



TRINIDAD AND TOBAGO.

No. 27—1947.

By Order 12/1/1950

Repealed

[L.S.]

I ASSENT

J. V. W. SHAW,

Governor.

31st July, 1947.

AN ORDINANCE to make provision for relief from Income Tax in aid of certain industries and the provision of workmen's homes.

[7th August, 1947.]

Commence-
ment.

Enactment

ENACTED by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof.

Short title.

1. (1) This Ordinance may be cited as the Income Tax (In Aid of Industry) Ordinance, 1947, and shall be read as one with the Income Tax Ordinance, hereinafter referred to as the Principal Ordinance.

Ch. 33. No. 1



Application of
Ordinance.

(2) This Ordinance shall, except as may be otherwise expressly provided therein, be applicable to the following trades: —

- (a) the manufacture and refining of sugar and its by-products ;
- (b) the distilling of rum ;
- (c) the working of any mine, oil well, or other source of mineral deposits and the manufacture, refining and processing of oil and other minerals and their derivatives ;
- (d) any other trade to which the Governor in Council may, and is hereby empowered to, declare by Order that this Ordinance shall be applicable.

PART I

Industrial Buildings and Structures, &c.

Initial
allowances.

2. (1) Subject to the provisions of this Ordinance, where, on or after the 6th day of April, 1946 (in this Ordinance 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 a trade carried on either by him or by such a lessee as is hereinafter mentioned, in ascertaining the chargeable income for the year of assessment hereinafter mentioned of such person who incurred the expenditure, there shall be allowed to him a deduction (in this Part of this Ordinance 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 of this Ordinance, is reversionary.

(2) The said year of assessment shall, in the case of a person incurring expenditure, be the year of assessment in his basis period for which the expenditure was incurred :

Provided 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 assessment shall be the year of assessment in which the tenancy begins.

(3) The preceding provisions of this section shall apply in relation to expenditure incurred by a person on or after the 6th day of April, 1944, but before the appointed day as if it had been incurred by him on the appointed day:

Provided 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 assessment before that in which the appointed day fell under Section 11 of the Principal Ordinance 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; or

(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 allowance 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 the 6th day of 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.

3. (1) Subject to the provisions of this Ordinance where—

(a) Any person is, at the end of his basis period for the year of assessment in which the appointed day falls or any subsequent year of assessment entitled to an interest in a building or structure; and

Annual allowances



(b) that 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,

in ascertaining the chargeable income of such person there shall be allowed in the relative year of assessment the deduction of an amount (in this Part of this Ordinance referred to as "an annual allowance") equal to one-fiftieth of that expenditure.

(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 assessment the basis periods for which end after the time of that sale—

(a) be computed by reference to the residue (as defined in the provisions of this Part of this Ordinance 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 assessment comprised in the period which—

(i) begins with the first year of assessment 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 assessment 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 assessment 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 assessment.

4. (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; or

(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 of this Ordinance 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 assessment 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, and a balancing charge shall be deemed to be a gain or profit within the meaning of section 5 (a) of the Principal Ordinance:

Provided that no balancing allowance or balancing charge shall be made to or on any person for any year of assessment by reason of any event occurring after the end of his basis period for the fiftieth year of assessment after that in which the building or structure was first used.

(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 assessment (as defined for the purposes of this subsection), no annual allowance has been made, the two last preceding subsections 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 assessment for which an annual allowance has been made in respect of the expenditure and the denominator of which is the total number of the relevant years of assessment.

In this subsection, the expression "the relevant years of assessment" means all the years of assessment 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:

Provided 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 assessment 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 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 in respect of that expenditure and any depreciation allowances (if any) in respect of that building or structure, made to him for years of assessment his basis periods for which end on or before the date of the event which gives rise to the charge.

Writing off of expenditure and meaning of "residue of expenditure."

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

(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 assessment in respect of the expenditure, the amount of that allowance shall be written off as at the said time :

Provided 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, in the case of any year of assessment after that in which the building or structure is first used, no annual allowance falls to be made to any person in respect of the expenditure, then, subject to the provisions of this and the next succeeding subsection, an amount equal to one-fiftieth of the expenditure shall be written off as at the end of the previous year of assessment :

Provided that—

(a) in the case of the year of assessment in which the appointed day falls or any subsequent year of assessment, 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 assessment ; and

(b) where this subsection does apply in the case of the year of assessment in which the appointed day falls or any subsequent year of assessment, 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 assessment had ended on the said preceding date; and

(iii) an annual allowance had been made to him for the year of assessment accordingly.

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

(a) no amount falls to be written off under the last preceding subsection as at any date before the beginning of the year of assessment 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 assessment 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 assessment immediately preceding that in which the appointed day falls.

(6) 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.

(7) 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 of this Ordinance to be increased as at the time of the sale by the amount on which the charge is made.

(8) Where the Crown 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 Crown had been entitled to the relevant interest; and

(b) all things which, while the Crown is entitled to the relevant interest, have been done in relation to the building or structure by or to the Crown or by or to any person using the building or structure

under the authority of the Crown, 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 Crown 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 assessment, ended immediately before the beginning of the year of assessment.

6. (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—

Buildings and
structures
bought unused

- (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 of this Ordinance ; 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, the provision of paragraph (b) of this subsection 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, paragraph (b) of the preceding subsection 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, the said paragraph (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, the said paragraph (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.

Cessation of
depreciation
allowances

7. (1) Subject to the provisions of this section, no allowance shall be made under section 11 of the Principal Ordinance for the year of assessment in which the appointed day falls or any subsequent year of assessment.

(2) Notwithstanding anything in the preceding subsection, if an allowance falls to be made under section 11 of the Principal Ordinance in respect of any premises in the case of any trade for the last year of assessment before that in which the appointed day falls, an allowance shall, by virtue of this subsection, be made under and subject to the provisions of the said section 11 in respect of those premises for the year of assessment in which the appointed day falls and each of the next four years of assessment in the case of every trade carried on thereon :

Provided that if, at any time in the year of assessment in which the appointed day falls or any of the next four years of assessment, any person to whom an allowance would otherwise fall to be made under the said section for that year of assessment in respect of the premises, by notice in writing to the Commissioner, elects that the said section 11 shall no longer apply to the premises—

(a) no allowance shall be made under the said section 11 for that or any subsequent year of assessment in the case of that person's trade ; and

(b) no allowance shall be made under the said section 11 for any year of assessment 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 the last preceding subsection an allowance falls to be made under the said section 11 for the year of assessment in which the appointed day falls or any subsequent year of assessment in the case of any trade, the other provisions of this Part of this Ordinance 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 assessment for which no allowance falls to be made under that section in the case of that or any other trade.

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

Definition of
"industrial
building or
structure"

(a) for the purposes of a trade mentioned in section 1, and

(b) for the purposes of any of the afore-mentioned 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 said 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) The provisions of subsection (1) of this section shall apply in relation to a part of a trade as they apply in relation to a trade :

Provided 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 purposes of that part of that trade.

(3) Notwithstanding anything in sub-section (1) or subsection (2) of this section, but subject to the provisions of subsection (4) of this section, 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 :

(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.

Sports
Pavilions.

9. Where a building or structure which is not an industrial building or structure as defined in the last preceding section 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 of this Ordinance shall apply in relation to that building or structure as if it were an industrial building or structure.

Meaning of
"the relevant
interest."

10. (1) Subject to the provisions of this Section, in this Part of this Ordinance, 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 of this Ordinance.

(3) An interest shall not cease to be the relevant interest for the purposes of this Part of this Ordinance 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 the last preceding subsection does not apply, the interest which is immediately reversionary thereon shall be deemed, for the purposes of the provisions of this Part of this Ordinance 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.

11. For the purposes of this Part of this Ordinance, 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.

12. (1) The provisions of this Part of this Ordinance shall have effect in relation to any period of requisition of any land as if the Crown had been in possession of that land for that period by virtue of a lease, and any reference in this Part of this Ordinance 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 construed accordingly, and any sum paid to the Crown 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 enactment or otherwise, by the person who, subject to the rights of the Crown, is entitled to possession of the land, shall be deemed for the purposes of this Part of this Ordinance to be a sum paid in consideration of the surrender of that lease:

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

Provided that where a person carrying on a trade is authorised by the Crown to occupy the land or any part thereof for the whole or any part of the period of requisition, the provisions of this Part of this Ordinance shall have effect as if the Crown had granted a sub-lease 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 sub-lease 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 Crown 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 paragraph (a) of subregulation (1) of regulation 4 of the Compensation (Defence) Regulations, 1940, or under the corresponding provision of any Ordinance 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 or 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 of this Ordinance 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, the provisions of this Part of this Ordinance 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, the provisions of this Part of this Ordinance 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, the provisions of this Part of this Ordinance 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,
&c.

13. (1) No allowance shall be made under, or by virtue of, any of the provisions of this Part of this Ordinance 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 assessment, an allowance is or can be made under any of the provisions of Part II of this Ordinance in respect of, or of expenditure on, that building or structure.

(2) Without prejudice to the provisions of the preceding subsection, any reference in this Part of this Ordinance 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 assessment as machinery or plant.

Interpretation
of Part I.

14. (1) References in this Part of this Ordinance 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:

Provided that paragraph (b) of this subsection 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 of this Ordinance 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 Ordinance 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 of this Ordinance, 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 of this Ordinance.

PART II

Machinery and Plant.

15. (1) 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 the 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 of this Ordinance referred to as "an initial allowance") equal to one-fifth of the expenditure.

Initial
allowances.

(2) Where, on or after the 6th day of 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) of this section 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 Principal Ordinance for any year of assessment before that in which the appointed day falls :

Provided 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.

(3) Any expenditure incurred on or after the said 6th day of April 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.

Allowance for wear and tear
Amendment of section 11 of Principal Ordinance.

16. (1) For the purposes of section 11 of the Principal Ordinance (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.

(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 Principal Ordinance, 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 Crown or any government or public or local authority, whether in the Colony 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 assessment 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.

(3) Where, in considering whether any, and, if so, what, deduction is to be allowed in respect of any machinery or plant under section 10 (1) (c) of the Principal Ordinance or the said section 11, account falls to be taken of deductions previously allowed under the said section 10 (1) (c) or the said section 11, any initial 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 10 (1) (c) or the said section 11.

17. (1) Subject to the provisions of this section, (where, **Balancing allowances and balancing charges.** 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 Principal Ordinance 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; or

(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 of this Ordinance 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 assessment 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, and a balancing charge shall be deemed to be a gain or profit within the meaning of section 5 (a) of the Principal Ordinance.

(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 unallowed 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 11 ; and
- (c) the amount of any balancing allowance previously made to him in respect of the expenditure.

Replacement
of machinery
or plant.

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

(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 ; and

(iii) in considering what deduction is to be allowed under the said section 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

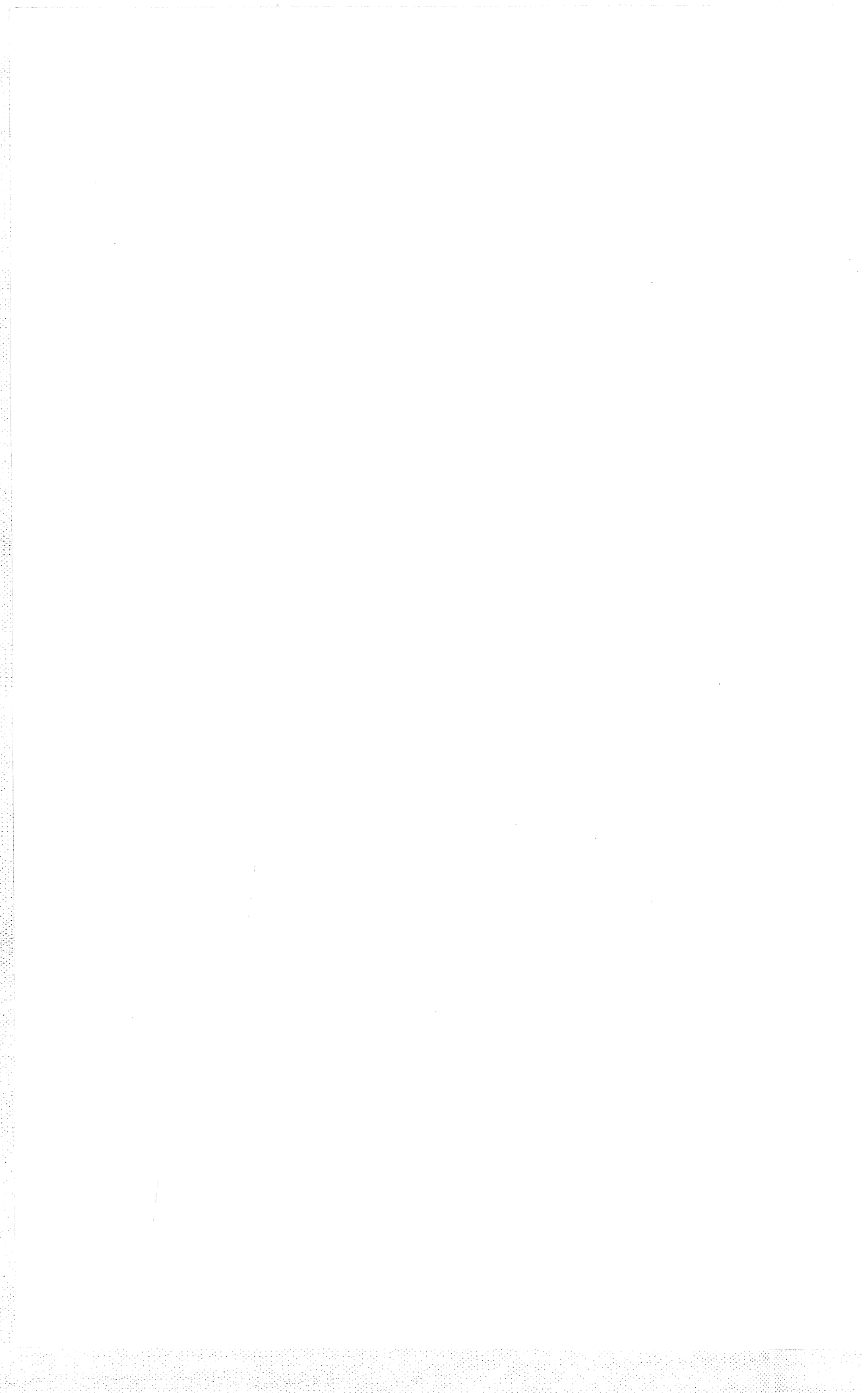
(iv) in considering whether any, and, if so, what, balancing allowance or balancing charge falls to be made in respect of the new machinery or plant, the initial allowance granted in respect thereof shall be deemed to have been increased by an amount equal to the amount on which the charge would have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

(2) Section 10 (1) (c) of the Principal Ordinance (which provides for a deduction for obsolescence in ascertaining the chargeable income)—

(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 Commissioner elects that it shall have effect in relation thereto,

and where any such election is made as is mentioned in paragraph (b) of this subsection, 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.



Meaning of
"expenditure
unallowed."

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

(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 11 of the Principal Ordinance being deductions allowed in ascertaining chargeable income for a year of assessment before that in which the appointed day falls or for a year of assessment the basis period for which ended before the time in question ; and

(c) any balancing allowance made to him in respect of the expenditure.

Expenditure
on alterations
to buildings
in connection
with
installation
of machinery
or plant.

20. (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 of this Ordinance and of section 11 of the Principal Ordinance 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) The preceding provisions of this section shall apply in relation to expenditure incurred by a person on or after the 6th day of April, 1944, but before the appointed day, as if it had been incurred by him on the appointed day.

PART III

Miscellaneous and General

Manner of
charging tax
and granting
allowances
in case of
traders.

21. (1) Any claim by a person for an allowance falling to be made to him under any of the provisions of this Ordinance in ascertaining his chargeable income shall be included in the Return of Income required to be delivered under the Income Tax Regulations, 1945, made under the Principal Ordinance, and the allowance shall be deemed to be a deduction included in section 10 of the Principal Ordinance.

(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 of this Ordinance for the last year of assessment during which the trade is carried on ;

(b) 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

(c) full effect cannot be given to the allowance because of an insufficiency of profits or gains for the said year of assessment,

the person entitled to the allowance may claim that the balance of the allowance may be given for the last preceding year of assessment 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 assessment. Provided that the amount of any such allowance to be given for preceding years of assessment 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 Ordinance on a person for any year of assessment shall be deemed to be a gain or profit within the meaning of section 5 (a) of the Principal Ordinance.

22. In this Ordinance, the expression "basis period" means the period on the profits or gains of which income tax for any year of assessment falls to be finally computed under the Principal Ordinance in respect of the trade in question: and for the purpose of giving effect to this Ordinance and in particular so that the several allowances and charges on any person engaged in any trade to which this Ordinance applies should be given or made in conformity with the provisions of this Ordinance, 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 Principal Ordinance: but so that such extension shall be operative only in relation to years of assessments for basis periods preceding the year of assessment 1948.

Meaning of
"basis
period."

23. (1) Any reference in this Ordinance 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,

Apportion-
ment of con-
sideration, and
exchanges and
surrenders of
leasehold
interests.

for the purposes of this Ordinance 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) The provisions of the last preceding subsection 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 Ordinance 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 Ordinance 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 assessment, the preceding provisions of this section shall, with the necessary adaptations, have effect in relation to section 11 and section 10 (1) (c) of the Principal Ordinance (which provide respectively for a wear and tear allowance and an obsolescence allowance in the case of machinery and plant) as if the said section 11 and section 10 (1) (c) were provisions of this Ordinance.

Special provisions as to certain sales.

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

- (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 person has 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 enactments, that is to say, any of the provisions of this Ordinance or of sections 11 and 10 (1) (c) of the Principal Ordinance.

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 enactments mentioned in subsection (1) of this section, 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 the provisions of the next succeeding subsection, 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, the last preceding subsection 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:

Provided that 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.

Provided also that where the sale is one to which paragraph (a) of subsection (1) of this section applies and took place before the appointed day, and the seller acquired the machinery or plant on or after the 6th day of 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 paragraph (a) of subsection (1) of this section applies and paragraph (b) of that subsection does not apply, and the parties to the sale by notice in writing to the Commissioner so elect, the following provisions shall have effect:—

(a) subsection (2) of this section shall have effect as if for the reference to the price which 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) paragraph (b) of subsection (3) 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 the provisions of section 5 of this Ordinance; and

(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 the provisions of section 19 of this Ordinance.

(5) As respects section 10(1)(c) and 11 of the Principal Ordinance the provisions of this section shall have effect as respects tax for the year of assessment in which the appointed day falls and any subsequent year of assessment.

Trade marks
and designs.

25. 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.

26. (1) References in this Ordinance to capital expenditure and capital sums—

Interpretation of certain references to expenditure, etc.

(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 Ordinance to the date on which expenditure is incurred shall be construed as a reference to the date when the sums in question become payable.

27. (1) Expenditure shall not be regarded for any of the purposes of this Ordinance as having been incurred by any person in so far as it has been or is to be met directly or indirectly by the Crown or by any government or public or local authority, whether in the Colony or elsewhere, or by any person other than the first mentioned person.

Subsidies, etc.

Provided that, in considering whether any, and, if so, what, balancing charge is to be made on a person under Part II of this Ordinance 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) of this section, and of any other provision of this Ordinance referring to expenditure met or to be met directly or indirectly by the Crown 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 Crown 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 the provisions of the next succeeding subsection.

(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 the provisions of subsection (1) of this section, 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 under Part I or Part II, of this Ordinance, then, subject to the provisions of the Schedule to this Ordinance, 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 section 10 of the Principal Ordinance.

28. 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 Crown or by any government or public or local authority, or by any person other than the first mentioned person.

Other provisions as to interpretation

29. (1) In this Ordinance, except where the context otherwise requires—

“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 Ordinance to any building, structure, machinery, plant, works, asset, shall be construed as including a reference to a part of any building, structure, machinery, plant, works, asset:

Provided that where the reference is expressed to be to the whole of a building or structure, this subsection shall not apply.

PART IV

Housing of Workers employed in any of the Trades mentioned in section 1 of this Ordinance or in Husbandry.

30. Subject to the provisions of this Part of this Ordinance, where on or after the 1st day of January, 1948, any person engaged in any of the trades mentioned in section 1 of this Ordinance, 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 assessment immediately thereafter, and in each of the succeeding nine years of assessment, 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 paragraph (d) of subsection (1) of section 10 of the Principal Ordinance shall not be applicable thereto during the period within which the aforementioned deductions falls to be made.

Annual allowances for capital expenditure on worker's dwellings.

to be made in the year of assessment in which the expenditure is incurred and in each of the following nine years of assessment.

Limitation
of annual
allowances.

31. 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, &c.

32. 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 of this Ordinance 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 assessment 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 assessment, 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.

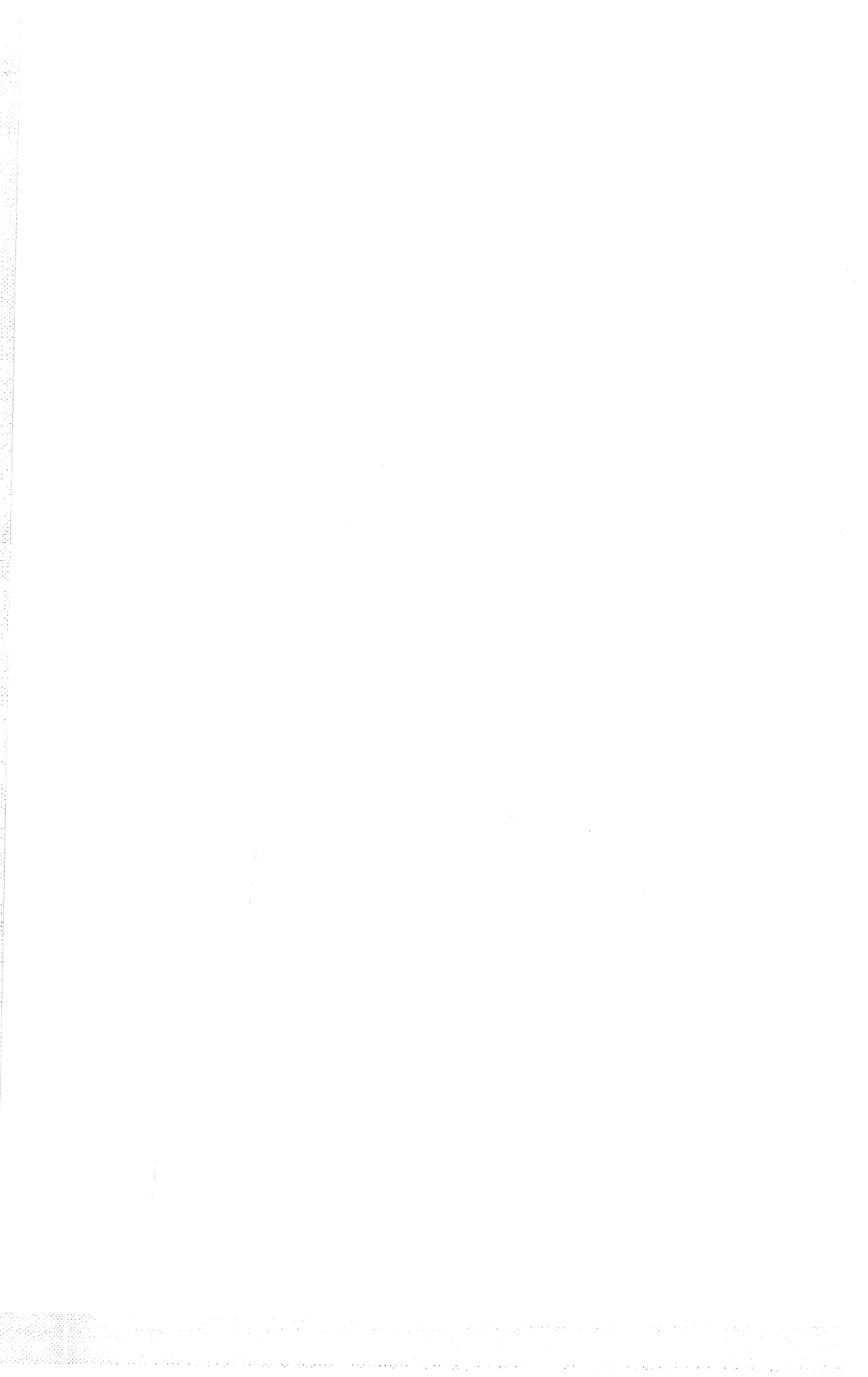
For the purposes of this section, where an interest in land is leasehold and the lease comes to an end, that interest shall be deemed to have been transferred—

(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 on the tenancy.

Cesser of
annual
allowances
during tempo-
rary non-use
of building.

33. 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 assessment following such event be entitled to the deduction hereinbefore provided, and the full period of ten years during which such deductions may be made under this part of this Ordinance shall not be thereby extended.

34. Any claim by any person for a deduction under this Part of this Ordinance shall be included in the Return of Income referred to in section 21 of this Ordinance.

35. In this Part of this Ordinance—

“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 Interpretation

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

36. None of the provisions of Part III of this Ordinance shall apply to this Part of this Ordinance.

SCHEDULE

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

(Section 27(3))

1. Subject to the provision of 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 assessment in which the transfer takes place and all subsequent years of assessment shall be made to the transferee;
- (b) where the transfer is of part only of the trade, the provisions of the preceding sub-paragraph 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 assessment 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 Ordinance 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) Subsection (2) of section 3 of this Ordinance (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.

Passed in Council this twenty-fifth day of July, in the year of Our Lord one thousand nine hundred and forty-seven.

G. E. CHEN,
Clerk of the Council.

