings and structures

(1) For the purposes of contribution allowances under Part 2A, the references in section 537(2) to expenditure on the provision of an asset are to be treated as references to expenditure which is qualifying expenditure for the purposes of Part 2A.

(2) This section applies if—

(a) the general conditions for contribution allowances are met,

(b) C's contribution is to expenditure which is qualifying expenditure for the purposes of Part 2A, and

(c) C's contribution is made for the purposes of a qualifying activity (within the meaning of Part 2A) which is—

(i) if R is a public body, an activity carried on, or to be carried on, by C or by a tenant of land in which C has an interest, or

(ii) if R is not a public body, an activity carried on, or to be carried on, by a tenant of land in which C has an interest.

(3) C is to be treated for the purposes of allowances under Part 2A as if—

(a) the contribution were expenditure incurred by C on the construction or acquisition of the building or structure,

(b) the building or structure were brought into qualifying use by C on the day on which R brought it into qualifying use, and

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(**a**) Section 537 was amended by paragraph 5 of Schedule 6 to the Finance Act 2005 and paragraph 8 of Schedule 27 to the Finance Act 2008.

(c) for the purposes of section 270AA(2)(b), the day on which the qualifying expenditure is incurred were the day on which C made the contribution.

(4) If C did not have a relevant interest in the building or structure on the day on which R brought it into qualifying use, for the purposes of allowances under Part 2A—

(a) C is treated as having had a relevant interest in the building or structure on that day, and

(b) C is not treated as ceasing to have that interest on any subsequent sale of R's relevant interest in the building or structure.

(5) For the purposes of this section, the provisions of Part 2A relating to the relevant interest apply (with any necessary modifications) in relation to the contribution as they apply in relation to expenditure incurred on the construction or acquisition of a building or structure.

(6) In subsection (2), "public body" means the Crown or any government or public or local authority (whether in the United Kingdom or elsewhere).".

(12) In section 544(**a**) (management assets), in subsection (1), after "(plant and machinery allowances)" insert "or Part 2A (structures and buildings allowances)".

(13) In section 546 (introduction to Chapter 2 of Part 12: additional VAT liabilities and rebates, interpretation etc), after paragraph (a) insert—

"(aa) Chapter 7 of Part 2A (structures and buildings allowances: additional VAT liabilities and rebates),".

(14) In section 573(**b**) (transfers treated as sales), in subsection (1), after "of Parts" insert "2A,".

Amendments to the Taxation of Chargeable Gains Act 1992

4.—(1) The Taxation of Chargeable Gains Act 1992(**c**) is amended as follows.

(2) In section 24 (disposal on destruction, extinction etc of asset), after subsection (3) insert—

"(3A) Subsection (3C) applies, for the purposes of this section, in relation to an asset which is a leasehold interest in a building or structure by reference to which a person is entitled to an allowance under Part 2 of CAA 2001 (structures and buildings allowances).

(3B) For the purposes of subsection (3A), "leasehold interest" is to be construed in accordance with section 270IH of CAA 2001.

(3C) Where this subsection applies—

(a) the building or structure is to be regarded, for the purposes of this section, as an asset separate from the land on which it is situated, and

(b) subsection (3) does not apply.

(3D) But subsection (3C) does not apply if the person deemed to make the disposal of the building or structure makes an election under this subsection.

(3E) An election under subsection (3D), in respect of a deemed disposal, must be made by a notice given to an officer of Revenue and Customs—

(a) in the case of an election by a person within the charge to corporation tax, within the period of two years from the end of the accounting period in which the disposal is deemed to be made; and

(b) in any other case, on or before the first anniversary of the 31 January following the year of assessment in which the disposal is deemed to be made.

(**a**) Section 544 was amended by paragraph 14(8)(b) of Schedule 10, and Part 2(10) of Schedule 27, to the Finance Act 2007 (c. 11) and paragraph 103 of Schedule 16 to the Finance Act 2012.

(**b**) Section 573 was amended by paragraph 10 of Schedule 6 to the Finance Act 2005, paragraph 18 of Schedule 27 to the Finance Act 2008 and paragraph 38(7) of Schedule 39 to the Finance Act 2012.

(**c**) 1992 c. 12.

(3F) An election under subsection (3D) is irrevocable. ".

(3) After section 24(**a**) insert—

"24A Structures and buildings contributions allowances: destruction of asset

(1) This section applies if—

(a) there is a deemed disposal of an asset by a person ("P") under section 24(1),

(b) the asset is an interest in a building or structure which is "an interest in UK land" (as defined in section 1C) or an equivalent interest in land outside the United Kingdom,

(c) a contribution allowance under Part 2A of CAA 2001 (see section 538A of that Act) has been made to another person ("C") by reference to C's contribution to expenditure in relation to the building or structure, and

(d) C does not have an interest in the building or structure which is "an interest in UK land" for the purposes of section 1C.

(2) C may make a claim for this Act to have effect as if an allowable loss equal to the unclaimed allowance amount had accrued to C on the deemed disposal of the asset by P.

(3) For the purposes of this section, the "unclaimed allowance amount" in relation to a contribution allowance under Part 2A of CAA 2001, is the amount of the difference between—

(a) the qualifying contribution amount, and

(b) the amount of the contribution allowance to which an entitlement arose (or would have arisen if the conditions in section 270AA(2) of that Act had been met at all times since an entitlement to the contribution allowance first arose) before the deemed disposal under section 24(1).

(4) For the purposes of subsection (3), the "qualifying contribution amount" is the amount of C's contribution to expenditure in respect of which the contribution allowance is available (see sections 270AA and 538A of that Act), if and to the extent that the expenditure is not allowable under section 38(**b**) as a deduction in computing the gain accruing to P on the deemed disposal.

(5) A claim under this section must—

(a) include information identifying the building or structure by reference to which the contribution allowance was made, and

(b) specify the unclaimed allowance amount.".

(4) After section 37A(**c**) insert—

"37B Consideration on certain disposals: structures and buildings allowances

(1) This section applies on the disposal of an asset by a person if—

(a) the asset is an interest in a building or structure which is "an interest in UK land" (as defined in section 1C) or an equivalent interest in land outside the United Kingdom,

(b) the person is, or has been, entitled to an allowance under Part 2A of CAA 2001 ("the structures and buildings allowance") by reference to the building or structure, and

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(**a**) Section 24 was amended by paragraph 4 of Schedule 39 to the Finance Act 1996 (c. 8), paragraph 3 of Schedule 2 to S.I. 2007/3186 and article 4 of S.I. 2009/730.

(**b**) Section 38 was amended by paragraph 5 of Schedule 18 to the Finance Act 2003 (c.14).

(**c**) Section 37A was inserted by paragraph 7 of Schedule 3 to the Taxation (International and Other Provisions) Act 2010 (c. 8).

(c) the expenditure by reference to which the structures and buildings allowance has been made is allowable under section 38 as a deduction from the consideration in the computation of the gain on the disposal.

(2) In determining the amount of any gain accruing to the person making the disposal (the "transferor") the consideration for the disposal is treated as being increased by an amount equal to the amount of the structures and buildings allowance that has been made to the transferor.

(3) If the disposal is—

(a) a disposal on which, by virtue of any of the no gain/no loss provisions, neither a gain nor a loss accrues to the person making the disposal,

(b) a disposal in respect of which section 162 (roll-over relief on transfer of business) applies for the purposes of computing the gain on the disposal, or

(c) a deemed disposal under section 579(4) of CTA 2010(**a**) (real estate investment trusts: cessation),

the person who acquires the asset (the "transferee") is treated, for the purposes of determining the amount of the gain accruing on any subsequent disposal of the asset by the transferee, as if the amount of structures and buildings allowance made to the transferor (see subsection (2)) had been made to the transferee.

(4) Subsection (2)—

(a) is to be applied after the other provisions of this Act which apply for the purposes of determining the amount of the consideration deemed to be given for the disposal of assets, and

(b) is subject to subsections (5) to (7).

(5) If section 45(3) or 47(2) applies in relation to the disposal, subsection (2) applies in relation to the part of the consideration apportioned in the same proportion as the expenditure qualifying for capital allowances.

(6) Subsection (7) applies in relation to the disposal if the asset mentioned in subsection (1) is—

(a) a leasehold interest by reference to which section 270DD of CAA 2001 (leases granted for 35 years or more) applies, and

(b) a wasting asset for the purposes of this Act.

(7) For the purposes of subsection (2), the amount of the structures and buildings allowance is to be treated as if it were an amount of expenditure attributable to the asset under section 38(1) and, accordingly, as if it had been reduced at the same rate at which that expenditure is written off in accordance with paragraph 1(3) and (4) of Schedule 8 (leases of land as wasting assets).

(8) The reference in subsection (1)(b) to an allowance under Part 2A of CAA 2001 includes a reference to a contribution allowance made by reason of the application of sections 537 and 538A of that Act (contribution allowances: structures and buildings allowances).".

(5) In section 39 (exclusion of expenditure by reference to tax on income) after subsection (3A) insert—

"(3B) This section is not to be taken as excluding, from the sums allowable under section 38 as a deduction in the computation of the gain, any expenditure in respect of which an allowance under Part 2A of CAA 2001 (structures and buildings allowances) is made.".

(6) After section 39 insert—

(**a**) The Corporation Tax Act 2010 (c. 4).

"39A Exclusion of certain expenditure: structures and buildings allowances

(1) This section applies if—

(a) a person disposes of an asset to a connected person,

(b) the asset is, or is an interest in, a building or structure by reference to which an allowance under Part 2A of CAA 2001 (a "structures and buildings allowance") has been made, and

(c) the person making the disposal is, or has been, a lessor in relation to a lease of the building or structure by reference to which section 270DD of CAA 2001 (leases granted for 35 years or more) applies.

(2) Any expenditure by reference to which a structures and buildings allowance has been made to a lessee in relation to the lease mentioned in subsection (1)(c) is to be excluded from the sums allowable under section 38 as a deduction in the computation of the gain.".

(7) In section 41(**a**) (restriction of losses by reference to capital allowances etc), after subsection (4) insert—

"(4A) But references in this section to a capital allowance do not include references to an allowance under Part 2A of CAA 2001 (structures and buildings allowances).".

(8) In section 52 (supplemental), at the end of subsection (5) insert "(and, except in section 41, references in this Chapter to a capital allowance include references to an allowance under Part 2A of CAA 2001 (structures and buildings allowances))".

(9) In section 103D(**b**) (application of Act to tax transparent funds), after subsection (3) insert—

"(3A) But if a participant is entitled to an allowance under Part 2A of CAA 2001 (structures and buildings allowances) by reference to expenditure in relation to any fund property, the participant's interest in the fund property is not to be disregarded under subsection (3) for the purposes of the application of section 37B (exclusion of certain expenditure: structures and buildings allowances) in relation to the disposal by the participant of units in the fund.".

Amendments to the Income Tax (Trading and Other Income) Act 2005

5.—(1) The Income Tax (Trading and Other Income) Act 2005(**c**) is amended as follows.

(2) In section 96A(**d**) (capital receipts under, or after leaving, the cash basis), in subsection (3A), after "(see section 96B(5))" insert "except to the extent that it is expenditure in respect of which a capital allowance is made under Part 2A of that Act".

(3) In section 96B(**e**) (capital receipts under, or after leaving, the cash basis: supplementary provision), in subsection (5)(a), after "Part 2," insert "2A,".

Amendment to the Income Tax Act 2007

6. In section 123 of the Income Tax Act 2007(**f**) (meaning of "the loss has a capital allowances connection" etc), after subsection (2) insert—

"(2A) But any allowance under Part 2A of CAA 2001 (structures and buildings allowances) is to be ignored for the purposes of subsection (2).".

(**a**) Section 41 was amended by paragraph 7 of Schedule 7 to the Finance Act 1998 (c. 36), paragraph 12 of Schedule 29 to the Finance Act 2000 (c. 17), paragraph 78 of Schedule 2 to the Capital Allowances Act 2001 (c. 2), paragraph 430 of Schedule 1 to the Income Tax (Trading and Other Income Act) 2005 (c. 5), paragraph 363 of Schedule 1, and Part 1 of Schedule 3, to the Corporation Tax Act 2009, section 73(3) of the Finance Act 2016 (c. 24) and paragraph 45 of Schedule 2 to the Finance (No. 2) Act 2017 (c. 32).

(**b**) Section 103D was inserted by regulation 3 of S.I. 2013/1400 and substituted by regulation 6 of S.I. 2017/1204.

(**c**) 2005 c. 5.

(**d**) Section 96A was inserted by paragraph 20 of Schedule 4 to the Finance Act 2013 (c. 29) and amended by paragraph 4 of Schedule 2 to the Finance (No. 2) Act 2017.

(**e**) Section 96B was inserted by paragraph 5 of Schedule 2 to the Finance (No. 2) Act 2017.

(**f**) 2007 c. 3.

Amendments to the Corporation Tax Act 2009

7.—(1) The Corporation Tax Act 2009(**a**) is amended as follows.

(2) In section 1147(**b**) (reliefs for expenditure on contaminated or derelict land: deduction for capital expenditure), in subsection (8), after "an allowance" insert ", other than an allowance under Part 2A of CAA 2001 (structures and buildings allowances),".

(3) In section 1233 (excess capital allowances)—

(a) in subsection (1), after "section 15(1)(g)" insert "or 270CA(f)", and

(b) in subsection (2), after "section 253(2)" insert "or 270HE(2) (as the case may be)".

Amendments to the Finance Act 2009

8.—(1) Schedule 61 to the Finance Act 2009 (alternative finance investment bonds)(**c**) is amended as follows.

(2) In paragraph 14 (treatment for purposes of capital allowances)—

(a) in sub-paragraph (2), for paragraph (b) substitute—

"(b) a building or structure (or part of a building or structure).",

(b) in sub-paragraph (3)(b), at the beginning insert "in a case within sub-paragraph (2)(a),", and

(c) in sub-paragraph (3), at the end insert—

"; and

(c) in a case within sub-paragraph (2)(b), Q is not to be regarded as acquiring, and P is not to be regarded as ceasing to have, the relevant interest in the asset by virtue of that transaction.".

(3) In paragraph 16—

(a) in sub-paragraph (2), for paragraph (b) substitute—

"(b) a building or structure (or part of a building or structure).",

(b) in sub-paragraph (4), for the words from ", Q is to be treated" to the end substitute—

"—

(a) in a case within sub-paragraph (2)(a), Q is to be treated as becoming, and P is to be treated as ceasing to be, the owner of the asset, and

(b) in a case within sub-paragraph (2)(b), Q is to be treated as acquiring, and P is to be treated as ceasing to have, the relevant interest in the asset.",

(c) omit sub-paragraph (5)(b) and the "and" before it, and

(d) omit sub-paragraph (6)(b) and the "and" before it.

(4) In paragraph 17—

(a) in sub-paragraph (2), for paragraph (b) substitute—

"(b) a building or structure (or part of a building or structure).",

(b) in sub-paragraph (4), for the words from ", that other person" to the end substitute—

"—

(a) in a case within sub-paragraph (2)(a), that other person is to be treated as becoming, and P is to be treated as ceasing to be, the owner of the asset, and

---

(**a**) 2009 c. 4.
(**b**) Section 1147 was amended by paragraph 9 of Schedule 7 to the Finance Act 2009 (c. 10).
(**c**) 2009 c. 10.

(b) in a case within sub-paragraph (2)(b), that other person is to be treated as acquiring, and P is to be treated as ceasing to have, the relevant interest in the asset.",

(c) omit sub-paragraph (5)(b) and the "and" before it, and

(d) omit sub-paragraph (6)(b) and the "and" before it.

Amendments to the Corporation Tax Act 2010

9.—(1) The Corporation Tax Act 2010(**a**) is amended as follows.

(2) In section 682 (restriction on the deduction of the expenses of management: general provision), in subsection (3), for "section 253" substitute "sections 253 and 270HE".

(3) In section 699 (restriction on the deduction of the expenses of management: asset transferred within group), in subsection (3), for "section 253" substitute "sections 253 and 270HE".

Amendment to the Finance Act 2012

10. In section 78(3) of the Finance Act 2012(**b**) (meaning of "deemed BLAGAB management expense for the accounting period"), after the entry in the list for section 256(2)(a) of CAA 2001 insert—

"section 270HH of CAA 2001 (allowances in respect of structures or buildings consisting of management asset), ".

Amendment to the Friendly Societies (Modifications of the Tax Acts) Regulations 2012

11. In the Friendly Societies (Modifications of the Tax Acts) Regulations 2012(**c**), after regulation 4 insert—

"4A. Section 270HG of CAA 2001 (structures and buildings allowances: apportionment of allowances) applies as if for subsection (1) there were substituted—

"(1) This section applies if the long-term business of the company consists of two or more of—

(a) basic life assurance and general annuity business,

(b) non-BLAGAB long-term business, or

(c) tax exempt business.

(1A) In subsection (1)(c) "tax exempt business" has the same meaning as in section 57A of FA 2012(**d**) (section 57: meaning of "tax exempt business").".".

Name 1
Name 2

Date — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 30 of the Finance Act 2019 (c. 1) and provide for the introduction of new allowances under the Capital Allowances Act 2001 (c. 2) ("CAA 2001") for certain expenditure on buildings and structures.

(**a**) 2010 c. 4.
(**b**) 2012 c. 14.
(**c**) S.I. 2012/3008.
(**d**) Section 57A is treated by regulation 6 of S.I. 2012/3008 as inserted in the Finance Act 2012.

Regulation 1 provides for citation and commencement.

Regulation 2 inserts a new Part 2A into CAA 2001 containing the main provisions governing the allowances. Part 2A is divided into the following Chapters:

Chapter 1 outlines the basic conditions required for allowances to be available. These conditions are contained in section 270AA and are expanded upon in the remaining Chapters of Part 2A. Section 270AB contains rules for ascertaining the date upon which construction of a building or structure begins for the purposes of the allowances. Where the conditions are met, allowances are available in respect of qualifying expenditure incurred on or after 29th October 2018, authority for retrospective effect being provided for in section 30(1)(a) of the Finance Act 2019.

Chapter 2 contains rules governing what constitutes "qualifying expenditure". Section 270BA defines "qualifying expenditure" as expenditure which is qualifying capital expenditure under any of sections 270BB to 270BE and is not excluded expenditure under sections 270BG to 270BI. Sections 270BJ and 270BK provide for certain expenditure to be treated as if it were expenditure on construction. Sections 270BL to 270BN contain supplementary provision about expenditure.

Chapter 3 contains rules governing what constitutes a "qualifying activity" (sections 270CA to 270CD) and a "qualifying use" (sections 270CE to 270CG) for the purposes of the allowances.

Chapter 4 contains rules to determine which person has the "relevant interest" in a given building or structure and so may be entitled to claim the allowances. Section 270DA contains the general rule as to what is the relevant interest. Sections 270DB to 270DE contain supplementary rules.

Chapter 5 contains rules dealing with the calculation of allowances in three particular sets of circumstances. First, section 270EA provides for the proportionate adjustment of allowances where a chargeable period is more or less than a year. Secondly, section 270EB provides for the proportionate adjustment of allowances where a building or structure is put to multiple uses. Finally, section 270EC reduces the availability of allowances to a purchaser on a transfer where the purchaser is entitled to research and development allowances under Part 6 of CAA 2001 in respect of the expenditure.

Chapter 6 contains rules governing the operation of the allowances in the context of "highway undertakings" (sections 270FA to 270FC).

Chapter 7 contains rules governing the interaction between the allowances and VAT. Section 270GA defines various terms related to VAT. Section 270GB increases the amount of allowances available where an additional VAT liability arises in respect of qualifying expenditure. Conversely, section 270GC decreases the amount of allowances available where an additional VAT rebate becomes available in respect of qualifying expenditure.

Chapter 8 contains rules governing how the allowances affect the tax computation of the person claiming them. Section 270HA provides that, if the qualifying activity of a person is a trade, the allowances are to be treated as an expense of the trade in calculating the profits of that trade. Sections 270HB to 270HE contain similar provisions governing how effect is to be given to the allowances in the context of ordinary UK property businesses and ordinary overseas property businesses (section 270HB), activities analogous to trades (sections 270HC and 270HD) and companies with investment business (section 270HE). Sections 270HF to 270HI govern how effect is to be given to the allowances where expenditure is on a "management asset" (as defined in Chapter 1 of Part 12 of CAA 2001 (long-term business)).

Chapter 9 contains supplementary provisions. Section 270IA requires that a person provides evidence of qualifying expenditure by way of an "allowance statement" in order to be able to claim the allowances and outlines what constitutes such a statement. Section 270IB contains an anti-avoidance rule requiring the counteraction of a tax advantage obtained by a taxpayer under the new Part 2A as a result of entering into "avoidance arrangements". Sections 270IC to 270IF are concerned with the application of the

allowances in the context of co-ownership authorised contractual schemes. Section 270IG deals with the availability of the allowances where a lease is renewed, extended or replaced and, in a variety different scenarios, terminated. Section 270IH defines "lease" for the purposes of the allowances.

Regulation 3 makes further amendments to CAA 2001. Paragraphs (2) to (6) and paragraphs (12) to (14) make consequential amendments by inserting references to the allowances elsewhere in CAA 2001. Paragraphs (7) and (8) introduce a new section 262AEA which enables an entity to withdraw an election made under section 262AB (co-ownership schemes: election). Paragraphs (9) and (10) make consequential amendments relating to the interaction between the allowances and contribution allowances. Paragraph (11) inserts a new section 538A which is the main provision governing the availability of allowances where a person makes a contribution to qualifying expenditure for the purposes of a qualifying activity.

Regulation 4 makes amendments to the Taxation of Chargeable Gains Act 1992 (c. 12). Paragraph (2) amends section 24 to deal with the availability of allowances on the destruction of a building or structure where the land the building or structure was situated upon is separately leased. Paragraph (3) inserts a new section 24A to deal with the availability of contribution allowances under Part 2A of CAA 2001 on the demolition of a building or structure. Paragraph (4) inserts a new section 37B which provides that, subject to certain exclusions, on a disposal of a building or structure qualifying for allowances, the person making the disposal should add to the consideration received an amount equal to the allowances that have been claimed as at the time of disposal. Paragraph (5) inserts a new subsection (3B) to ensure that section 39 is not taken as excluding from the sums allowable under section 38 as a deduction in the computation of the gain any expenditure in respect of which the allowances have been claimed. Paragraph (6) inserts a new section 39A to deal with the disposal of leases of 35 years or more and to prevent expenditure qualifying for allowances from being included in the base cost where the parties are connected. Paragraph (7) amends section 41 to ensure that it does not apply in relation to the allowances. Paragraph (8) amends section 52 to ensure that, except in section 41, the allowances are "capital allowances" for the purposes of Chapter 3 of Part 2 of the Act. Finally, paragraph (9) amends section 103D to ensure that new section 37B is engaged where an investor in a co-ownership authorised contractual scheme or offshore transparent fund disposes of units in the fund.

Regulation 5 amends sections 96A and 96B of the Income Tax (Trading and Other Income) Act 2005 (c. 5). The amendments deal with the interaction between the allowances and the cash basis (conditions for which are contained in Chapter 3A of Part 2 of that Act).

Regulation 6 amends section 123 of the Income Tax Act 2007 (c. 3). The amendment prevents the allowances from being taken into account when considering whether a loss has a capital allowances connection for the purposes of that section.

Regulation 7 amends the Corporation Tax Act 2009 (c. 4). Paragraph (2) makes an amendment to section 1147 which prevents the claiming of the allowances from disqualifying an entity from being entitled to a deduction for capital expenditure where that expenditure is qualifying land remediation expenditure incurred on contaminated or derelict land. Paragraph (3) makes amendments to section 1233 which deal with the interaction between the allowances and excess capital allowances in the context of expenses of management.

Regulation 8 amends Schedule 61 to the Finance Act 2009 (c. 10). The amendments are designed to accommodate the allowances within the statutory regime for alternative finance investment bonds.

Regulation 9 amends sections 682 and 699 of the Corporation Tax Act 2010 (c. 4). The amendments relate to the deduction of expenses of management where such expenditure qualifies for the allowances and is apportioned between two notional accounting periods in accordance with sections 685 and 702 of that Act.

Regulation 10 amends section 78 of the Finance Act 2012 (c. 14). The amendment deals with the meaning of "deemed BLAGAB management expense for the accounting period" for the purposes

of section 76 of that Act and is designed to accommodate expenditure qualifying for the allowances.

Regulation 11 amends the Friendly Societies (Modifications of the Tax Acts) Regulations 2012 (S.I. 2012/3008). It inserts a new regulation 4A which modifies new section 270HG of CAA 2001 to deal with the interaction between the allowances and the tax treatment of long-term business.

A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

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