

INCOME TAX (IN AID OF INDUSTRY) ACT

CHAPTER 85:04

Act
12 of 1950

Amended by

5 of 1951	6 of 1981
73 of 1951	11 of 1984
48 of 1955	26 of 1985
2/1963	17 of 1992
5 of 1964	*5 of 1995
29 of 1966	39 of 2000
46 of 1969	2 of 2002
5 of 1970	21 of 2005
42 of 1970	2 of 2006
36 of 1973	30 of 2007
106/1974	
46 of 1976	

*See Note on page 2

Current Authorised Pages

<i>Pages</i> <i>(inclusive)</i>	<i>Authorised</i> <i>by L.R.O.</i>
1-72	1/2009
73-90	1/2006

L.R.O. 1/2009

LAWS OF TRINIDAD AND TOBAGO

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2

Chap. 85:04

Income Tax (In Aid of Industry)

Index of Subsidiary Legislation

	<i>Page</i>
Income Tax (Mineral Deposits) Regulations (GN 115/1950)	83

Note on Submarine Production Allowance

Section 10 of Act No. 26 of 1985 states that the submarine production allowance as referred to in Parts III and IV of this Act, is discontinued.

Note on Act No. 5 of 1995

Section 5(7) of Act No. 5 of 1995 provides as follows:

The provisions of Part I of the Income Tax (In Aid of Industry) Act relating to initial and annual allowances on industrial buildings and structures shall not apply to a person entitled to an allowance under this section.

Note on Adaptation

Under paragraph 6 of the Second Schedule to the Law Revision Act (Ch. 3:03) the Commission amended certain references to public officers in this Chapter. The Minister's approval of the amendments was signified by LN 120/1980, but no marginal reference is made to this Notice where any such amendment is made in the text.

CHAPTER 85:04

INCOME TAX (IN AID OF INDUSTRY) ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
- 1A. Application of Act.
2. Interpretation.

PART I

INDUSTRIAL BUILDINGS AND STRUCTURES, ETC.

3. Initial allowances.
4. Annual allowances.
5. Balancing allowances and balancing charges.
6. Writing off of expenditure and meaning of “residue of expenditure”.
7. Buildings and structures bought unused.
8. Cessation of depreciation allowances.
9. Definition of industrial building or structure.
10. Sports pavilions.
11. Meaning of “the relevant interest”.
12. Temporary disuse of industrial buildings or structures.
13. Requisitioned land, holding over of leased land, and other special cases.
14. Exclusion of double allowances, etc.
15. Interpretation of Part I.
- 15A. Interpretation.

PART II

MACHINERY AND PLANT

16. Initial allowances.
- 16A. Initial and first year allowances.
- 16B. *(Deleted by Act No. 21 of 2005).*
17. Allowance for wear and tear. Amendment of section 11 of Income Tax Act.
- 17A. Annual allowance.
- 17B. Previous allowance to be taken into account.

ARRANGEMENT OF SECTIONS—*Continued*

SECTION

18. Balancing allowances and balancing charges.
19. Replacement of machinery or plant.
20. Meaning of “expenditure unallowed”.
21. Expenditure on alterations to buildings in connection with installation of machinery or plant.

PART IIA

OIL REFINERIES—MACHINERY AND PLANT

- 21A. Allowances on oil refinery, machinery and plant.
- 21B. Meaning of expenditure.

PART III

MINES, OIL WELLS, ETC.

22. Expenditure to which Part III applies.
23. Initial allowance.
- 23A. (*Deleted by Act No. 21 of 2005*).
24. Annual allowances.
25. Sale of source or part of source as going concern.
26. Application to expenditure incurred by person not engaged in the trade of mining, etc.
27. Land production allowance in certain cases.
28. Regulations.

PART IV

SUBMARINE OIL WELLS

29. Definitions.
30. Submarine Production Allowance.
31. Application for Submarine Production Allowance.
32. Accounts and records.
33. Regulations.

PART V

PRODUCTION BUSINESS ON LAND

34. Definitions.

SECTION

- 35. *(Repealed by Act No. 6 of 1981).*
- 36. Investment allowances.
- 36A. Eligibility for investment allowance under section 36 of the Act.
- 37. Balancing charge or allowance.
- 38. *(Repealed by Act No. 6 of 1981).*

PART VI

PATENTS

- 39. Annual allowances for capital expenditure on purchase of patent rights.
- 40. Effect of lapse of patent rights, sales, etc.
- 41. Charges on capital sums received for sale of patent rights.
- 42. Patent rights sold before appointed day.
- 43. Relief for expenses.
- 44. Spreading of income payments over several years.
- 45. When a person is to be treated as a trader.
- 46. Interpretation.

PART VII

SCIENTIFIC RESEARCH

- 47. Allowances for expenditure not of capital nature incurred after “the appointed day”.
- 48. Allowances of expenditure not of capital nature incurred between 6th April, 1944 and “the appointed day”.
- 49. Allowances of expenditure of a capital nature incurred after “the appointed day”.
- 50. Allowances for expenditure of a capital nature incurred between 1st January, 1937 and “the appointed day”.
- 51. Special provisions with regard to assets representing capital expenditure.
- 52. Periods covered by section.
- 53. Carry forward of trade losses arising out of allowances.
- 54. Scientific research allowances exclude initial and annual allowances under Part I and Part II.
- 55. Interpretation and supplemental provisions.

ARRANGEMENT OF SECTIONS—*Continued*

SECTION

PART VIII

HOUSING OF WORKERS EMPLOYED IN ANY OF THE TRADES MENTIONED IN THE FIRST SCHEDULE OR IN HUSBANDRY

- 56. Annual allowances for capital expenditure or workers' dwellings.
- 57. Limitation of annual allowances.
- 58. Mode of dealing with annual allowances after transfer of land, etc.
- 59. Cesser of annual allowances during temporary non-use of building.
- 60. Claims for deductions under Part VIII.
- 61. Interpretation.
- 62. Application of Part VIII.

PART IX

MISCELLANEOUS AND GENERAL

- 63. Manner of charging tax and granting allowances in cases of traders.
- 63A. Allowance for capital expenditure.
- 63B. To request Board of Inland Revenue to reopen returns.
- 64. Meaning of "basis period".
- 65. Apportionment of consideration, and exchanges and surrenders of leasehold interests.
- 66. Special provisions as to certain sales.
- 67. Trade marks and designs.
- 68. Interpretation of certain references to expenditure, etc.
- 69. Subsidies, etc.
- 70. Computation of expenditure for purposes of sections 10 and 11 of the Income Tax Act.
- 71. Other provisions as to interpretation.
- 72. Deductions and allowances for year of discharge of tax.
- 73. Written-down value of assets of refinery as at 31st December, 1979.

FIRST SCHEDULE—(Repealed by Act No. 2 of 2002).

SECOND SCHEDULE.

THIRD SCHEDULE.

FOURTH SCHEDULE.

CHAPTER 85:04

INCOME TAX (IN AID OF INDUSTRY) ACT

An Act to make provisions for relief from Income Tax in aid of certain industries and the provision of workmen's homes. 12 of 1950.

[16TH MARCH 1950]

Commencement.

1. This Act may be cited as the Income Tax (In Aid of Industry) Act, and shall be read as one with the Income Tax Act. Short title.
[2 of 2002].
Ch. 75:01.

1A. This Act shall, except as may be otherwise expressly provided herein, be applicable to all manufacturing trades. Application of Act.
[2 of 2002].

***2.** (1) In this Act, references to a year of assessment shall be construed as references to a former year of assessment or, as the circumstances require, a year of income, and references to years of assessment shall be construed accordingly. Interpretation.
[2 of 2002].

(2) In this Act “manufacturing trade” means any activity involving the mechanical, physical or chemical transformation of materials, substances or components into new products but does not include the printing and publication of newspapers, magazines, reviews and other periodicals by the proprietors for their account.

(3) For the purposes of Parts II, III and V “production business” has the meaning assigned to it in the Petroleum Act. Ch. 75:04.

†PART I

INDUSTRIAL BUILDINGS AND STRUCTURES, ETC.

3. (1) Subject to this Act, where, on or after 6th April, 1946 (in this Act referred to as “the appointed day”), a person incurred or incurs capital expenditure on the construction of a building or structure which has been or is to be an industrial building or structure occupied for the purposes of trade carried on either by Initial allowances.

* In accordance with this section, the expression “year of income” has been substituted for “year of assessment” throughout the Act wherever it is clear that the circumstances so require.

† See section 73 concerning written-down value of assets.

him or by such a lessee as is hereinafter mentioned, in ascertaining the chargeable income for the year of income hereinafter mentioned of such person who incurred the expenditure, there shall be allowed to him a deduction (in this Part referred to as “an initial allowance”) equal to one-tenth thereof.

The said lessees are lessees occupying the building or structure on the construction of which the expenditure was incurred under a lease to which the relevant interest, as defined for the purposes of this Part, is reversionary.

(2) The said year of income shall, in the case of a person incurring expenditure, be the year of income in his basis period for which the expenditure was incurred except that where the first use to which the building or structure is put is a use by a person occupying it by virtue of a tenancy to which the relevant interest is reversionary and the tenancy begins after the incurring of the expenditure, the said year of income shall be the year of income in which the tenancy begins.

(3) Subsections (1) and (2) apply in relation to expenditure incurred by a person on or after 6th April, 1944 but before the appointed day as if it had been incurred by him on the appointed day except that—

(a) the amount by reference to which the initial allowance is to be calculated shall, instead of being the amount of the expenditure, be the amount thereof less any deduction allowed for years of income before that in which the appointed day fell under section 11 of the Income Tax Act for the exhaustion by wear and tear (hereinafter referred to as “depreciation allowance”) of the building or structure; and

(b) no initial allowance shall be allowed if—

(i) before the appointed day, the relevant interest in the building or structure was sold or, being a leasehold interest came to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon;

- (ii) before the appointed day, the building or structure is demolished or is destroyed; or
- (iii) at any time before the appointed day the building or structure was, but on the appointed day was not, an industrial building or structure.

(4) Notwithstanding anything in this section, no initial allowances shall be made in respect of any expenditure if, when the building or structure came to be used, it was not an industrial building or structure; and where an initial allowance has been granted in respect of any expenditure otherwise than in accordance with the provisions of this section, all such additional assessments shall be made as are necessary to secure that effect is given to those provisions.

(5) Any expenditure incurred on or after 6th April, 1944 for the purposes of a trade by a person about to carry it on shall be treated for the purposes of the preceding provisions of this section as if it had been incurred by that person on the first day on which he does carry it on.

4. (1) Subject to this Act where—

- (a) any person is, at the end of his basis period for the year of income in which the appointed day falls or any subsequent year of income entitled to an interest in a building or structure; and
- (b) at the end of the said basis period the building or structure is an industrial building or structure; and
- (c) that interest is the relevant interest in relation to the capital expenditure incurred in the construction of that building or structure,

Annual allowances.
[42 of 1970].

in ascertaining the chargeable income of such person, there shall be allowed in the relative year of income the deduction of an amount (in this Part referred to as “an annual allowance”) equal to one-fiftieth of that expenditure save that, in the case of a person

carrying on petroleum operations under a licence issued after 1st January 1970, the annual allowance shall equal one-twentieth of the capital expenditure.

In this subsection—

- (a) “petroleum operations” means exploring for, producing, refining and transporting by pipeline, petroleum or petroleum products or both, as those expressions are defined in the Petroleum Act;
- (b) “licence” does not include a licence issued pursuant to section 38 of the Petroleum Act.

Ch. 62:01.

(2) Where, at any time on or after the appointed day, the interest in a building or structure which is the relevant interest in relation to any expenditure is sold while the building or structure is an industrial building or structure, the annual allowance in respect of that expenditure shall, in the case of years of income the basis period for which end after the time of that sale—

- (a) be computed by reference to the residue (as defined in this Part relating to the writing-off of expenditure) of that expenditure immediately after the sale; and
- (b) be the fraction of the said residue the numerator of which is one and the denominator of which is the number of years of income comprised in the period which—
 - (i) begins with the first year of income for which the buyer is entitled to an annual allowance in respect of the expenditure or would be so entitled if the building or structure had at all material times continued to be an industrial building or structure; and
 - (ii) ends with the fiftieth year of income after that in which the building or structure was first used,

and so on for any subsequent sales.

(3) Notwithstanding anything in the preceding provisions of this section, in no case shall the amount of an annual allowance made to a person for any year of income in respect of any expenditure exceed what, apart from the writing off falling to be made by reason of the making of that allowance, would be the residue of that expenditure at the end of his basis period for that year of income.

5. (1) Where any capital expenditure has been incurred on the construction of a building or structure and on or after the appointed day any of the following events occurs while the building or structure is an industrial building or structure, that is to say—

Balancing allowances and balancing charges.

- (a) the relevant interest in the building or structure is sold;
- (b) that interest, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon; or
- (c) the building or structure is demolished or destroyed or, without being demolished or destroyed, ceases altogether to be used,

an allowance or charge (in this Part referred to as “a balancing allowance” or “a balancing charge”) shall in the circumstances mentioned in this section, be made to, or as the case may be, on the person entitled to the relevant interest immediately before that event occurs for the year of income in his basis period for which that event occurs; and in ascertaining the chargeable income of such person a balancing allowance shall be deemed to be a deduction included in section 10 or 11, and a balancing charge shall be deemed to be a gain or profit within the meaning of section 5(1)(c) and (d) of the Income Tax Act except that no balancing allowance or balancing charge shall be made to or on any person for any year of income by reason of any event occurring after the end of his basis period for the fiftieth year of income after that in which the building or structure was first used.

Ch. 75:01.

(2) Where there are no sale, insurance, salvage or compensation moneys or where the residue of the expenditure

immediately before the event exceeds those moneys, a balancing allowance shall be made and the amount thereof shall be the amount of the said residue or as the case may be of the excess thereof over the said moneys.

(3) If the sale, insurance, salvage or compensation moneys exceed the residue, if any, of the expenditure immediately before the event, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the excess, or where the residue is nil, to the said moneys.

(4) If, for any of the relevant years of income (as defined for the purposes of this subsection), neither an annual allowance nor a scientific research allowance has been made, subsections (2) and (3) shall have effect subject to the modification that the amount of the balancing allowance, or as the case may be, the amount on which the balancing charge is to be made shall be reduced by applying thereto the fraction, the numerator of which is the number of the relevant years of income for which an annual allowance or scientific research allowance has been made in respect of the expenditure and the denominator of which is the total number of the relevant years of income.

In this subsection, the expression "the relevant years of income" means all the years of income after that in which the building or structure was first used for any purpose up to and including that in which the event takes place which gives rise to the allowance or charge except that where, before the said event but on or after the appointed day, the building or structure has been sold while an industrial building or structure, the said expression means all years of income for which either—

- (a) an annual allowance is made by reason of the building or structure being an industrial building or structure at any time between the sale and the event, or, where there has been more than one such sale, between the last such sale and the event; or
- (b) an annual allowance would have fallen to be made if the building or structure had been an industrial

building or structure at all times between the sale, or as the case may be, the last of such sale, and the event.

(5) Notwithstanding anything in the preceding provisions of this section, in no case shall the amount on which a balancing charge is made on a person in respect of any expenditure on the construction of a building or structure exceed the amount of the initial allowance, if any, made to him in respect of that expenditure together with the amount of any annual allowances or scientific research allowances in respect of that expenditure and any depreciation allowances (if any) in respect of that building or structure, made to him for years of income his basis periods for which end on or before the date of the event which gives rise to the charge.

6. (1) Any expenditure incurred on the construction of any building or structure shall be deemed for the purposes of this Part to be written off to the extent and as at the times hereafter specified in this section, and references in this Part to the residue of any such expenditure shall be construed accordingly.

Writing off of expenditure and meaning of "residue of expenditure". [5 of 1964].

(2) If an initial allowance is made in respect of the expenditure, the amount of that allowance shall be written off as at the time when the building or structure is first used.

(3) If, by reason of the building or structure being at any time an industrial building or structure, an annual allowance is made for any year of income in respect of the expenditure, the amount of that allowance shall be written off as at the said time except that where at the said time an event occurs which gives rise or may give rise to a balancing allowance or balancing charge, the amount directed to be written off by this subsection as at the said time shall be taken into account in computing the residue of that expenditure immediately before that event for the purpose of determining whether any and if so what balancing allowance or balancing charge is to be made.

(4) If a scientific research allowance is made for any year of income in respect of the expenditure, the amount of that

allowance shall be written off, in the case of an allowance under section 49 as at the end of the basis period (as defined in that section) for the year of income, and, in the case of an allowance under section 51 as at the time when the asset ceases to be used by the person in question for scientific research connected with the trade; but where, at the time when an amount falls to be written off under this subsection, an event occurs which gives rise or may give rise to a balancing allowance or a balancing charge, the amount directed to be written off by this subsection as at that time shall be taken into account in computing the residue of the expenditure immediately before that event for the purpose of determining whether any and if so what balancing allowance or balancing charge is to be made.

(5) If, in the case of any year of income after that in which the building or structure is first used, no annual allowance or scientific research allowance falls to be made to any person in respect of the expenditure, then subject to this subsection and subsection (6), an amount equal to one-fiftieth of the expenditure shall be written off as at the end of the previous year of income except that—

- (a) in the case of the year of income in which the appointed day falls or any subsequent year of income, this subsection shall not apply for any purpose if the building or structure was an industrial building or structure on the day preceding the beginning of the year of income; and
- (b) where this subsection does apply in the case of the year of income in which the appointed day falls or any subsequent year of income, the amount to be written off shall, if the building or structure has been sold on or after the appointed day while an industrial building or structure, be the amount which would have fallen to be written off if—
 - (i) the building or structure had been an industrial building or structure in use on

the said preceding day for the purposes of a trade carried on by a person entitled to the relevant interest in the building or structure; and

- (ii) the basis period of that person for the year of income had ended on the said preceding date; and
- (iii) an annual allowance had been made to him for the year of income accordingly.

(6) If any depreciation allowances are made in respect of the building or structure for any year of income before that in which the appointed day falls, and either—

- (a) no amount falls to be written off under subsection (5) as at any date before the beginning of the year of income in which the appointed day falls; or
- (b) the total amounts falling to be written off thereunder as at dates before the beginning of the year in which the appointed day falls are less than the total depreciation allowances for years of income before that year,

an amount equal to the total depreciation allowances or, as the case may be, to that total amount less the total amounts falling to be written off as aforesaid, shall be written off as at the end of the year of income immediately preceding that in which the appointed day falls.

(7) If, on the occasion of a sale, a balancing allowance is made in respect of the expenditure, there shall be written off as at the time of the sale the amount by which the residue of the expenditure before the sale exceeds the net proceeds of the sale.

(8) If, on the occasion of a sale, a balancing charge is made in respect of the expenditure, the residue of the expenditure shall be deemed for the purposes of this Part to be increased as at the time of the sale by the amount on which the charge is made.

(9) Where the State is at any time entitled to the relevant interest in a building or structure, the preceding provisions of this section shall have effect as if all such annual allowances, balancing allowances, depreciation allowances and balancing charges had been made as could have been made if—

- (a) a person other than the State had been entitled to the relevant interest; and
- (b) all things which, while the State is entitled to the relevant interest, have been done in relation to the building or structure by or to the State or by or to any person using the building or structure under the authority of the State, had been done by or to that other person, for the purposes of and in the course of a trade carried on by him;
- (c) any sale or other disposition by or on behalf of the State of the relevant interest in the building or structure had been made in connection with the termination of that trade; and
- (d) the basis periods of that other person in respect of that trade had, in the case of each year of income, ended immediately before the beginning of the year of income.

Buildings and structures bought unused.

7. (1) Where expenditure is incurred on the construction of a building or structure and, before that building or structure is used, the relevant interest therein is sold—

- (a) the expenditure actually incurred on the construction thereof shall be left out of account for the purposes of the preceding provisions of this Part; but
- (b) the person who buys that interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, expenditure on the construction thereof equal to the said expenditure or to the net price paid by him for the said interest, whichever is the less:

Provided that, where the relevant interest in the building or structure is sold more than once before the building or structure is used, paragraph (b) shall have effect only in relation to the last of those sales.

(2) Where the expenditure incurred on the construction of a building or structure was incurred by a person carrying on a trade which consists, as to the whole or any part thereof, in the construction of buildings or structures with a view to their sale and, before the building or structure is used, he sells the relevant interest therein in the course of that trade or, as the case may be, of that part of that trade, subsection (1)(b) shall have effect subject to the following modifications:

- (a) if that sale is the only sale of the relevant interest before the building or structure is used, subsection (1)(b) shall have effect as if the words “the said expenditure or to” and the words “whichever is the less” were omitted; and
- (b) in any other case, subsection (1)(b) shall have effect as if the reference to the expenditure actually incurred on the construction of the building or structure were a reference to the price paid on the said sale.

8. (1) Subject to this section, no allowance shall be made under section 11(1)(a) of the Income Tax Act for the year of income in which the appointed day falls or any subsequent year of income. Cessation of depreciation allowances. Ch. 75:01.

(2) Notwithstanding anything in subsection (1) if an allowance falls to be made under section 11(1)(a) of the Income Tax Act in respect of any premises in the case of any trade for the last year of income before that in which the appointed day falls, an allowance shall, by virtue of this subsection, be made under and subject to the said section 11(1)(a) in respect of those premises for the year of income in which the appointed day falls and each of the next four years of income in the case of every trade carried on thereon. Ch. 75:01.

Provided that if, at any time in the year of income in which the appointed day falls or any of the next four years of income, any

person to whom an allowance would otherwise fall to be made under the said section for that year of income in respect of the premises, by notice in writing to the Board, elects that the said section 11(1)(a) shall no longer apply to the premises—

- (a) no allowance shall be made under the said section 11 (1)(a) for that or any subsequent year of income in the case of that person's trade; and
- (b) no allowance shall be made under the said section 11(1)(a) for any year of income in the case of any trade carried on on those premises after that person's trade has ceased to be carried on thereon.

(3) Where by virtue of subsection (2) an allowance falls to be made under the said section 11(1)(a) for the year of income in which the appointed day falls or any subsequent year of income in the case of any trade, the other provisions of this Part shall have effect in relation to the premises in question as if the appointed day were postponed until the first day of the first year of income for which no allowance falls to be made under that section in the case of that or any other trade.

Definition of industrial building or structure. [2 of 2002].

9. (1) Subject to this section, in this Part the expression "industrial building or structure" means a building or structure in use—

- (a) for the purposes of a manufacturing trade; and
- (b) for the purposes of any of the aforementioned trades and consisting in the storage of goods or materials which, having been manufactured or produced or subjected, in the course of that trade, to any process, have not yet been delivered to any purchaser,

and in particular, the expression includes any building or structure provided by the person carrying on such a trade for the welfare of workers employed in that trade and in use for that purpose.

(2) Subsection (1) shall apply in relation to a part of a trade as it applies in relation to a trade except that where part only

of a trade complies with the conditions set out in the said provisions, a building or structure shall not, by virtue of this subsection, be an industrial building or structure unless it is in use for the purpose of that part of that trade.

(3) Notwithstanding subsection (1) or subsection (2), but subject to subsection (4), the expression “industrial building or structure” does not include any building or structure in use as, or as part of, a dwelling house, retail shop, showroom, hotel or office or for any purpose ancillary to the purposes of a dwelling house, retail shop, showroom, hotel or office except that this subsection shall not apply to, or to part of, a building or structure which was constructed for occupation by, or for the welfare of, persons employed at or in connection with the working of a mine, oil well or other source of mineral deposits, save asphalt if the building or structure is likely to have little or no value to the person carrying on the trade when the mine, oil well, or other source is no longer worked.

(4) Where part of the whole of a building or structure is, and part thereof is not, an industrial building or structure, and the capital expenditure which has been incurred on the construction of the second mentioned part is not more than one-tenth of the total capital expenditure which has been incurred on the construction of the whole building or structure, the whole building or structure and every part thereof shall be treated as an industrial building or structure.

(5) In this section the expression “retail shop” includes any premises of a similar character where retail trade or business (including repair work) is carried on.

10. Where a building or structure which is not an industrial building or structure as defined in section 9 is occupied by the person carrying on a trade and used as a sports pavilion for the welfare of all or any of the workers employed in that trade, this Part shall apply in relation to that building or structure as if it were an industrial building or structure. Sports pavilions.

Meaning of
“the relevant
interest”.

11. (1) Subject to this section, in this Part the expression “the relevant interest” means, in relation to any expenditure incurred on the construction of a building or structure, the interest in that building or structure to which the person who incurred the expenditure was entitled when he incurred it.

(2) Where, when he incurs expenditure on the construction of a building or structure, a person is entitled to two or more interests in the building or structure, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Part.

(3) An interest shall not cease to be the relevant interest for the purposes of this Part by reason of the creation of any lease or other interest to which that interest is subject, and where the relevant interest is leasehold interest and is extinguished by reason of the surrender thereof, or on the person entitled thereto acquiring the interest which is reversionary thereon, the interest into which that leasehold interest merges shall thereupon become the relevant interest.

(4) Where the relevant interest is a leasehold interest which came to an end before the appointed day and subsection (3) does not apply, the interest which is immediately reversionary thereon shall be deemed, for the purposes of this Part in so far as they relate to annual allowances, balancing allowances and balancing charges, to have thereupon become the relevant interest.

Temporary
disuse of
industrial
buildings or
structures.

12. For the purposes of this Part, a building or structure shall not be deemed to cease altogether to be used by reason that it falls temporarily out of use on or after the appointed day, and where, immediately before any period of temporary disuse beginning on or after that day, a building or structure is an industrial building or structure, it shall be deemed to continue to be an industrial building or structure during the period of temporary disuse.

Requisitioned
land, holding
over of leased
land, and other
special cases.

13. (1) The provisions of this Part shall have effect in relation to any period of requisition of any land as if the State had been in possession of that land for that period by virtue of a lease,

and any reference in this Part to the surrender of a lease or the extinguishment thereof on the person entitled thereto acquiring the interest which is reversionary thereon, or to the merger of a leasehold interest shall be constructed accordingly, and any sum paid to the State in respect of any building or structure constructed on any land during any period of requisition of that land, being a sum paid, whether by virtue of any written law or otherwise, by the person who, subject to the rights of the State, is entitled to possession of the land, shall be deemed for the purposes of this Part to be a sum paid in consideration of the surrender of that lease, except that where a person carrying on a trade is authorised by the State to occupy the land or any part thereof for the whole or any part of the period of requisition, this Part shall have effect as if the State had granted a sublease to that person of that land or, as the case may be, that part thereof, for the period of requisition or, as the case may be, for that part of the period for which the said person occupies the land, and the preceding provisions of this subsection shall have effect in relation to that sublease as they have effect in relation to the lease therein mentioned, subject, however, to the modification that for the reference to any sum paid to the State there shall be substituted a reference to any sum paid to the said person.

In this subsection, the expression “period of requisition” means a period in respect of which compensation is or, but for any agreement to the contrary, would be payable under regulation 4(1)(a) of the Compensation (Defence) Regulations 1940, or under the corresponding provisions of any written law which may replace the said Regulations, by reference to the rent which might reasonably be expected to be payable under a lease granted immediately before the beginning of that period.

(2) Where, with the consent of the lessor, a lessee of any building or structure remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Part to continue so long as he remains in possession as aforesaid.

(3) Where, on the termination of a lease, a new lease is granted to the lessee in pursuance of an option available to him under the terms of the first lease, this Part shall have effect as if the second lease were a continuation of the first lease.

(4) Where, on the termination of a lease, the lessor pays any sum to the lessee in respect of a building or structure comprised in the lease, this Part shall have effect as if the lease had come to an end by reason of the surrender thereof in consideration of the payment.

(5) Where, on the termination of a lease, another lease is granted to a different lessee and, in connection with the transaction, that lessee pays a sum to the person who was the lessee under the first lease, this Part shall have effect as if both leases were the same lease and there had been an assignment thereof by the lessee under the first lease to the lessee under the second lease in consideration of the payment.

Exclusion of
double
allowances, etc.

14. (1) No allowance shall be made under, or by virtue of any of the provisions of this Part in respect of, or of premises including, or of expenditure on, a building or structure if, for the same or any previous or subsequent year of income, an allowance is or can be made under any of the provisions of Part II or Part III in respect of, or of expenditure on, that building or structure.

(2) Without prejudice to subsection (1), any reference in this Part to the incurring of expenditure on the construction of a building or structure does not include expenditure on the provision of machinery or plant or on any asset which has been treated for any year of income as machinery or plant.

Interpretation
of Part I.

15. (1) References in this Part to expenditure incurred on the construction of a building or structure do not include—

- (a) any expenditure incurred on the acquisition of, or rights in or over, any land; or
- (b) any expenditure incurred on preparing, cutting, tunnelling or levelling any land,

except that paragraph (b) shall not apply to expenditure on work done on the land to be covered by a building or structure for the purposes of preparing the land to receive the foundations of the building or structure being work which may be expected to be valueless when the building or structure is demolished and not being work which consists of cutting or tunnelling.

(2) A person who has incurred expenditure on the construction of a building or structure shall be deemed, for the purposes of any provision of this Part referring to his interest therein at the time when the expenditure was incurred, to have had the same interest therein as he would have had if the construction thereof had been completed at that time.

(3) Without prejudice to any of the other provisions of this Act relating to the apportionment of sale, insurance, salvage or compensation moneys, the sum paid on the sale of the relevant interest in a building or structure, or any other sale, insurance, salvage or compensation moneys payable in respect of any building or structure, shall, for the purposes of this Part, be deemed to be reduced by an amount equal to so much thereof as, on a just apportionment, is attributable to assets representing expenditure other than expenditure in respect of which an allowance can be made under this Part.

15A. In this Part—

“estimated economic life” means the estimated useful life of the property for the purpose for which it is intended, regardless of the term of lease;

“executory costs” includes insurance, maintenance and taxes paid in connection with the leased property;

“fair value” means the price for which the leased property could be sold between related parties in an arm’s length transaction;

“purchased option” means a lessee’s option to purchase the leased property at a sufficiently low price that makes the exercise of the option relatively certain.

Interpretation.
[39 of 2000].

L.R.O. 1/2009

*PART II

MACHINERY AND PLANT

Initial
allowances.
[2/1963
5 of 1964
29 of 1966
11 of 1984
2 of 2002
30 of 2007].

16. (1) Subject to subsection (1A) where, on or after the appointed day, a person carrying on a trade incurs capital expenditure on the provision of machinery or plant for the purposes of that trade, there shall be made to him, for the year of assessment in the basis period for which the expenditure is incurred, an allowance (in this Part referred to as "an initial allowance") equal to seventy-five per cent of the expenditure incurred in the provision of machinery and plant for the purposes of that trade.

Ch. 85:01.

(1A) In the case of persons enjoying concessions under the Fiscal Incentives Act and persons engaged in the production of sugar, petroleum or petro-chemicals, the rate of the initial allowance shall be limited to one-fifth of the expenditure incurred.

Ch. 33 No. 3.
(1950 Ed.).

(2) Notwithstanding subsection (1), where the initial allowance is made in respect of capital expenditure incurred during the tax holiday period by a person who on or before 4th January, 1963 has been declared to be a pioneer manufacturer under the Aid to Pioneer Industries Ordinance, such allowance shall be equal to two-fifths of the expenditure.

Ch. 75:01.

(3) Where, on or after 6th April, 1944 but before the appointed day, a person carrying on a trade incurs any capital expenditure on the provision of machinery or plant for the purposes of the trade, he shall be treated for the purposes of subsection (1) as having incurred, on the appointed day, capital expenditure on the provision of that machinery or plant for those purposes equal to the amount of that expenditure less any deduction under section 11 of the Income Tax Act for any year of assessment before that in which the appointed day falls, except that this subsection shall not apply to any expenditure on the provision of machinery or plant if, on the appointed day, the machinery or plant is no longer owned by the person who incurred the expenditure or is out of use as being worn out or obsolete or otherwise useless or no longer required.

(4) Any expenditure incurred on or after the said 6th April, 1944 for the purposes of a trade by a person about to carry it on shall be treated for the purposes of the preceding

*See section 73 concerning written-down value of assets.

provisions of this section as if it had been incurred by that person on the first day on which he does carry it on.

16A. Where on or after January 1, 1992, a person carrying on production business incurs expenditure on the provision of machinery or plant for the purposes of the trade, there shall be made to him in the financial year in which the expenditure was incurred, an initial allowance and a first year allowance of twenty per cent each, of the expenditure incurred.

Initial and first year allowances. [17 of 1992].

16B. *(Deleted by Act No. 21 of 2005).*

17. (1) For the purposes of section 11 of the Income Tax Act (which provides, in ascertaining the chargeable income of any person in a trade for the deduction of a reasonable amount for the exhaustion by wear and tear of any machinery arising out of its use in the trade) the machinery or plant in use at the end of the basis period shall, in the case of the year of assessment in which the appointed day falls or any subsequent year of assessment be taken to be the machinery or plant used for the purposes of the trade during the year.

Allowance for wear and tear. Amendment of section 11 of Income Tax Act. Ch. 75:01.

(2) In the case of machinery or plant provided on or after the appointed day—

- (a) in considering what deduction is to be allowed under section 11 of the Income Tax Act, there shall be left out of account a proportion of the machinery or plant equal to the proportion of the expenditure on the provision thereof which is or is to be met directly or indirectly by the State or any government or public or local authority, whether in Trinidad and Tobago or elsewhere, or by any person other than the person providing the machinery or plant; and
- (b) the deduction allowed under the said section 11 for any year of income shall not exceed what, apart from any deduction which falls to be made under the said section for that year would be the amount of the capital expenditure on the provision of the machinery or plant still unallowed as at the beginning of the year.

Ch. 75:01.

Annual allowance. [21 of 2005]. Ch. 75:01.

17A. (1) For the purposes of the said section 11 of the Income Tax Act, where on or after January 1, 2004, a person carrying on a production business incurs expenditure on the provision of machinery or plant for the purposes of the trade, there shall be made to him from the financial year in which the expenditure was incurred an allowance of twenty per cent calculated on a straight line basis, on the residue of such expenditure after deduction of the initial allowance referred to in section 16(2).

(2) Notwithstanding subsection (1), the provisions of the law existing immediately prior to the commencement of the Finance Act, 2005 shall apply in respect of any unrelieved balance of expenditure for the period ending December 31, 2003.

Previous allowance to be taken into account. [17 of 1992]. Ch. 75:01.

17B. Where, in considering whether any, and, if so, what, deduction is to be allowed in respect of any machinery or plant under section 11 of the Income Tax Act, account falls to be taken of deductions previously allowed under the said section 11, any initial allowance and first year allowance granted in respect of the machinery or plant shall be taken into account as if it were a deduction allowed under the said section 11.

Balancing allowances and balancing charges. Ch. 75:01.

18. (1) Subject to this section, where, on or after the appointed day, any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or a deduction under section 11 of the Income Tax Act has been made or allowed for any year of assessment to a person carrying on a trade, that is to say, either—

- (a) the machinery or plant is sold, whether while still in use or not;
- (b) the machinery or plant is destroyed; or
- (c) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required,

and the event in question occurs before the trade is permanently discontinued, an allowance or charge (in this Part referred to as “a balancing allowance” or “a balancing charge”) shall, in the circumstances mentioned in this section, be made to or, as the case may be, on that person for the year of income in his basis

period for which the event occurs; and in ascertaining the chargeable income of such person a balancing allowance shall be deemed to be a deduction included in section 10 or 11, and a balancing charge shall be deemed to be a gain or profit within the meaning of section 5(1)(c) and (d) of the Income Tax Act.

Ch. 75:01.

(2) Where there are no sale, insurance, salvage or compensation moneys or where the amount of the capital expenditure of the person in question on the provision of the plant or machinery still unallowed as at the time of the event exceeds those moneys, a balancing allowance shall be made, and the amount thereof shall be the amount of the expenditure still unallowed as aforesaid or, as the case may be, of the excess thereof over the said moneys.

(3) If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure still unallowed as at the time of the event, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the excess or, where the said amount still unallowable is nil, to the said moneys.

(4) Notwithstanding anything in the preceding provisions of this section, in no case shall the amount on which a balancing charge is made on a person exceed the aggregate of the following amounts, that is to say:

- (a) the amount of the initial allowance, if any, made to him in respect of the expenditure in question;
- (b) the amount of any deductions in respect of machinery or plant in question under the said section 10 or 11;
- (c) the amount of any scientific research allowances made to him in respect of the expenditure; and
- (d) the amount of any balancing allowance previously made to him in respect of the expenditure.

19. (1) Where machinery or plant in the case of which any of the events mentioned in section 18(1) has occurred is replaced by the owner thereof and a balancing charge falls to be made on

Replacement of
machinery or
plant.

L.R.O. 1/2009

him by reason of that event or, but for the provisions of this subsection, would have fallen to be made on him by reason thereof, then if by notice in writing to the Board he so elects, the following provisions shall have effect, that is to say:

- (a) if the amount on which the charge would have been made is greater than the capital expenditure on providing the new machinery or plant—
 - (i) the charge shall be made only on an amount equal to the difference; and
 - (ii) no initial allowance, no balancing allowance and no deduction under the said section 10 or 11 shall be made or allowed in respect of the new machinery or plant or the expenditure on the provision thereof; and
 - (iii) in considering whether any and, if so, what balancing charge falls to be made in respect of the expenditure on the new machinery or plant, there shall be deemed to have been made in respect of that expenditure an initial allowance equal to the full amount of that expenditure;
- (b) if the capital expenditure on providing the new machinery or plant is equal to or greater than the amount on which the charge would have been made—
 - (i) the charge shall not be made;
 - (ii) the amount of any initial allowance in respect of the said expenditure shall be calculated as if the expenditure had been reduced by the amount on which the charge would have been made;
 - (iii) in considering what deduction is to be allowed under the said section 10 or 11 in respect of the new machinery or plant, there shall be left out of account a proportion of

the machinery or plant equal to the proportion which the amount on which the charge would have been made bears to the amount of the said expenditure; and

- (iv) in considering whether any and, if so, what balancing allowance or balancing charge falls to be made in respect of the new machinery or plant, the initial allowance granted in respect thereof shall be deemed to have been increased by an amount equal to the amount on which the charge would have been made.

(2) Section 11(1)(a) of the Income Tax Act (which provides for a deduction for obsolescence in ascertaining the chargeable income)—

Ch. 75:01.

- (a) shall not have effect in the case of any replacement of plant or machinery provided on or after the appointed day;
- (b) shall, in the case of the replacement on or after the appointed day of machinery or plant provided before the appointed day, have effect only if the person carrying on the trade by notice in writing to the Board elects that it shall have effect in relation thereto,

and where any such election is made as is mentioned in paragraph (b), no balancing allowance shall be made in respect of the sale, destruction or putting out of use of the machinery or plant which is replaced.

20. References in this Part to the amount still unallowed of any expenditure as at any time shall be construed as references to the amount of that expenditure less—

Meaning of
“expenditure
unallowed”.

- (a) the initial allowance, if any, made in respect thereof to the person who incurred it;
- (b) any deductions allowed to that person in respect of the machinery or plant under section 10 or 11 of the Income Tax Act being deductions allowed

Ch. 75:01.

in ascertaining chargeable income for a year of income before that in which the appointed day falls or for a year of income the basis period for which ended before the time in question;

- (c) any scientific research allowance made to him in respect of that machinery or plant; and
- (d) any balancing allowance made to him in respect of the expenditure.

Expenditure on alterations to buildings in connection with installation of machinery or plant.
Ch. 75:01.

21. (1) Where, on or after the appointed day, a person carrying on a trade incurs capital expenditure on alterations to an existing building incidental to the installation of machinery or plant for the purposes of the trade, the provisions of this Part and of section 11 of the Income Tax Act shall have effect as if the said expenditure were expenditure on the provision of that machinery or plant and as if the works representing that expenditure formed part of that machinery or plant.

(2) Subsection (1) shall apply in relation to expenditure incurred by a person on or after 6th April, 1944 but before the appointed day, as if it had been incurred by him on the appointed day.

PART IIA

OIL REFINERIES—MACHINERY AND PLANT

Allowances on oil refinery, machinery and plant.
[6 of 1981].

21A. (1) Where a person engaged in refining business incurs expenditure on or after 1st January, 1980 in the acquisition of new machinery and plant for use in that business, he shall be granted allowances with Part II.

(2) The allowances granted under subsection (1) are to be calculated by reference to an amount equal to 120 per cent of the expenditure.

Ch. 75:04.

(3) In this section “refining business” has the same meaning as in the Petroleum Taxes Act.

Meaning of expenditure.
[6 of 1981].

21B. For the purposes of this Part any reference to expenditure in Part II shall be taken to mean the amount determined under section 21A(2).

***PART III**

MINES, OIL WELLS, ETC.

22. (1) In this Part, the expression “expenditure to which this Part applies” means capital expenditure incurred by any person in connection with the working of a mine, oil well or other source of mineral deposit of a wasting nature—

Expenditure to which Part III applies.

- (a) on searching for or on discovering and testing deposits, or winning access thereto; or
- (b) on the construction of any works which are likely to be of little or no value when the source is no longer worked except that the said expression does not include—
 - (i) any expenditure on the acquisition of the site of the source, or of the site of any such works as aforesaid, or of rights in or over any such site;
 - (ii) any expenditure on the acquisition of, or of rights in or over, the deposits;
 - (iii) any expenditure on machinery or plant, or on any asset which has been treated for any year of income as machinery or plant;
 - (iv) any expenditure on works constructed wholly or mainly for subjecting the raw product of the source to any process, except a process designed for preparing the raw product for use as such;
 - (v) any expenditure on buildings or structures provided for occupation by or for the welfare of workers;
 - (vi) any expenditure on a building where the whole of the building was constructed for use as an office;
 - (vii) any expenditure on so much of a building or structure as was constructed for use as

*See Note on submarine production allowance on page 2.

an office, unless the capital expenditure on the construction of the part of the building or structure constructed for use as an office was not more than one-tenth of the capital expenditure incurred on the construction of the whole building or structure.

(2) Any reference in this Part to assets representing any expenditure includes, in relation to expenditure on searching for, discovering and testing deposits, any results obtained from any search, exploration or inquiry upon which the expenditure was incurred.

Initial
allowance.
[48 of 1955
46 of 1969].

23. (1) Where, on or after the appointed day, a person carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature incurs for the purposes of the trade any expenditure to which this Part applies on the construction of works likely to have little or no value to him when the source is no longer worked, in ascertaining the chargeable income of such person, there shall be allowed to him for the year of income in the basis period for which the expenditure is incurred a deduction (in this Part referred to as “an initial allowance”) equal to one-tenth of that expenditure.

(2) Subsection (1) shall apply in relation to expenditure incurred by a person on or after 6th April, 1944 but before the appointed day, as if it had been incurred by him on the appointed day:

Provided that—

- (a) in the case of expenditure on a building or structure, the amount by reference to which the initial allowance is to be calculated shall, instead of being the amount of the expenditure, be the amount of the expenditure less any relevant depreciation allowances made in respect of the building or structure for any year of income, before that in which the appointed day falls; and
- (b) no initial allowance shall be made in respect of any expenditure if the asset representing the

expenditure has been sold between the date when the expenditure was incurred and the appointed day.

(3) Notwithstanding anything to the contrary contained in this section, where a submarine well allowance or submarine production allowance under Part IV is claimed by any company in respect of any submarine well for any basis period, then, for the purposes of calculating any initial allowance to be granted to such company for the same basis period, there shall be left out of account, in computing the expenditure to which this Part applies, any expenditure incurred in connection with the same well.

23A. *(Deleted by Act No. 21 of 2005).*

24. (1) Where a person carrying on a trade which consists of or includes the working of any mine, oil well or other source of mineral deposits of a wasting nature has, at any time after the beginning of the appointed day and before the end of his basis period for any year of income, incurred for the purposes of that trade expenditure to which this Part applies, in ascertaining the chargeable income of such person there shall be allowed to him a deduction (in this Part referred to as “an annual allowance”) in accordance with section 15(1A) of the Petroleum Taxes Act in respect of the whole of the expenditure to which this Part applies which he has incurred for the purposes of the trade and in connection with that source in the period which begins with the said day and ends with the end of the said basis period.

Annual allowances.
[48 of 1955
46 of 1969
21 of 2005
2 of 2006].

Ch. 75:04.

(2) The amount of the said allowance shall be the amount which results from applying twenty per cent to the residue of expenditure.

(3) Where the source ceases to be worked, the person carrying on the trade may elect that the annual allowances, if any, for the year of income in which that event occurs and each of the five previous years of income shall be computed as if the reference in subsection (2) to the total potential future output of the source estimated as at the end of the basis period were a

Ch. 75:01.

Second
Schedule.

reference to the actual output of the source between the end of the basis period and the happening of the said event, and the said allowances shall be computed accordingly, and, notwithstanding anything in the Income Tax Act limiting the time for the making of assessments or the allowance of claims for repayment, all such repayments and additional assessments shall be made as are necessary to enable effect to be given to this subsection.

(4) (a) Where, on the appointed day, a person is carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature, the preceding provisions of this section shall have effect as if he had on that day incurred, for the purposes of the trade and in connection with the source of expenditure to which this Part applies, expenditure of the amount specified in the Second Schedule.

(b) If he considers that that amount is inadequate having regard to the dates on which expenditure to which this Part applies was actually incurred in connection with the source before the appointed day, he may apply to the President for relief, and the President may authorise such increase in that amount as may be appropriate.

(5) References in this section to the residue of any expenditure, in relation to the annual allowance to be made for any year of income, are references to the amount thereof which remains after deducting therefrom—

- (a) any initial allowances made in respect of that expenditure or any part thereof for that or any previous year of income;
- (b) any annual allowances made in respect of that expenditure or any part thereof for any previous year of income; and
- (c) subject to section 25, if, before the end of the basis period for the year of income for which the allowance is to be made, any asset representing the expenditure is sold or demolished or destroyed, the sale insurance, salvage or compensation moneys;

(d) in the case of a company which carries on or has carried on in Trinidad and Tobago a trade consisting of or including the production of oil or gas from any submarine well or wells within the meaning of Part IV, any submarine well allowance or submarine production allowance which has been made to the company under Part IV for any previous year of income in respect of any submarine well on which that expenditure or any part thereof has been incurred.

(6) Notwithstanding anything to the contrary contained in this section, for the purpose of calculating any annual allowance for any basis period to be granted under subsection (1) to any company which has claimed a submarine well allowance or submarine production allowance under Part IV in respect of any submarine well for the same basis period there shall be left out of account, in computing the expenditure to which this Part applies, any expenditure incurred in connection with the submarine well during the same basis period.

(7) Without prejudice to section 68 of the Income Tax Act every company as defined in Part IV and every other company to which the said Part IV applies, which carries on in Trinidad and Tobago trade which consists of or includes the production of oil or gas from any submarine well or wells, shall keep separate and distinct accounts and records in respect of each such submarine well in such form as shall be approved by the Board showing clearly in respect of each material basis period within the meaning of the said Part IV the expenditure to which this Part applies which has been incurred in respect of such submarine well. All such accounts and records kept by a company shall be produced by the company for inspection by the Board or any person authorised by it or any person authorised by him in that behalf at all reasonable times at such place as the Board may direct. Ch. 75:01.

Sale of source
or part of source
as going
concern.

25. (1) The provisions of this section shall have effect where—

- (a) a person who is, on or after the appointed day, carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature sells assets representing expenditure to which this Part applies; and
- (b) the buyer of those assets buys them for the purposes of a trade carried on or to be carried on by him, being a trade which consists of or includes the working of the whole or any part of the source in connection with which the assets were provided.

(2) If the net proceeds of the sale are less than the residue of the expenditure on the assets immediately before the sale, an allowance (in this Part referred to as “a balancing allowance”) shall be made to the seller, for the year of income in the basis period for which the sale took place, equal to the difference; and in ascertaining the chargeable income of such person a balancing allowance shall be deemed to be a deduction included in section 10 or 11 of the Income Tax Act.

Ch. 75:01.

(3) If the net proceeds of the sale exceed the residue of the expenditure on the assets immediately before the sale, a charge (in this Part referred to as “a balancing charge”) shall be made on the seller, for the year of income in the basis period for which the sale took place, on the amount of the excess; and in ascertaining the chargeable income of such person a balancing charge shall be deemed to be a profit or gain within the meaning of section 5(1)(c) and (d) of the Income Tax Act.

(4) If the source in connection with which the expenditure was incurred has been worked before the appointed day, subsections (2) and (3) shall have effect subject to the modification that the amount of the balancing allowance or the amount on which the balancing charge is made shall be reduced

by applying thereto the fraction of which the numerator represents the total output from the source in the period which begins with the appointed day and ends with the time of the sale, and the denominator represents the total output from the source up to the time of the sale:

Provided that if the person to whom a balancing allowance is to be made in respect of any expenditure considers that the amount by which the allowance is to be reduced under this subsection is excessive having regard to the dates on which the expenditure was actually incurred, he may apply to the President for relief, and the President may authorise such smaller reduction as may be appropriate.

(5) In no case shall the amount on which a balancing charge is made upon a person in respect of any assets exceed the difference between—

- (a) the expenditure to which this Part applies which he incurred upon the assets; and
- (b) the residue of that expenditure immediately before the sale.

(6) Whether a balancing allowance or balancing charge is made upon the seller or not, the deduction to be made in the case of the seller in respect of the assets under section 24(5)(c) shall, instead of being the sale, insurance, salvage or compensation moneys, be the residue of the expenditure attributable to the assets immediately before the sale.

(7) The buyer shall, for the purposes of the provisions of this Part relating to annual allowances, balancing allowances and balancing charges, be deemed to have incurred on the assets at the time of the sale expenditure to which this Part applies equal to whichever is the less of the following amounts, that is to say:

- (a) so much of the price as is attributable to the assets; and
- (b) the residue of the expenditure on the assets immediately after the sale.

Application to expenditure incurred by person not engaged in the trade of mining, etc.

26. (1) Any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated for the purposes of this Part as if it had been incurred by that person on the first day on which he does carry it on except that nothing in this subsection shall authorise the making of an initial allowance in respect of any expenditure incurred before 6th April, 1944.

(2) Where a person incurs expenditure to which this Part applies on searching for, discovering and testing the mineral deposits of any mine, oil well or other source of a wasting nature and winning access to those deposits, and, without having carried on any trade which consists of or includes the working of the source, he sells any assets representing that expenditure, then, if the person who acquires the assets carries on such a trade as aforesaid in connection with the source, that person shall, for the purposes of this Part, be deemed to have incurred for the purposes of the trade and in connection with the source, expenditure to which this Part applies equal to the amount of the expenditure to which this Act applies which is represented by the assets or the price paid by him for the assets, whichever is the smaller.

Land production allowance in certain cases. [46 of 1969].

Ch. 75:02.

27. (1) Subject to this section, in ascertaining the chargeable profits for a year of income of a company that carries on approved petroleum production during that year, there shall be allowed to such company, in addition to any other allowance and deductions provided for in the Corporation Tax Act, a deduction (in this section called a “land production allowance” or “allowance”) of an amount equal to the royalty paid on petroleum won from approved petroleum production.

(2) Subject to subsections (3) and (4), the land production allowance shall be allowed from the profits of the accounting period of the company ending in the year of income in which approved petroleum production commences and, subject as aforesaid, shall continue to be made for the three years of income next following, but no longer.

(3) For the purposes of subsection (2), the period during which the land production allowance is to be allowed shall be reckoned—

- (a) in the case of petroleum production referred to in subsection (5)(a), from the completion of the discovery well;
- (b) in any other case, from the commencement of approved petroleum production whereby petroleum is obtained in the circumstances mentioned in subsection (5)(b).

(4) Where the land production allowance is such that it cannot wholly be allowed against the company profits derived from its petroleum operations (this expression here and in subsection (5) having the same meaning as in the Petroleum Act) the amount of such allowance shall, to the extent to which it is not allowed against such profits for the same year, be carried forward and shall be allowed in ascertaining the chargeable profits of such company from its petroleum operations in the next year of income and so on for succeeding years of income. Ch. 62:01.

(5) In this section “approved petroleum production” means petroleum production from petroleum operations carried out on land and approved by the Minister, whereby petroleum is obtained—

- (a) from any geological formation within a licensed area where no petroleum has been produced;
- (b) in proven areas, from any older and deeper geological formation than those from which petroleum has been produced within the licensed area.

(6) In this section the expression “licensed area” has the same meaning as in the Petroleum Act. Ch. 62:01.

28. The President may make Regulations for carrying this Part into effect, and those Regulations may in particular— Regulations.

- (a) lay down rules for determining the extent of the mineral deposits which are to be taken, for all or any of the purposes of this Part, as constituting

a source and the amount of the output from a source in any year or over any period, and in estimating total potential future output for any of those purposes;

- (b) lay down rules for determining the residue of the expenditure attributable to an asset immediately before, or immediately after, the sale thereof;
- (c) in relation to cases in which, by virtue of the preceding provisions of this Part, a person is deemed to have incurred expenditure on the appointed day, lay down rules for determining what assets are to be treated as representing that expenditure and how much of that expenditure is to be treated as incurred on any particular asset;
- (d) lay down rules for determining, for the purposes of any application under this Part, whether and by how much—
 - (i) the amount of the expenditure, which under this Part a person is to be treated as having incurred on the appointed day is inadequate; or
 - (ii) the amount by which any allowance is to be reduced under this Part is excessive.

*PART IV

SUBMARINE OIL WELLS

29. In this Part—

“crude oil” or “oil” means petroleum in the liquid state;

“drainage area”, in relating to a well, means a circular area of one hundred and fifty feet radius having the centre of the borehole of the well at the surface as its centre except when the well is inclined from the vertical in which case the centre of the circular area shall be at a point at the surface approved by any Petroleum Engineer;

Ch. 62:01.

“licensed area” has the same meaning as in the Petroleum Act;

Definitions.
[48 of 1955
46 of 1969
42 of 1970].

*See Note on submarine production allowance on page 2.

“material basis period” means a basis period occurring between 1st January, 1955 and 31st December, 1981;

“submarine area” means land underlying the sea waters surrounding the coast of Trinidad and Tobago below the high water mark of the sea at ordinary spring tides including the seabed and subsoil situated beneath the territorial waters and the continental shelf of Trinidad and Tobago (“continental shelf” here having the same meaning as in the Continental Shelf Act); Ch. 1:52.

“submarine well” means a well drilled under and in accordance with a licence granted under the Petroleum Act and Regulations made thereunder being a well the surface outlet and the centre of the drainage area of which are in a submarine area and the centre of the drainage area of which is not less than 2,000 feet from high water mark; and includes any other well the surface outlet of which is in a submarine area and which in exceptional circumstances and for special reasons the President has directed the Board to treat as a submarine well; Ch. 62:01.

“well” includes every borehole drilled or sunk, or in the course of being drilled or sunk, for the purpose of producing petroleum oil or natural gas.

30. (1) Subject to this Part, in ascertaining the chargeable income for any material basis period of any company which carries on in Trinidad and Tobago a trade which consists of or includes the production of oil or gas from any submarine well, there shall be allowed a deduction (in this Part and in Part III referred to as a submarine production allowance) of such percentage of the gross value of the production from such well as is hereinafter specified namely—

Submarine
Production
Allowance.
[48 of 1955
46 of 1969
*5 of 1970
42 of 1970].

(a) for the purposes of every basis period for the years of assessment 1956 to 1960, ten per cent;

* Section 3(2) of this Act (i.e. 5 of 1970) provided that where in any enactment or instrument a reference to the year of income 1982 in connection with this section (i.e. section 30) occurs the reference shall be read as a reference to the year of income 1981.

- (b) for the purposes of every basis period for the years of assessment 1961 to 1962, and years of income 1963 to 1965, fifteen per cent;
- (c) for the purposes of every basis period for the years of income 1966 to 1981, ten per cent:

Provided that such deduction shall not, for the purposes of an income for any basis period exceed forty per cent of the chargeable income of such company for that basis period, computed without the deduction of any allowances under Part III or this Part, in so far as that income is derived from the production from such well:

Provided further that a deduction under this section shall not be granted to any company unless the company has applied for the same in accordance with the requirements of section 31.

(2) Nothing in subsection (1) shall apply in relation to the production of oil or gas from any submarine well, situated in a submarine area, the licence to explore for and win oil or gas in which is granted after 31st December, 1960.

(3) In ascertaining the chargeable profits of a company that carries on a trade which consists of or includes the exploration for or the production of oil or gas, and to which a licence is granted after 31st December, 1960 but before 1st January, 1969, there shall be allowed a deduction (in this Part and in Part III called a "submarine production allowance" or an "allowance") of an amount equal to the royalty paid on that portion [specified in subsection (4)] of the total production of oil won from a submarine well.

(4) Subject to subsections (5) and (6), the submarine production allowance shall be allowed from the profits of the accounting period of such a company as is referred to in subsection (3), that ends in the year of income in respect of which the production of oil in a licensed area first commences and, subject as aforesaid, shall continue to be made for the six years of income next following, but no longer, as follows:

- (a) for the first year of income, an amount equal to the royalty paid on production up to 2,000 barrels per day from each well producing during the accounting period for that year;

- (b) for the second year of income, an amount equal to the royalty paid on production up to 2,000 barrels per day from each well producing during the accounting period for that year;
 - (c) for the third year of income, an amount equal to the royalty paid on production up to 1,500 barrels per day from each well producing during the accounting period for that year;
 - (d) for the fourth year of income, an amount equal to the royalty paid on production up to 1,500 barrels per day from each well producing during the accounting period for that year;
 - (e) for the fifth year of income, an amount equal to the royalty paid on production up to 1,000 barrels per day from each well producing during the accounting period for that year;
 - (f) for the sixth year of income, an amount equal to the royalty paid on production up to 500 barrels per day from each well producing during the accounting period for that year;
 - (g) for the seventh year of income, an amount (if any), equal to the royalty, paid on production up to 500 barrels per day from each well producing during the accounting period for that year.
- (5) For the purposes of subsection (4)—
- (a) where commercial production of oil in a licensed area first commences on a date other than the beginning of the accounting period, the submarine production allowance shall be computed—
 - (i) in the third year of income, on the portion of the total production of oil won from a submarine well specified in subsection (4)(a), to the extent to which the period during which the allowance was allowed in the first year of income fell short of twelve months; and

- (ii) in the fifth and sixth years of income, on the portion of the total production of oil won from a submarine well specified in subsection (4)(c) and (e), respectively, to the extent to which the allowance was not so computed in the third and fifth years of income, respectively;
- (b) the production on which the amount equal to the royalty thereon is to be allowed in the seventh year of income in accordance with subsection (4)(g) shall be production for such part only of the accounting period for that year as would not, when aggregated with the periods during which the allowance was allowed under subsection (4)(a) to (f) exceed seventy-two months;
- (c) the seventy-two month period during which the allowance is to be allowed in respect of each licensed area shall be reckoned from the date of the commencement of commercial production in such area, as determined in accordance with the terms of the licence.

Ch. 62:01.

(6) Where the submarine production allowance is such that it cannot wholly be allowed against the company's profits derived from its petroleum operations (this expression here having the same meaning as in the Petroleum Act) the amount of such allowance shall, to the extent to which it is not allowed against such profits for the same year, be carried forward and shall be allowed in ascertaining the chargeable profits of the company from its petroleum operations in the next year of income and so on for succeeding years of income.

87/1945.

Ch. 62:01.

(7) In subsections (2) and (3), "licence" means a licence granted under the Submarine (Oil Mining) Regulations repealed by the Petroleum Act and in the case of subsection (2) includes any licence issued under the Petroleum Act other than a licence under section 38 thereof in respect of a licence granted before 1st January, 1961 and in the case of subsection (3) includes a licence or licences issued under the Petroleum Act, in respect of

any part of the area comprised in any such licence as was granted under the Submarine (Oil Mining) Regulations or any licence issued pursuant to section 38 of the Petroleum Act in substitution therefor.

(8) Notwithstanding anything to the contrary contained in this section, a submarine production allowance shall not be claimable by any company in respect of any submarine well for any basis period for which such company has claimed any allowance under Part III in respect of the expenditure upon such submarine well.

(9) The gross value of the production of oil and gas in respect of any submarine well for the purposes of this section shall be taken to be the value thereof calculated for the purpose of the payment of royalties thereon under and in accordance with the Petroleum Regulations 1970.

Ch. 62:01.
Sub. Leg.

(10) In order to remove doubts, it is hereby declared that where gas produced from any submarine well is not sold it shall be treated as of no value for the purposes of determining the gross value of the production in respect of such well under subsection (9).

31. An application for a submarine production allowance in respect of any material basis period shall be in writing addressed to the Board and shall be accompanied by such documents and particulars, if any, as may be prescribed.

Application for
Submarine
Production
Allowance.
[48 of 1955].

32. (1) Without prejudice to section 116 of the Income Tax Act, every company carrying on in Trinidad and Tobago a trade which consists of or includes the production of oil or gas from any submarine well or wells shall keep separate and distinct accounts and records in respect of each such submarine well in such form as shall be approved by the Board of Inland Revenue, showing clearly in respect of each material basis period—

Accounts and
records.
[48 of 1955
46 of 1969].
Ch. 75:01

- (a) the quantity of oil produced from such submarine well;
- (b) the quantity of gas produced from such submarine well which is sold and the price or prices for which it is sold;
- (c) such other matters as may be prescribed.

L.R.O. 1/2009

(2) The Board may issue directions in writing to any such company as is mentioned in subsection (1) for the purpose of ensuring that accounts and records are kept by such company in such a manner as to enable the Board accurately and readily to determine the submarine production allowance, if any, which may be granted to such company under this Part in respect of any submarine well for any material basis period.

(3) All accounts and records kept by a company in pursuance of subsection (1) shall be produced by the company for inspection by the Board or any person authorised by it in writing in that behalf at all reasonable times at such place as the Board may direct.

(4) Notwithstanding anything to the contrary contained in this Part, no claim for a submarine production allowance for any basis period shall be entertained from any company which has failed to comply, in respect of such basis period—

- (a) with any requirement of subsection (1) or subsection (3); or
- (b) with any direction issued by the Board under subsection (2).

Regulations.
[48 of 1955
46 of 1969].

33. The President is hereby authorised to make Regulations for carrying this Part into effect and in particular the Regulations may prescribe anything which may be prescribed under the said Part.

PART V

PRODUCTION BUSINESS ON LAND

Definitions.
[46 of 1976
17 of 1992].

34. In this Part—
“disposal value” means, in relation to any property—

- (a) which has been disposed of by way of a sale, the net proceeds of the sale, or which has been disposed of by way of an exchange or transfer, the written down value at the time of the exchange or transfer;
- (b) which has been scrapped, the scrap value thereof, if any;

- (c) which has been destroyed, any amount received for the remains thereof together with any amount accrued as compensation or indemnity for such destruction;

“financial year” means the financial year of any person for the purposes of the Petroleum Taxes Act;

Ch.75:04.

“new capital expenditure” means expenditure incurred in relation to the production business on land of any person by way of—

- (a) the acquisition of assets of a tangible nature;
(b) the cost of exploration operations;
(c) intangible drilling and development costs within the meaning of section 14(6) of the Petroleum Taxes Act;

“petroleum operations” has the same meaning as in the Petroleum Taxes Act;

“taxable profits” means taxable profits of any person ascertained under the Petroleum Taxes Act.

35. (Repealed by Act No. 6 of 1981).

36. (1) Where a person incurs new capital expenditure on or after January 1, 1975 but not later than December 31, 1991 in respect of his production business on land, there shall be made to him an allowance in this Part referred to as an investment allowance in accordance with this section, and the provisions of Parts I, II and III shall not apply in respect of the expenditure.

Investment allowances. [46 of 1976 17 of 1992].

(2) The amount by reference to which the investment allowances are to be calculated shall be an amount equal to one hundred and fifty per cent of the new capital expenditure.

(3) The investment allowances shall be granted for six years commencing from the financial year in which the new capital expenditure is incurred and computed as follows:

- (a) for the first financial year, an initial investment allowance and an annual investment allowance

of twenty per cent each of the amount determined in accordance with subsection (2);

- (b) for subsequent financial years, an annual investment allowance of twenty per cent of the residue of such amount after deduction of the investment allowances under paragraph (a).

Eligibility for investment allowance under section 36 of the Act. [6 of 1981].

36A. A person who by reason only of this Act becomes eligible for the grant of investment allowance under section 36 of the Act is so eligible only in respect of capital expenditure incurred on or after 1st January, 1980.

Balancing charge or allowance. [46 of 1976].

37. (1) Subject to subsection (3), where any property, in respect of which any investment allowances have been granted to any person under section 36(3), is disposed of, scrapped or destroyed, and the disposal value thereof exceeds the difference between—

- (a) the amount determined in accordance with section 36(2); and
(b) any investment allowances granted under section 36(3),

then a balancing charge, equal to the amount of the excess, shall be included in the taxable profits of that person for the financial year in which the property was disposed of, scrapped or destroyed.

(2) Subject to subsection (3), where any property, in respect of which any investment allowances have been granted to any person under section 36(3), is disposed of, scrapped or destroyed and the amount determined in accordance with section 36(2) exceeds the aggregate of—

- (a) any investment allowances granted under section 36(3); and
(b) the disposal value thereof,

then a balancing allowance, equal to the amount of the excess shall be allowed as a deduction in ascertaining the taxable profits of that person for the financial year in which the property was disposed of, scrapped or destroyed.

(3) Where any property, in respect of which any investment allowances have been granted to any person under section 36(3), is disposed of within three years after the end of the financial year in which the expenditure was incurred, a balancing charge or balancing allowance, as the case may be, shall be computed under this section by substituting a reference to the new capital expenditure actually incurred for any reference to the amount determined in accordance with section 36(2).

(4) For the purposes of subsection (3), property shall be deemed to have been disposed of where it is sold or exchanged or transferred from the production business on land of a person to any other business activity of that person.

38. (Repealed by Act No. 6 of 1981).

***PART VI**

PATENTS

39. (1) Where, on or after the appointed day, a person incurs capital expenditure on the purchase of patent rights, in ascertaining the chargeable income of such person there shall, subject to and in accordance with the subsequent provisions of this Part, be allowed to him for each of the relevant years of income, as hereinafter defined, a deduction (in this Part referred to as “an annual allowance”) equal to the appropriate fraction, as hereinafter defined, of the amount of that expenditure:

Annual allowances for capital expenditure on purchase of patent rights.

Provided that no annual allowance shall be made to a person in respect of any expenditure unless—

- (a) the allowance falls to be made to him in ascertaining the chargeable profits or gains of his trade; or
- (b) any income receivable by him in respect of the rights would be liable to income tax.

*See section 73 concerning written-down value of assets.

(2) The relevant years of income are, in the case of any person, the fourteen years of income beginning with the year of income in his basis period for which the expenditure was incurred:

Provided that—

- (a) where the rights are purchased for a specified period, the preceding provisions of this subsection shall have effect with the substitution of the reference to fourteen years of a reference to fourteen years or the number of years comprised within that period, whichever is the less; and
- (b) where the rights purchased begin one complete year or more after the commencement of the patent and paragraph (a) of this proviso does not apply, the said provisions shall have effect with the substitution for the reference to fourteen years of a reference to fourteen years less the number of complete years which, when the rights begin, have elapsed since the commencement of the patent or, if fourteen complete years have elapsed as aforesaid, of a reference to one year; and
- (c) any expenditure incurred on or after the appointed day for the purposes of a trade by a person about to carry it on shall be treated for the purposes of this subsection as if it had been incurred by that person on the first day on which he does carry it on, unless, before the said first day, he has sold all the rights on the purchase of which the expenditure was incurred.

(3) The appropriate fraction is the fraction the numerator of which is one and the denominator of which is the number of the relevant years of income.

Effect of lapse
of patent rights,
sales, etc.

40. (1) Where, on or after the appointed day, a person incurs capital expenditure on the purchase of patent rights and, before the end of the relevant years of income, any of the following events occurs, that is to say:

- (a) the rights come to an end without being subsequently revived;

- (b) he sells all those rights or so much thereof as he still owns; or
- (c) he sells part of those rights and the net proceeds of the sale (so far as they consist of capital sums) are not less than the amount of the capital expenditure remaining unallowed,

no annual allowance shall be made to that person for the year of income in his basis period for which the event takes place or any subsequent year of income.

(2) Where, on or after the appointed day, a person incurs capital expenditure on the purchase of patent rights and, before the end of the relevant years of income, either of the following events occurs, that is to say:

- (a) the rights come to an end without being subsequently revived; or
- (b) he sells all those rights, or so much thereof as he still owns, and the net proceeds of the sale (so far as they consist of capital sums) are less than the amount of the capital expenditure remaining unallowed,

there shall, subject to and in accordance with the subsequent provisions of this Part, be made to him for the year of income in his basis period for which the event takes place an allowance (in this Part referred to as “a balancing allowance”) equal, if the event is the rights coming to an end, to the amount of the capital expenditure remaining unallowed, and, if the event is a sale, to the amount of the capital expenditure remaining unallowed less the net proceeds of the sale.

(3) Where a person who, on or after the appointed day, has incurred capital expenditure on the purchase of patent rights, sells all or any part of those rights and the net proceeds of the sale (so far as they consist of capital sums) exceed the amount of the capital expenditure remaining unallowed, if any, there shall, subject to and in accordance with the subsequent provisions of this Part, be made on him for the year of income in his basis period for which the sale

takes place a charge (in this Part referred to as “a balancing charge”) on an amount equal to the excess or, where the amount of the capital expenditure remaining unallowed is nil, to the said net proceeds.

(4) Where a person who, on or after the appointed day, has incurred capital expenditure on the purchase of patent rights sells a part of those rights and subsection (3) does not apply, the amount of any annual allowance made in respect of that expenditure for the year of income in his basis period for which the sale takes place or any subsequent year of income shall be the amount arrived at by—

- (a) subtracting the net proceeds of the sale (so far as they consist of capital sums) from the amount of the expenditure remaining unallowed at the time of the sale; and
- (b) dividing the result by the number of the relevant years of income which remained at the beginning of the year of income in his basis period for which the sale takes place,

and so on for any subsequent sales.

(5) References in the preceding provisions of this section to the amount of any capital expenditure remaining unallowed shall, in relation to any event, be construed as references to the amount of that expenditure less any annual allowances made in respect thereof for years of income before the year of income in the basis period for which that event occurs, and less also the net proceeds of any previous sale by the person who incurred the expenditure of any part of the rights acquired by the expenditure, so far as those proceeds consist of capital sums.

(6) Notwithstanding anything in the preceding provisions of this section, no balancing allowance shall be made in respect of any expenditure unless an annual allowance has been, or, but for the happening of the event giving rise to the balancing allowance; could have been, made in respect of that expenditure, and the total amount on which a balancing charge is made in respect of any expenditure shall not exceed the total annual allowances actually

made in respect of that expenditure, less, if a balancing charge has previously been made in respect of that expenditure, the amount on which that charge was made.

41. (1) Where, on or after the appointed day, a person resident in Trinidad and Tobago sells any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, he shall, subject to this Part, be charged to tax under the Income Tax Act, for the year of income of the basis period in which the sum is received by him and each of the five succeeding years of income on an amount equal to one-sixth of that sum:

Charges on capital sums received for sale of patent rights.

Ch. 75:01.

Provided that if that person, by notice in writing served on the Board not later than twelve months after the end of the year of income in which the said amount was received elects that the whole of the said sum shall be charged to tax for the said year of income, it shall be charged to tax accordingly.

(2) Where, on or after the appointed day a person not resident in Trinidad and Tobago sells any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, and the patent is a Trinidad and Tobago patent, then subject to the provisions of this Part—

- (a) he shall be chargeable to tax in respect of that sum under the Income Tax Act as if the proceeds of sale were income derived from Trinidad and Tobago; and
- (b) all the other provisions of the Income Tax Act shall have effect accordingly:

Provided that if, not later than twelve months after the end of the year of income in which the sum is paid, the person to whom it is paid, by notice in writing to the Board, elects that the said sum shall be treated for the purpose of income tax for that year and each of the five succeeding years as if one-sixth thereof, and no more, were included in his income chargeable to tax for all those years respectively, it shall be so treated, and all such repayments and assessments of tax for each of those years shall be made as are necessary to give effect to the election.

(3) Where the patent rights sold by a person or the rights out of which the patent right sold by a person were granted were acquired by him by purchase and the price paid by him consisted wholly or partly of a capital sum, subsections (1) and (2) shall apply as if any capital sum received by him when he sells the rights were reduced by the amount of that sum:

Provided that where between the said purchase and the said sale he has sold part of the patent rights acquired by him and the net proceeds of that sale consist wholly or partly of a capital sum, the amount of the reduction falling to be made under this subsection in respect of the subsequent sale shall be itself reduced by the amount of that sum.

Third Schedule.

(4) The provisions of the Third Schedule (which relate to deaths, windings up and partnership changes) shall have effect in relation to the charges provided for by this section, and, in the said Schedule, the expression “the principal section” means this section.

Patent rights sold before appointed day.

42. Nothing in the preceding provisions of this Part shall apply in relation to any patent rights if those rights, or any rights out of which they were granted have been the subject of a sale before the appointed day and the proceeds of the sale consisted wholly or partly of a capital sum.

Relief for expenses.

43. (1) In computing the profits or gains of any trade, there shall be allowed to be deducted as expenses any fees paid or expenses incurred on or after the appointed day in obtaining, for the purposes of the trade, the grant of a patent or an extension of the term of a patent.

(2) Where—

(a) on or after the appointed day, a person, otherwise than for the purposes of a trade carried on by him, pays any fees or incurs any expenses in connection with the grant or maintenance of a patent or the obtaining of an extension of a term of a patent; and

- (b) those fees or expenses would, if they had been paid or incurred for the purposes of a trade, have been allowable as a deduction in estimating the profits or gains thereof,

there shall be made to him, for the year of income in which these expenses were paid or incurred, an allowance equal to the amount thereof.

(3) Where a patent is granted in respect of any invention an allowance equal to so much of the net amount of any expenses incurred, on or after the appointed day, by an individual who, whether alone or in conjunction with any other person, actually devised the invention as is properly ascribable to the devising thereof (not being expenses in respect of which, or of assets representing which, an allowance falls to be made under any other provision of the Income Tax Act) shall be made to that individual for the year of income in which the expenses were incurred.

Ch. 75:01.

(4) Subsection (3) shall apply in relation to expenses incurred before the appointed day as if those expenses were incurred on the appointed day, subject to the modification that, if the patent in question was granted one complete year or more before the appointed day, the amount to be allowed shall be reduced by applying thereto the fraction the numerator of which is fourteen less the number of complete years comprised in the period beginning with the commencement of the patent and ending immediately before the appointed day, and the denominator of which is fourteen.

44. (1) Where a royalty or other sum is paid in respect of the user of a patent, and that user extended over a period of six complete years or more, the person receiving the payment may require that the income tax payable by him by reason of the receipt of that sum shall be reduced so as not to exceed the total amount of income tax which would have been payable by him if that royalty or sum had been paid in six equal instalments at yearly intervals, the last of which was paid on the date on which the payment was in fact made.

Spreading of income payments over several years.

L.R.O. 1/2009

(2) Subsection (1) shall apply in relation to a royalty or other sum where the period of the user is two complete years or more but less than six complete years as it applies to the royalties and sums mentioned in that subsection, but with the substitution for the reference to six equal instalments of a reference to so many equal instalments as there are complete years comprised in that period.

When a person is to be treated as a trader.

45. (1) An allowance or charge under any of the provisions of this Part shall be made to or on a person in ascertaining the chargeable income resultant on the exercise of his trade if—

- (a) he is carrying on a trade the profits or gains of which are, or, if there were any, would be, chargeable to income tax under the Income Tax Act for the year of income for which the allowance or charge is made; and
- (b) at any time in his basis period for that year of income, the patent rights in question, or other rights out of which they were granted, were or were to be used for the purposes of that trade:

Ch. 75:01.

Provided that nothing in this subsection shall affect any of the preceding provisions of this Part allowing a deduction as expenses in computing the profits or gains of a trade or requiring a charge to be made under the Income Tax Act.

(2) Save as aforesaid, in ascertaining the chargeable income of such person an allowance shall be deemed to be a deduction included in section 10 or 11 of the Income Tax Act and a charge shall be deemed to be a gain or profit within the meaning of section 5(1)(c) and (d) of the Income Tax Act.

Interpretation.

46. (1) In this Part, the following expressions have the meanings hereby respectively assigned to them, that is to say:

“the commencement of the patent” means, in relation to a patent, the date from which the patent rights become effective;

“income from patents” means—

- (a) any royalty or other sum paid in respect of the user of a patent;

(b) any amount on which tax is payable for any year of income by virtue of any of the provisions of this Part;

“patent rights” means the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent;

“Trinidad and Tobago patent” means a patent granted under the laws of Trinidad and Tobago.

(2) In this Part, any reference to the sale of part of patent rights includes a reference to the grant of a licence in respect of the patent in question, and any reference to the purchase of patent rights includes a reference to the acquisition of a licence in respect of a patent:

Provided that if a licence granted by a person entitled to any patent rights is a licence to exercise those rights to the exclusion of the grantor and all other persons for the whole of the remainder of the term for which the rights subsist, the grantor shall be treated for the purposes of this Part as thereby selling the whole of the rights.

(3) Where under section 12 of the Patents and Designs Act or any corresponding provisions of the law of any country outside Trinidad and Tobago, an invention which is the subject of a patent is made, used, or exercised or vended by or for the service of the State or the government of the country concerned, the provisions of this Part shall have effect as if the making, user, exercise or vending of the invention had taken place in pursuance of a licence, and any sums paid in respect thereof shall be treated accordingly. Ch. 82:83.

(4) Any reference in this Part to the number of years comprised in a period shall be construed as a reference to the number of consecutive periods of twelve months, beginning with the day with which the period begins, which are comprised in the period, any odd period of less than twelve months remaining at the end of the period being treated as a complete twelve months:

Provided that nothing in this subsection shall be construed as affecting any reference in this Part to the number of complete years comprised in any period or which have elapsed since any date.

*PART VII

SCIENTIFIC RESEARCH

Allowances for expenditure not of capital nature incurred after "the appointed day".

47. Notwithstanding anything in the Income Tax Act, where, after the appointed day, a person carrying on a trade—

- (a) incurs expenditure not of a capital nature on scientific research related to that trade and directly undertaken by him or on his behalf;
- (b) pays any sum to any scientific research association for the time being approved for the purposes of this section by the President, being an association which has as its object the undertaking of scientific research related to the class of trade to which the trade he is carrying on belongs; or
- (c) pays any sum to be used for such scientific research as is mentioned in paragraph (b) to any such university, college, research institute or other similar institution as is for the time being approved for the purposes of this section by the President,

the expenditure incurred or sum paid, as the case may be, may be deducted as an expense in computing the profits or gains of the trade for the purposes of income tax.

Allowances of expenditure not of capital nature incurred between 6th April, 1944 and "the appointed day".

48. For the purposes of section 47, any expenditure incurred and any sum paid on or after 6th April, 1944 and on or before the appointed day, being expenditure or a sum which, apart from that section, would not have been deductible as an expense in computing the profits or gains of the trade for the purposes of income tax, shall be treated as if that expenditure was incurred or that sum was paid immediately after the appointed day.

*See section 73 concerning written-down value of assets.

49. Subject to section 51, where after the appointed day a person—

- (a) while carrying on a trade, incurs expenditure of a capital nature on scientific research related to that trade and directly undertaken by him or on his behalf; or
- (b) incurs expenditure of a capital nature on scientific research directly undertaken by him or on his behalf and thereafter sets up and commences a trade connected with that research,

Allowances of expenditure of a capital nature incurred after “the appointed day”.
[5 of 1964].

in ascertaining the chargeable income of such person there shall be allowed to him a deduction equal to one-fifth of the expenditure for each of the five years of income commencing with the year of income of the basis period in which the expenditure was incurred.

However, in relation to expenditure incurred on or after 6th April, 1949, a deduction equal to three-fifths of the expenditure shall be allowed for the year of income in the basis period for which the expenditure was incurred and a deduction equal to one-tenth of the expenditure shall be allowed for each of the succeeding four years of income.

In this section the expression “basis period” means in relation to a year of income, the period the profits or gains of which are under the Income Tax Act to be taken to be the profits or gains of the year preceding that year of income.

Ch. 75:01.

50. Where on or after 1st January, 1937 and on or before the appointed day a person incurs expenditure of a capital nature on scientific research, he shall, unless the expenditure is represented by an asset which ceases on or before the appointed day to be used by him for scientific research related to the trade carried on by him, be treated for the purposes of sections 49 and 51 as having incurred that expenditure immediately after the appointed day:

Allowances for expenditure of a capital nature incurred between 1st January, 1937 and “the appointed day”.

Provided that where that expenditure is represented by an asset, the expenditure shall be treated as reduced by the aggregate amount of all depreciation allowances made to him in respect of the asset for any year of income before that in which the appointed day falls.

L.R.O. 1/2009

Special provisions with regard to assets representing capital expenditure.

51. (1) Where an asset representing scientific research expenditure of a capital nature incurred by the person carrying on a trade ceases to be used by that person for scientific research related to that trade—

- (a) no allowance shall be made under section 49 for any year of income after that in which the cessation takes place; and
- (b) if the amounts, if any, allowed under section 49 in respect of the expenditure added to the value of the asset immediately before the cessation, are less than the said expenditure there shall be allowed in charging the profits or gains of the trade for the year of income in which the cessation takes place an additional deduction equal to the difference; and
- (c) if in any subsequent year of income a claim is, or would but for this subsection be, admissible by the person carrying on the trade to a deduction in respect of the asset for depreciation and the amount of that deduction is dependent upon the actual cost to that person of the asset, the cost of the asset, or the net cost of the asset, then the actual cost, or net cost, as the case may be, shall, for the purpose of ascertaining whether any and if so what deduction is admissible, be treated as reduced by the amount of any deductions allowed in respect of the asset under this or section 49.

(2) Where an asset representing scientific research expenditure of a capital nature in respect of which an allowance or allowances has or have been made under this or section 49 in charging the profits or gains of a trade ceases to be used by the person carrying on the trade for scientific research related to that trade and is then or thereafter sold by him without having been used in the meantime for other purposes, then—

- (a) if an additional allowance, or a greater additional allowance, would have been made under subsection (1) for the year of income in which

the cessation occurred if the proceeds of sale of the asset had been taken to be the value of the asset, an amount equal to the additional allowance which would have been made or, as the case may be, to the difference between the additional allowance which would have been made and the additional allowance which was made for that year shall be allowed in ascertaining the chargeable income in respect of the trade for the year of income in which the sale occurs or, if the sale occurs on or after the date on which the trade is permanently discontinued, for the last year of income in which the trade is carried on before the discontinuance;

- (b) in any other case, if the proceeds of sale plus the total amount of the allowances made under this and section 49 in respect of the expenditure exceed the amount of the expenditure, the excess or the amount of the allowances so made, whichever is the less, shall be treated as a trading receipt of the trade accruing at the time of the sale, or, if the sale occurs on or after the date on which the trade is permanently discontinued, accruing immediately before the discontinuance.

(3) Where an asset is destroyed, it shall for the purposes of subsection (2) be treated as if it had been sold immediately before the destruction thereof and any insurance moneys or other compensation of any description received by the person carrying on the trade in respect of the destruction and any moneys received by him for the remains of the asset shall be treated as if they were proceeds of that sale.

(4) Where a deduction is allowed for any year under this or section 49 in respect of expenditure represented wholly or partly by any assets, no deduction shall be allowed under any provision of the Income Tax Act other than this Part in respect of depreciation Ch. 75:01.

of those assets for any year of income during any part of which they are used by the person carrying on the trade for scientific research related to the trade.

Periods covered by section.

52. (1) Any reference in section 51 to expenditure of a capital nature incurred by the person carrying on a trade shall not include a reference to any expenditure except—

- (a) expenditure incurred after the appointed day; and
- (b) so much of any expenditure incurred on or after 1st January, 1937 and on or before the appointed day as, under section 50 is to be treated as having been incurred immediately after the appointed day.

(2) Section 51(4) shall not prevent the allowance of any deduction for the purpose of income tax for any year of income before that in which the appointed day falls.

Carry forward of trade losses arising out of allowances. Ch. 75:01.

53. Section 16 of the Income Tax Act shall apply in relation to deductions allowable under sections 49 and 51.

Scientific research allowances exclude initial and annual allowances under Part I and Part II.

54. No initial allowance under Part I and Part II shall be made in respect of expenditure on the provision of an asset if that expenditure is expenditure in respect of which a deduction may be allowed under section 49, and section 51(4) shall apply in relation to annual allowances under Part I as it applies in relation to wear and tear allowances.

Interpretation and supplemental provisions.

55. (1) In this Part, the following expressions have the meanings hereby respectively assigned to them, that is to say:

“asset” includes part of an asset;

“scientific research” means any activities in the fields of natural or applied science for the extension of knowledge;

“scientific research expenditure” means expenditure incurred on scientific research;

references to expenditure incurred on scientific research do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research, but save as

aforesaid, include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research;

references to scientific research related to a trade or a class of trades include—

- (a) any scientific research which may lead to or facilitate an extension of that trade or, as the case may be, of trades of that class;
- (b) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that trade or, as the case may be, trades of that class.

(2) The same expenditure shall not be taken into account for any of the purposes of this Part in relation to more than one trade.

***PART VIII**

HOUSING OF WORKERS EMPLOYED IN ANY OF THE TRADES MENTIONED IN THE FIRST SCHEDULE OR IN HUSBANDRY

56. Subject to the provisions of and save as otherwise provided in this Part, where on or after 1st January, 1948, any person engaged in any of the trades mentioned in the First Schedule or, being the owner of an estate consisting of or including agricultural land, incurs capital expenditure on the construction on land, whereof such person is the owner, of a building to be occupied as a residence by workers employed by any such person in any such trade or in husbandry, in ascertaining the chargeable income of such person in the year of income immediately thereafter, and in each of the succeeding nine years of income, there shall be allowed as a deduction a sum equal to one-tenth of such capital expenditure; but no deduction shall be allowed for repair of any building so erected, and section 11 (1)(d) of the Income Tax Act shall not be applicable thereto during the period within which the aforementioned deductions fall to be made.

Annual allowances for capital expenditure or workers' dwellings. First Schedule.

Ch. 75:01.

*See section 73 concerning written-down value of assets.

LAWS OF TRINIDAD AND TOBAGO

MINISTRY OF LEGAL AFFAIRS

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64

Chap. 85:04

Income Tax (In Aid of Industry)

Limitation of annual allowances.

57. Such capital expenditure in relation to any building to be so occupied as a residence shall be limited to a sum not exceeding four thousand dollars; and in determining such expenditure there shall not be included the value of the building site and the curtilage attaching thereto, nor any expenses incurred preparatory to the erection of any such residence; but the expenditure in erecting out-offices to be used in connection therewith and in the installation of fixtures shall be taken into account in determining such expenditure.

Mode of dealing with annual allowances after transfer of land, etc.

58. Where a person would, if he continued to be the owner or, as the case may be, the lessee of any land upon which such building is erected, in ascertaining his chargeable income, be entitled under this Part to a deduction in respect of expenditure as in the manner provided, and the whole of his interest in the land in question, or in any part of the land in question, is transferred whether by operation of law or otherwise to some other person, then—

- (a) the amount of the allowance (if any) for the year of income in which the transfer takes place shall be apportioned between the person from whom the interest is transferred and the person to whom the interest is transferred; and
- (b) the person to whom the interest is transferred shall to the exclusion of the person from whom the interest is transferred be entitled, where the interest transferred is in the whole of the land to the whole of the allowance for any subsequent year of income, and where the interest transferred is in part only of the land, to so much of the allowance as is properly referable to that part of the land.

For the purposes of this section, where an interest in land is leasehold and the lease comes to an end, that interest shall be deemed to have been transferred—

- (i) if an incoming tenant makes any payment to the outgoing tenant in respect of assets representing the expenditure in question, to the incoming tenant; and
- (ii) in any other case, to the owner of the interest in immediate reversion of the tenancy.

59. In the event of any building intended on its completion to be so occupied by such workers not being so occupied within six months of its completion, or, being so occupied, ceasing to be occupied for a like period, then the owner shall not in the year of income following such event be entitled to the deduction hereinbefore provided, and the full period of ten years during which such deductions may be thereby extended.

Cesser of annual allowances during temporary non-use of building.

60. Any claim by any person for a deduction under this Part shall be included in the return of income referred to in section 63.

Claims for deductions under Part VIII.

61. In this Part—

Interpretation.

“agricultural land” means land occupied wholly or mainly for the purposes of field and/or animal husbandry and includes a dairy;

“owner” means a person having the freehold interest in the building site and the curtilage thereto attaching, or the lessee of the said site and curtilage, provided that at the time of the occupation of the building as a residence for the first time by such workers as aforesaid the unexpired portion of the lease shall be not less than ten years.

62. None of the provisions of this Part shall apply to any manufacturing trade other than the mining, working and processing of asphalt; and none of the provisions of Part IX shall apply to this Part.

Application of Part VIII. [2 of 2002].

PART IX

MISCELLANEOUS AND GENERAL

63. (1) Any claim by a person for an allowance falling to be made to him under any of the provisions of this Act in ascertaining his chargeable income shall be included in the Return of Income required to be delivered under the Income Tax Act, and the allowance shall be deemed to be a deduction included in section 10 or 11 of the Income Tax Act.

Manner of charging tax and granting allowances in cases of traders. [5 of 1964].

Ch. 75:01.

(2) If, in the case of a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits—

(a) a balancing allowance falls to be made under Part I for the last year of income during which the trade is carried on;

L.R.O. 1/2009

- (b) the event giving rise to the allowance is the mine, oil well or other source ceasing to be worked;
- (c) the allowance is in respect of expenditure on a building or structure which was constructed for occupation by, or for the welfare of, persons employed at or in connection with the working of the mine, oil well or other source; and
- (d) full effect cannot be given to the allowance because of an insufficiency of profits or gains for the said year of income,

the person entitled to the allowance may claim that the balance of the allowance may be given for the last preceding year of income and so on for other preceding years, so, however, that no allowance shall be given by virtue of this subsection for any year earlier than the second year before the first mentioned year of income: Provided that the amount of any such allowance to be given for preceding years of income shall not in any case exceed an amount which would reduce the tax payable to less than one-half the amount which would have been payable had the allowance not been given.

(3) Any charge falling to be made under any of the provisions of this Act on a person for any year of income shall be deemed to be a gain or profit within the meaning of section 5(1)(c) and (d) of the Income Tax Act.

Ch. 75:01.

Allowance for capital expenditure. [21 of 2005 2 of 2006].

63A. (1) A person carrying on production business is entitled to an allowance for capital expenditure under this Act only where such allowance is claimed in—

- (a) the year of income in which the expenditure was actually incurred; and
- (b) the years immediately following the year of income in which the claim referred to in paragraph (a) was made.

(1A) In computing the profits of a company other than a company carrying on production business, the allowances for capital expenditure to which that company is entitled under this Act, shall be made in—

- (a) the year of income in which the assets were first put into use by the company; and

(b) the years immediately following the year of income in which the allowance referred to in paragraph (a) was made.

(2) A claim for an allowance from capital expenditure may not be deferred except a claim for an allowance under section 24 which, in accordance with section 15(1A) of the Petroleum Taxes Act can only be claimed from the year following the year in which the expenditure was actually incurred. Ch. 75:04.

(3) Where in any year of income, a person has not claimed an allowance to which he is entitled under this Act in accordance with section 11 of the Income Tax Act, the Board shall, for the purpose of calculating the residue of expenditure on which the annual allowance will be computed for that year or any subsequent years of income, include an amount equal to the allowances to which the person was entitled for that year and any subsequent years as if the person had in fact claimed the allowance or allowances in the respective years. Ch. 75:01.

63B. (1) Where a person who has ceased to do production business in Trinidad and Tobago has incurred decommissioning or abandonment costs in a year of income and there is insufficient income in that year to set off the total costs of such decommissioning or abandonment, that person may request the Board of Inland Revenue to reopen the returns submitted by him in respect of the financial year immediately preceding the current financial year to allow so much of the unrelieved costs that may be set off against the chargeable profits of that person. To request Board of Inland Revenue to reopen returns. [21 of 2005 2 of 2006].

(2) For the purpose of this section, “financial year” has the meaning assigned to it under section 2(1) of the Petroleum Taxes Act. Ch. 75:04.

64. In this Act, the expression “basis period” means the period on the profits or gains of which income tax for any year of income falls to be finally computed under the Income Tax Act in respect of the trade in question; and for the purpose of giving effect to this Act and in particular so that the several allowances and charges on any Meaning of “basis period”. Ch. 75:01.

Ch. 75:01.

Apportionment
of consideration,
and exchanges
and surrenders
of leasehold
interests.

person engaged in any trade to which this Act applies should be given or made in conformity with the provisions of this Act, an assessment or re-assessment to tax on the chargeable income of any such person shall be made with consequential allowances, charges or reliefs on such person irrespective of the time limited for so doing in the Income Tax Act, but so that such extension shall be operative only in relation to years of income for basis periods preceding the year of income 1948.

65. (1) Any reference in this Act to the sale of any property includes a reference to the sale of that property together with any other property and where property is sold together with other property so much of the net proceeds of the sale of the whole property as, on a just apportionment, is properly attributable to the first-mentioned property shall, for the purposes of this Act be deemed to be the net proceeds of the sale of the first-mentioned property, and references to expenditure incurred on the provision or the purchase of property shall be construed accordingly.

For the purposes of this subsection, all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are or purport to be agreed for separate items of that property or that there are or purport to be separate sales of separate items of that property.

(2) Subsection (1) shall, with the necessary adaptations, apply in relation to other sale, insurance, salvage or compensation moneys as they apply in relation to the net proceeds of sales.

(3) This Act shall have effect as if any reference therein (including any reference in the preceding provisions of this section) to the sale of any property included a reference to the exchange of any property, and, in the case of a leasehold interest, also included a reference to the surrender thereof for valuable consideration, and any provisions of this Act referring to sales shall have effect accordingly with the necessary adaptations and, in particular, with the adaptations that references to the net proceeds of sale and to the price shall be taken to include references to the consideration for the exchange or surrender and references to capital sums included in the price shall be taken to include

references to so much of the consideration as would have been a capital sum if it had taken the form of a money payment.

(4) As respects the year in which the appointed day falls and any subsequent year of income, the preceding provisions of this section shall with the necessary adaptations have effect in relation to—

- (a) section 11 of the Income Tax Act (which provides for an obsolescence allowance and for a wear and tear allowance in the case of machinery and plant) as if the provisions of the said section 11 were provisions of this Act; and
- (b) section 51 of this Act (which relates to sale of assets representing expenditure on scientific research).

Ch. 75:01.

66. (1) The provisions of this section shall have effect in relation to sales of any property where either—

Special provisions as to certain sales.

- (a) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other persons have control over both of them; or
- (b) it appears with respect to the sale or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from the provisions of this section, might have been expected to accrue to the parties or any of them was the obtaining of an allowance or deduction under any of the following written laws, that is to say, any of the provisions of this Act or of section 11 of the Income Tax Act.

Ch. 75:01.

References in this subsection to a body of persons include references to a partnership.

(2) Where the property is sold at a price other than that which it would have fetched if sold in the open market then, subject to the succeeding provisions of this section, the like consequences

shall ensue for the purposes of the written laws mentioned in subsection (1) in their application to the income tax of all persons concerned, as would have ensued if the property had been sold for the price which it would have fetched if sold in the open market.

- (3) Where the sale is a sale of machinery or plant—
- (a) no initial allowance shall be made to the buyer; and
 - (b) subject to subsection (4), if the price which the property would have fetched if sold in the open market is greater than the limit of re-charge on the seller, subsection (2) shall have effect as if for the reference to the price which the property would have fetched if sold in the open market there were substituted a reference to the said limit of re-charge.

This subsection shall not apply in relation to a sale of machinery or plant which has never been used if the business or part of the business of the seller was the manufacture or supply of machinery or plant of that class and the sale was effected in the ordinary course of the seller's business.

Where the sale is one to which subsection (1)(a) applies and took place before the appointed day, and the seller acquired the machinery or plant on or after 6th April, 1944, paragraph (a) of this subsection shall not apply.

In this subsection the expression "the limit of re-charge" means, in relation to a person who sells machinery or plant—

- (i) if he provided that machinery or plant for himself before the appointed day, the actual cost to him of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on machinery or plant by way of renewal, improvement or reinstatement;

- (ii) if he provided the machinery or plant for himself on or after the appointed day, the expenditure incurred by him on the provision thereof.

(4) Where the sale is one to which subsection (1)(a) applies and subsection (1)(b) does not apply, and the parties to the sale by notice in writing to the Board so elect, the following provisions shall have effect:

- (a) subsection (2) shall have effect as if for the reference to the price which the property would have fetched if sold in the open market there were substituted a reference to that price or to the sum hereinafter mentioned, whichever is the lower;
- (b) subsection (3)(b) shall not apply; and
- (c) notwithstanding anything in the preceding provisions of this section, such balancing charge, if any, shall be made on the buyer on any event occurring after the date of the sale as would have fallen to be made on the seller if the seller had continued to own the property and had done all such things and been allowed all such allowances or deductions in connection therewith as were done by or allowed to the buyer.

The said sum is—

- (i) in the case of an industrial building or structure, the residue of the expenditure on the construction of that building or structure immediately before the sale, computed in accordance with section 6;
- (ii) in the case of machinery or plant, the amount of the expenditure on the provision thereof still unallowed immediately before the sale, computed in accordance with section 20;
- (iii) in the case of assets representing the expenditure to which Part III (Mines,

Oilwells, etc.) applies, the residue of the expenditure attributable to those assets immediately before the sale, computed in accordance with Part III; and

- (iv) in the case of patent rights, the amount of any capital expenditure on the acquisition thereof remaining unallowed, computed in accordance with section 40.

(5) As respects section 11 of the Income Tax Act this section shall have effect as respects tax for the year of income in which the appointed day falls and any subsequent year of assessment.

Trade marks and designs.

67. In computing the profits or gains of any trade, there shall be allowed to be deducted as expenses any fees paid or expenses incurred on or after the appointed day in obtaining for the purposes of a trade, the registration of a design or a trade mark or the extension of the period of copyright in a design or the renewal or registration of a trade mark.

Interpretation of certain references to expenditure, etc.

68. (1) References in this Act to capital expenditure and capital sums—

- (a) in relation to the person incurring the expenditure or paying the sums, do not include any expenditure or sum which is allowed to be deducted in computing, for the purposes of income tax, the profits or gains of a trade by him; and
- (b) in relation to the person receiving the amounts expended or the sums in question, do not include references to any amounts or sums which fall to be taken into account as receipts in computing the profits or gains of any trade, carried on by him,

and do not include, in relation to any such person as aforesaid any expenditure or sum in the case of which a deduction of tax falls or may fall to be made.

(2) Any reference in this Act to the date on which expenditure is incurred shall be construed as a reference to the date when the sums in question become payable.

69. (1) Expenditure shall not be regarded for any of the purposes of this Act as having been incurred by any person in so far as it has been or is to be met directly or indirectly by the State or by any government or public or local authority, whether in Trinidad and Tobago or elsewhere, or by any person other than the first mentioned person: Subsidies, etc.

In considering whether any and, if so, what balancing charge is to be made on a person under Part II in respect of any machinery or plant provided before the appointed day, this section shall not apply.

(2) In considering, for the purposes of subsection (1), and of any other provision of this Act referring to expenditure met or to be met directly or indirectly by the State or by any authority or person other than the person incurring the expenditure, how far any expenditure has been or is to be so met, there shall be left out of account—

- (a) any insurance moneys or other compensation moneys payable in respect of any asset which has been demolished, destroyed or put out of use; and
- (b) any expenditure met or to be met by any person other than the State or a government or public or local authority, being expenditure in respect of which, apart from the provisions of this paragraph, no allowance could be made under subsection (3).

(3) Where, on or after the appointed day, a person, for the purposes of a trade carried on or to be carried on by him or by a tenant of land in which he has an interest, contributes a capital sum to expenditure on the provision of an asset, being expenditure which, apart from subsection (1) would have been regarded as wholly incurred by another person and in respect of which, apart from the said provisions, an allowance would have been made

Fourth Schedule. under Part I, Part II or Part III then, subject to the provisions of the Fourth Schedule, such initial and annual allowance, if any, shall be made to the contributor as would have been made to him if his contribution had been expenditure on the provision, for the purposes of that trade, of a similar asset.

Computation of expenditure for purposes of sections 10 and 11 of the Income Tax Act.

70. In computing the cost to any person of maintenance, repairs, insurance and management, for the purpose of ascertaining chargeable income, there shall be left out of account any expenditure incurred by him on or after the appointed day, in so far as it has been or is to be met directly or indirectly by the State or by any government or public or local authority, or by any person other than the first-mentioned person.

Other provisions as to interpretation.

71. (1) In this Act—

“control”, in relation to a body corporate, means the power of a person to secure by means of holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership;

“lease” includes an agreement for a lease where the term to be covered by the lease had begun, and any tenancy, and “lessee”, “lessor” and “leasehold interest” shall be construed accordingly;

“mineral deposits” includes any natural deposits capable of being lifted or extracted from the earth;

“sale, insurance, salvage or compensation moneys” mean, in relation to an event which gives rise or might give rise to a balancing allowance or a balancing charge to or on any person—

(a) where the event is a sale of any property, the net proceeds to that person of the sale;

- (b) where the event is the demolition or destruction of any property, the net amount received by him for the remains of the property, together with any insurance moneys received by him in respect of the demolition or destruction and any other compensation of any description received by him in respect thereof, in so far as that compensation consists of capital sums; and
- (c) where the event is that a building or structure ceases altogether to be used or that machinery or plant is put out of use, any compensation of any description received by him in respect of that event, in so far as that compensation consists of capital sums.

(2) Any reference in this Act to any building, structure, machinery, plant, works or asset shall be construed as including a reference to a part of any building, structure, machinery, plant, works or asset except that where the reference is expressed to be to the whole of a building or structure, this subsection shall not apply.

(3) Any reference in this Act to the time of any sale shall be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.

***72.** (1) All deductions in respect of any allowances authorised to be made or allowed by this Act that would, but for the passing of the Income Tax (Amendment) Act 1963, have been allowed under the Income Tax Act in ascertaining the chargeable income of any person for what would have been the year of assessment 1963 had the said Act not been passed, shall be treated for all the purposes of this Act as having been allowed for what would have been the said year of assessment 1963; and the provisions of this Act that relate to the reduction of the amount of capital expenditure or other expenditure for the purpose of computing the annual allowances and other allowances for any year of income, shall apply accordingly.

Deductions and allowances for year of discharge of tax. [5 of 1964, 29 of 1966, 16 of 1963, Ch. 75:01.

*Deemed to have come into operation on 1st January, 1963.

(2) Subsection (1) shall be construed so as to include deductions under the Income Tax Act in respect of all allowances authorised to be made or allowed by this Act, notwithstanding any allowance—

- (a) was not claimed by the person entitled thereto;
- (b) is, by any other provision of this Act, deemed to be a deduction for the purposes of the Income Tax Act only when granted;
- (c) is, by virtue of section 2, to be made or allowed only for the year of income 1963 and subsequent years of income.

Written-down value of assets of refinery as at 31st December, 1979. [6 of 1981].

73. In determining the written-down value of the assets of a refining business as at 31st December, 1979 for the purpose of granting allowances under the Act for the year 1980, the balance of capital expenditure unallowed as at 31st December, 1973 together with capital expenditure incurred from 1st January, 1974 to 31st December, 1979—

- (a) on the constitution of industrial buildings and structures referred to in Part I;
- (b) on the provision of machinery and plant referred to in Part II;
- (c) in the purchase of patent rights referred to in Part VI;
- (d) in scientific research referred to in Part VII; or
- (e) in the constitution of buildings to be occupied as residences by workers employed in that refining business as referred to in Part VIII,

shall be reduced by an amount equal to allowances notionally calculated for each year in accordance with Act.

FIRST SCHEDULE

(Repealed by Act No. 2 of 2002)

SECOND SCHEDULE

Section 24.

**APPLICATION OF PART III TO EXPENDITURE BEFORE
THE APPOINTED DAY**

PART I

PRELIMINARY

1. The amount of expenditure which a person who, on the appointed day, is carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature is to be treated for certain purposes of Part III of this Act as having incurred on that day shall, except in the cases dealt with in Part III of this Schedule, be the amount specified in Part II thereof.

2. In the subsequent provisions of this Schedule, the said expenditure is referred to as “the appointed day expenditure” and the said person is referred to as “the trader”.

PART II

**PROVISIONS APPLICABLE WHERE PART III OF THIS
SCHEDULE DOES NOT APPLY**

3. Except in cases to which Part III of this Schedule applies, the amount of the appointed day expenditure shall be ascertained by—

- (a) ascertaining the total expenditure to which Part III of this Act applies which was incurred by the trader before the appointed day for the purposes of the trade and in connection with the source; and

L.R.O. 1/2006

- (b) subtracting therefrom the amount specified in paragraph 4; and
- (c) applying the fraction specified in paragraph 5 to the result.

4. The said amounts are—

- (a) where any asset representing any part of the expenditure incurred by the trader as aforesaid before the appointed day has, before the appointed day, been sold by him, the amount of the expenditure so incurred which is attributable to that asset; and
- (b) where the assets representing the expenditure so incurred, not being assets sold by the trader before the appointed day, consist of or include buildings or structures, any depreciation allowances made in respect of the buildings or structures for any year of income before that in which the appointed day falls.

5. The said fraction is the fraction of which—

- (a) the numerator represents the total potential future output from the source, estimated as at the appointed day; and
- (b) the denominator represents the sum of the total output from the source before the appointed day and the said total potential future output.

PART III

PROVISIONS APPLICABLE IN CERTAIN CASES WHERE ASSETS HAVE BEEN PURCHASED FROM A PREDECESSOR

6. (1) Where, at or about the time when the trader began to work the source, he acquired from a predecessor in the working of the source, assets representing expenditure to which Part III of this Act applies incurred by that or any other predecessor in the working of the source, the amount of the appointed day expenditure shall be whichever of the amounts respectively specified in paragraphs 7 and 8 is the smaller.

(2) In this and the subsequent provisions of this Part, the expression “predecessor in the working of the source” means a person who has, before the appointed day, carried on a trade which consisted of or included the working of the source but has, before that day, ceased to work it.

(3) In the subsequent provisions of this Part, the assets mentioned in subparagraph (1) are referred to as “the acquired assets”.

7. (1) The first of the amounts mentioned in paragraph 6 is the amount which results from—

- (a) ascertaining the total expenditure to which Part III of this Act applies which was incurred either on the acquired assets by any predecessor in the working of the source for the purposes of his trade and in connection with the source or by the trader for the purposes of his trade in connection with the source;
- (b) subtracting therefrom the sums specified in subparagraph (2); and
- (c) applying to the result the fraction specified in subparagraph (3).

(2) The said sums are—

- (a) where any of the acquired assets have before the appointed day been sold by the trader, so much of the said expenditure incurred by any predecessor in the working of the source as is attributable to that asset;
- (b) where any of the acquired assets or any asset representing any such expenditure as aforesaid of the trader appointed day has, before the appointed day, been sold by him, the amount of that expenditure which is attributable to that asset; and
- (c) where any of the acquired assets or any asset representing any such expenditure as aforesaid of the trader consists of buildings or structures (not being buildings or structures sold by the trader before the appointed day), any relevant depreciation allowances made in respect of the buildings or structures for any year of income before that in which the appointed day falls.

(3) The said fraction is the fraction of which—

- (a) the numerator represents the total potential future output from the source, estimated as on the appointed day; and
- (b) the denominator represents the sum of the total output from the source before the appointed day and the said total potential figure output.

8. (1) The second of the said amounts is the amount which results from—

- (a) adding the price paid by the trader for the acquired assets to all the expenditure to which Part III of this Act applies which he incurred for the purposes of the trade and in connection with the source between the time when he acquired those assets and the appointed day;
- (b) subtracting from the total the sums specified in subparagraph (2); and
- (c) applying to the result the fraction specified in subparagraph (3).

- (2) The said sums are—
- (a) where any asset representing the expenditure mentioned in subparagraph (1)(a) has, before the appointed day, been sold by the trader, the amount of that expenditure which is attributable to that asset;
 - (b) where any of the acquired assets has, before the appointed day, been sold by the trader, the price paid by the trader for the asset; and
 - (c) where the assets representing that expenditure, not being assets sold by the trader before the appointed day, consist of or include buildings or structures, any depreciation allowances made to him in respect of the buildings or structures for any year of income before that in which the appointed day falls.
- (3) The said fraction is the fraction of which—
- (a) the numerator represents the total potential future output of the source, estimated as at the appointed day; and
 - (b) the denominator represents the sum of the total output from the source between the date of the acquisition of the acquired assets and the appointed day and the said total potential future output.

Section 41.

THIRD SCHEDULE

EFFECT OF DEATHS, WINDINGS UP AND PARTNERSHIP CHANGES ON CERTAIN CHARGES IN RESPECT OF PATENT RIGHTS

1. Where a person on whom, by reason of the receipt of a capital sum, a charge falls or would otherwise fall to be made under the principal section dies or, being a body corporate, commences to be wound up—
- (a) no sums shall be charged under the principal section on that person for any year subsequent to that in which the death takes place or the winding up commences; and
 - (b) the amount falling to be charged for the year in which the death occurs or the winding up commences shall be increased by the total amounts which, but for the death or winding up, would have fallen to be charged for subsequent years:

Provided that, in the case of a death, the personal representatives may, by notice in writing served on the Board not later than twenty-one days after notice

has been served on them of the charge falling to be made by virtue of this paragraph, require that the income tax payable out of the estate of the deceased by reason of the increase provided for by this paragraph shall be reduced so as not to exceed the total amount of income tax which would have been payable by him or out of his estate by reason of the operation of the principal section in relation to that sum, if, instead of the amount falling to be charged for the year in which the death occurs being increased by the whole amount of the sums charged for subsequent years, the several amounts falling to be charged for the years beginning with that in which the capital sum was received and ending with that in which the death occurred had each been increased by the said whole amount divided by the number of those years.

2. Where, under the provisions of Part IX of this Act relating to partnerships, a charge under the principal section falls to be made on two or more persons jointly as being the persons for the time being carrying on a trade, and that trade is discontinued, paragraph 1 of this Schedule shall have effect in relation to the discontinuance as they have effect where a body corporate commences to be wound up:

Provided that—

- (a) the additional sum which, under the said paragraph falls to be charged for the year in which the discontinuance occurs shall be apportioned among the members of the partnership immediately before the discontinuance, according to their respective interests in the partnership profits before the discontinuance, and each partner (or, if he is dead, his personal representatives) charged separately for his proportion; and
- (b) each of the partners, or, if he is dead, his personal representatives, shall have the same right to require a reduction of the total income tax payable by him or out of his estate by reason of the increase as would have been exercisable by the personal representatives under the said paragraph 1 in the case of a death, and the proviso to the said paragraph, shall have effect accordingly, but as if references to the amount of income tax which would have been payable by the deceased or out of his estate in the event therein mentioned were a reference to the amount of income tax which would in that event have fallen to be paid or borne by the partner in question or out of his estate.

Section 69.

FOURTH SCHEDULE

**SUPPLEMENTARY PROVISIONS AS TO ALLOWANCES
FOR CONTRIBUTIONS TOWARDS THE EXPENDITURE
OF OTHER PERSONS**

1. Subject to this Schedule, the amount of the allowances and the manner in which they are to be made shall be determined on the following basis:

- (a) the asset shall be deemed to continue at all material times to be in use for the purposes of the trade;
- (b) where the asset is machinery or plant, and when the contribution was made, the trade was carried on or to be carried on by a tenant of land in which the contributor has an interest, the contributor shall be deemed to have let the machinery or plant to the said tenant on such terms that the burden of the wear and tear thereof falls directly on the contributor.

2. Where, when the contribution was made, the trade for the purposes of which it was made was carried on or to be carried on by the contributor, the following provisions shall have effect on any transfer of the trade or any part of the trade:

- (a) where the transfer is of the whole trade, the annual allowance for the year of income in which the transfer takes place and all subsequent years of income shall be made to the transferee;
- (b) where the transfer is of part only of the trade, subparagraph (a) shall have effect with respect to so much of the allowance as is properly referable to the part of the trade transferred.

3. (1) Where, when the contribution was made, the trade was carried on or to be carried on by a tenant of land in which the contributor had an interest, the annual allowance for any year of income shall be made to the person who, at the end of that year, is entitled to the contributor's interest in the land, and the provisions of this Act defining, for the purposes of Part I thereof, the expression "the relevant interest" shall, with the necessary modifications, apply in relation to a contribution made for the purposes of a trade carried on or to be carried on by a tenant of land as they apply in relation to expenditure incurred on the construction of a building or structure.

(2) Section 4(2) of this Act (which relates to the effect of sales on the amount of annual allowances) shall not apply in relation to annual allowances to be made in respect of contributions.

SUBSIDIARY LEGISLATION

INCOME TAX (MINERAL DEPOSITS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation.
 2. Interpretation.
 3. Source.
 4. Output.
 5. Total potential future output.
 6. Residue of expenditure immediately before sale.
 7. Residue of expenditure immediately after sale.
 8. Assets representing, and apportionment of, appointed day expenditure.
 9. Appointed day expenditure.
Application under section 24(4)(b).
 10. Revision of balancing allowances: application under proviso to section 25(4).
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LAWS OF TRINIDAD AND TOBAGO

MINISTRY OF LEGAL AFFAIRS

www.legalaffairs.gov.tt

84

Chap. 85:04

Income Tax (In Aid of Industry)

[Subsidiary]

115/1950.

INCOME TAX (MINERAL DEPOSITS) REGULATIONS

made under section 28

Citation.

1. These Regulations may be cited as the Income Tax (Mineral Deposits) Regulations.

Interpretation.

2. The expression “appointed day expenditure” where used in these Regulations has the meaning which it has for the purposes of the Second Schedule to the Act.

Second Schedule.

Source.

3. The mineral deposits which are to be taken at any date as constituting a source shall be the total deposits in or upon any land from which the person carrying on the trade had at that date any right to lift or extract the mineral deposits or any title to acquire such right being land in the same mineral field or petroleum province:

Second Schedule.

Provided that for the purposes of Part III of the Second Schedule to the Act where assets were acquired by the person carrying on the trade on the appointed day from a predecessor in the working of mineral deposits, the source or part of a source worked by that predecessor with those assets may, if the person carrying on the trade on the appointed day wishes, be regarded as a separate source from any other mineral deposits.

Output.

4. The output from a source in any year or over any period shall be the amount of the payable mineral deposits lifted or extracted from the source in that year or period.

Total potential future output.

5. The total potential future output from a source at any time shall be the total payable mineral deposits that were proved or reasonably estimated to exist in the source at that time.

Residue of expenditure immediately before sale.

6. (1) The residue of the expenditure attributable to any assets immediately before the sale thereof shall be ascertained by deducting from the seller’s expenditure on the assets the seller’s allowances in respect of the assets.

- (2) For the purpose of this regulation—
- (a) the “seller’s expenditure on the assets” shall be—
- (i) any expenditure to which Part III of the Act applies incurred by the seller on the assets on or after the appointed day;
 - (ii) so much of any expenditure deemed to have been incurred by the seller on the appointed day under section 24(4) of the Act as is to be treated as incurred on the assets; and
 - (iii) so much of any expenditure deemed to have been incurred on the assets by the seller on or after the appointed day under section 25(7) or 26(2) of the Act as is attributable to the assets.
- (b) the “seller’s allowance in respect of the assets” shall be—
- (i) any initial allowances made to the seller in respect of expenditure represented by the assets; and
 - (ii) so much of any annual allowances made to the seller as is attributable to the seller’s expenditure on the assets:

Provided that where some only of the assets connected with a source are in question the amount of the seller’s annual allowances attributable to those assets shall be ascertained by applying the provisions of Part III of the Act relating to the computation of annual allowances as though the seller’s expenditure on those assets had been the only expenditure qualifying for allowance in connection with the source.

7. The residue of the expenditure attributable to any assets immediately after the sale thereof shall be an amount equal to the residue immediately before the sale ascertained in accordance with regulation 6 reduced by the amount of any balancing allowance,

Residue of expenditure immediately after sale.

LAWS OF TRINIDAD AND TOBAGO

MINISTRY OF LEGAL AFFAIRS

www.legalaffairs.gov.tt

86

Chap. 85:04

Income Tax (In Aid of Industry)

[Subsidiary]

Income Tax (Mineral Deposits) Regulations

or increased by the amount on which any balancing charge is made, being an allowance or charge made on the occasion of the sale.

Assets representing, and apportionment of, appointed day expenditure.

8. (1) The assets to be treated as representing appointed day expenditure shall be the assets representing the whole of the expenditure of which a part is included in the appointed day expenditure as finally computed.

(2) Where it is necessary to determine how much of any appointed day expenditure is to be treated as incurred on any particular asset or group of assets, the total appointed day expenditure may be apportioned among the assets representing that expenditure in proportion to the several amounts of expenditure to which Part III of the Act applies which were originally incurred or were deemed to have been incurred on the assets respectively:

Provided that where the appointed day expenditure is increased under section 24(4) of the Act and separate appointed day residues are ascertained for separate blocks of expenditure—

- (a) the amount to be treated as incurred on any asset or group of assets representing a block of expenditure shall be the appointed day residue of that block of expenditure; and
- (b) the appointed day residue of a block of expenditure representing a group of assets shall, if necessary, be apportioned among the assets in the group in proportion to the several amounts of expenditure to which Part III of the Act applies which were originally incurred or were deemed to have been incurred on the assets respectively.

Appointed day expenditure.

9. (1) This regulation shall have effect in relation to any application to the President under section 24(4) of the Act.

Application under section 24(4)(b).

(2) For the purposes of this regulation and of regulation 10—

- (a) the “normal appointed day expenditure” means the appointed day expenditure computed in accordance with the Second Schedule;

Second Schedule.

- (b) subject as hereinafter provided “block of expenditure” means—
- (i) so much of the expenditure incurred on the construction of any works specified by the applicant as is expenditure of which a part is included in his normal appointed day expenditure;
 - (ii) so much of the expenditure incurred in any period specified by the applicant as is expenditure of which a part is included in his normal appointed day expenditure, except expenditure incurred on such works as aforesaid;
 - (iii) all the expenditure of which a part is included in the applicant’s normal appointed day expenditure except expenditure incurred on such works or in such periods as aforesaid;
- (c) subject as hereinafter provided the “relevant date” of any block of expenditure means the date when first an asset representing any part of that block of expenditure came into use or the day preceding the appointed day if earlier:
- Provided that assets representing expenditure on searching for, discovering or testing deposits, shall be deemed to have come into use when the relevant search, exploration or inquiry was completed;
- (d) where a part of expenditure consisting of a price paid for assets purchased from a predecessor is included in the trader’s normal appointed day expenditure, the price paid shall be regarded as expenditure to which Part III of the Act applies which was incurred by the applicant, and in such a case the relevant date means the date when the applicant began to use the purchased assets in question.

LAWS OF TRINIDAD AND TOBAGO

MINISTRY OF LEGAL AFFAIRS

www.legalaffairs.gov.tt

88

Chap. 85:04

Income Tax (In Aid of Industry)

[Subsidiary]

Income Tax (Mineral Deposits) Regulations

(3) The amount by which the normal appointed day expenditure is inadequate shall for the purposes of the application be taken to be the amount, if any, by which the normal appointed day expenditure falls short of the sum of the appointed day residues of all the separate blocks of expenditure.

Second
Schedule.

(4) In determining the appointed day residue of any block of expenditure, it shall be assumed that the applicant had always worked the source and had incurred the block of expenditure, and the appointed day residue of each separate block of expenditure shall be ascertained by applying the principles of Part II of the Second Schedule to the Act relating to the computation of appointed day expenditure as though the assets representing that block of expenditure had been the only assets representing expenditure to which Part III of the Act applies connected with the source and as though the source had first been worked at the relevant date of that block of expenditure:

Second
Schedule.

Provided that in applying the principles of Part II of the Second Schedule to the Act to a block of expenditure represented solely by assets in respect of which any depreciation allowances were made, no deduction shall be made for any relevant depreciation allowances, but the appointed day residue of such a block of expenditure shall not be greater than the amount by which that block of expenditure exceeds the total of any relevant depreciation allowances made in respect of assets representing that block of expenditure for years of assessment before that in which the appointed day falls.

Revision of
balancing
allowances:
application
under proviso to
section 25(4).

10. (1) The provisions of this regulation shall have effect in relation to any application to the President under the proviso to section 25(4) of the Act.

(2) In this regulation—

(a) the “basic allowance” means the balancing allowance which apart from section 25(4) of the Act would have been due under subsection 25(2) of the Act;

- (b) the “modified allowance” means the balancing allowance which would have been due apart from the application;
- (c) the “new assets” means such of the assets sold as do not represent any part of the applicant’s appointed day expenditure;
- (d) “element of expenditure” means so much of any block of expenditure as is represented by any of the assets sold, or, as regards expenditure represented by new assets, all such expenditure;
- (e) the “relevant date of an element of expenditure” means the relevant date of the corresponding block of expenditure.

(3) The amount by which the difference between the basic allowance and the modified allowance is excessive shall for the purpose of the application be taken to be the amount, if any, by which the amount specified in subregulation (4) exceeds the modified allowance.

(4) The said last mentioned amount shall be ascertained by a series of separate comparisons between—

- (a) the residue of each element of expenditure; and
- (b) so much of the net proceeds of the sale as is attributable to the assets representing that element of expenditure and shall be the amount arrived at by—
 - (i) ascertaining the sum of the adjusted excesses for all cases in which there is an excess of the said residue over the amount mentioned in this paragraph; and
 - (ii) subtracting therefrom the sum of the adjusted deficiencies for all cases in which there is a deficiency of the said residue below the amount mentioned in this paragraph.

For this purpose—

- (i) the residue of an element of expenditure means the residue immediately before the sale of the expenditure attributable to the assets representing the expenditure comprised in that element computed separately in accordance with regulation 6; and
- (ii) the adjusted excess or deficiency means in the case of an element of expenditure represented by assets other than new assets, the amount obtained by applying to the excess or deficiency in question the fraction of which—
 - (A) the numerator represents the total output from the source in the period which begins with the appointed day and ends with the time of sale; and
 - (B) the denominator represents the total output from the source in the period which begins with the relevant date of the element of expenditure and ends with the time of sale,and in the case of an element of expenditure represented by new assets, the excess or deficiency itself.