

**Akta Cukai Pendapatan 1967  
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**Tarikh Keluaran** :  
**Title** : Income Tax Act  
**Part** : PART X - SUPPLEMENTAL  
**Chapter** : Chapter 3 - Miscellaneous  
**Section** : Schedule 3. Capital Allowances And Charges

SCHEDULE 3  
(Section 42)

*Capital Allowances And Charges*

*Qualifying expenditure*

[Am. Act 241;  
Act 274;  
Act 293;  
Act 309;  
Act 323;  
Act A643;  
Act 328;  
Act 421;  
Act 451;  
Act 476;

Act A1349]

1. Subject to this Schedule, qualifying expenditure for the purposes of this Schedule is qualifying plant expenditure or qualifying building expenditure within the meaning of paragraphs 2 to 6.

2. (1) Subject to subparagraph (2) and paragraph 67, qualifying plant expenditure is capital expenditure incurred on the provision of machinery or plant used for the purposes of a business, including-

(2) In the case of a motor vehicle, other than a motor vehicle licensed or permitted, by the appropriate authority, for commercial transportation of goods or passengers, the qualifying plant expenditure incurred on or after the first day of the basis period for the year of assessment 1991 shall be limited to a maximum of fifty thousand ringgit:

Provided that where the qualifying plant expenditure is incurred on a motor vehicle purchased on or after 28 October 2000, the maximum amount shall be increased to not more than one hundred thousand ringgit if the motor vehicle has not been used prior to purchase and the total cost of the motor vehicle does not exceed one hundred and

fifty

thousand

ringgit:

Provided further that where the qualifying plant expenditure is incurred between the period from 28 October 2000 to 31 December 2000, and that period forms part of the basis period of a person for the year of assessment prior to the year of assessment 2001, that expenditure shall be deemed for the purposes of this Schedule to be incurred in the basis period for the year of assessment 2001.

History.

Schedule 3 Subparagraph 2(2) is substituted by Act 608 of 2000 s24, with effect from year of assessment 2001. Schedule 3 Subparagraph 2(2) formerly read: "(2) In the case of a motor vehicle (other than a motor vehicle licensed or permitted, by the appropriate authority, for commercial transportation of goods or passengers, such as lorry, truck, bus, mini bus, van, station wagon, taxi cab or hire car) the qualifying plant expenditure incurred on or after the first day of the basis period for the year of assessment 1991 shall be limited to a maximum of fifty thousand ringgit."

Schedule 3 Subparagraph 2(2) amended by Act 476 of 1992 s18(a), by substituting for the figures "1975" the figures "1991", shall have effect for the year of assessment 1991 and subsequent years of assessment.

Schedule 3 subparagraph 2(2) amended by Act 451 of 1991 s25(a), by substituting for the word "twenty-five" the word "fifty", shall have effect for the year of assessment 1991 and subsequent years of assessment.

2A. Subject to this Schedule, where any person had in use machinery or plant for a non-business purpose, and that machinery or plant is subsequently brought into use for the purposes of a business of his, he is deemed to have incurred qualifying plant expenditure in relation to that machinery or plant and the amount of the qualifying plant expenditure shall be taken to be the market value of the machinery or plant on the day the machinery or plant was so

brought into use.

History.

Schedule 3 paragraph 2A inserted by Act 476 of 1992 s18(b), shall have effect for the year of assessment 1992 and subsequent years of assessment.

~~2B. Subject to this Schedule, where -~~

~~(a) any person is exempt from tax by or under this Act; \_\_\_\_\_ or~~

~~(i) any income of any person is exempt from tax by or under \_\_\_\_\_ this \_\_\_\_\_ Act,~~

~~and the person had in use machinery or plant for the purposes of a business of his during the exempt period and the machinery or plant continues to be used for the purposes of a business of his immediately after the exempt period, he shall be deemed to have incurred qualifying plant expenditure and the amount of the qualifying plant expenditure in respect thereof shall be taken to be the market value or the net book value, whichever is the lower, of the machinery or plant on the day the exemption ceases.  
(Deleted by Act 644 of 2005)~~

History.

Schedule 3 paragraph 2B inserted by Act 476 of 1992 s18(b), shall have effect for the year of assessment 1992 and subsequent years of assessment.

2C. Subject to this Schedule, where machinery or plant is brought into use for the purposes of a business in Malaysia by any person and prior thereto the machinery or plant had been used for the purposes of a business outside Malaysia, the person shall be deemed to have incurred qualifying plant expenditure and the amount of the qualifying plant expenditure in respect thereof shall be taken to be the market value or the net book value of the machinery or

plant, whichever is the lower, on the day the machinery or plant was so brought into use in Malaysia.

History.

Schedule 3 paragraph 2C inserted by Act 476 of 1992 s18(b), shall have effect for the year of assessment 1992 and subsequent years of assessment.

2D. For the purpose of paragraph 1, the capital expenditure incurred by a person on the provision of machinery or plant shall not include any amount paid to a non-resident person in consideration of services rendered in connection with the installation or operation of that machinery or plant, if tax has not been deducted therefrom and paid to the Director General under paragraph 109B(1)(a) of the Act:

Provided that this paragraph shall not apply if the person has paid the amount referred to in subsection 109B(2).

History

Paragraph 2D is inserted by Act 693 of 2009 s43, comes into operation on 9 January 2009

3 (1) Subject to paragraph 6, qualifying building expenditure is capital expenditure incurred on the construction or purchase of a building which is used at any time after its construction or purchase, as the case may be, as an industrial building.

(2) For the purpose of this Schedule, the qualifying building expenditure in the case of purchase of a building shall be the amount of the purchase price of that building.";

History

Schedule 3 Paragraph 3 amended by Act 639 of 2004 s28(a)(i), by renumbering that paragraph as subparagraph 3(1), with effect for the year of assessment 2005 and subsequent years of assessment.

Schedule 3 subparagraph 3(1) as renumbered, amended by Act 639 of 2004 s28(a)(ii), by substituting for the words "paragraph 3A to" the word "paragraph" with effect for the year of assessment 2005 and subsequent years of assessment.

Schedule 3 subparagraph 3(1), amended by Act 639 of 2004 s28(a)(iii), by inserted after subparagraph 3(1), the following subparagraph :

(2) For the purpose of this Schedule, the qualifying building expenditure in the case of purchase of a building shall be the amount of the purchase price of that building.";

Schedule 3 Paragraph 3 formerly read as:

3. Subject to paragraphs 3A to 6, qualifying building expenditure is capital expenditure incurred on the construction or purchase of a building which is used at any time after its construction or purchase, as the case may be, as an industrial building.

Special provision relating to paragraph 3 of Schedule 3

29. Notwithstanding the provision of paragraph 3 of Schedule 3 to the principal Act as amended under paragraph 28(a) of this Act, where the amount of qualifying building expenditure has been determined pursuant to paragraph 3, 3A, 4 or 5 of the principal Act before the coming into operation of the amendment to those paragraphs under section 28 of this Act, that amount of qualifying building expenditure shall continue to apply for the purposes of that Schedule.

#### History

Schedule 3 paragraph 3 amended by Act 619 of 2002 s8(a), by substituting for the word "4" the word "3A", shall have effect for the year of assessment 2002 and subsequent years of assessment.

3A. Deleted by Act 639 of 2004,

#### History

Schedule 3 paragraph 3A deleted by Act 639 of 2004

s28(b)with effect for the year of assessment 2005 and subsequent years of assessment.

Schedule 3 paragraph 3A , formerly read as:

3A. (1) Subject to subparagraph (2), where a building is purchased for use as an industrial building from a person who constructed that building and that building has not been used by any person for any purpose prior to the purchase, then, for the purposes of this Schedule -

(a) the purchaser shall be deemed to have constructed that building and deemed to have incurred capital expenditure on the construction of that building;

(b) the purchase price shall be deemed to be the capital expenditure incurred on the construction of that building; and

(c) the date of that purchase shall be deemed to be the date of construction of that building.

(2) The capital expenditure incurred by the person who constructed the building and the date of construction of that building by that person to which regard would be had but for this subparagraph shall be disregarded for the purposes of this Schedule.

Schedule 3 paragraph 3A inserted by Act 619 of 2002 s8(b), shall have effect for the year of assessment 2002 and subsequent years of assessment.

4. Deleted by Act 639 of 2004,

#### History

Schedule 3 paragraph 4 deleted by Act 639 of 2004 s28(b)with effect for the year of assessment 2005 and subsequent years of assessment.

Schedule 3 paragraph 4 , formerly read as:

4. Where a purchased building to which paragraph 3 applies was in use as an industrial building within one month (or such further period as the Director General may allow) before the purchase, the qualifying building expenditure incurred by the purchaser on that building shall be taken, for the purposes of this Schedule, to be the amount of the purchase price for the building or, where the purchase price exceeds the vendor's residual expenditure in relation to the building at the date of the purchase, the amount of that residual expenditure increased by any balancing charge made on the vendor, in relation to the building, under this Schedule.

5. Deleted by Act 639 of 2004,

#### History

Schedule 3 paragraph 5 deleted by Act 639 of 2004 s28(b) with effect for the year of assessment 2005 and subsequent years of assessment.

Schedule 3 paragraph 5, formerly read as:

5. (1) *Subject to subparagraph (1A), in the case of a purchased building in use as an industrial building to which paragraph 4 does not apply, the qualifying building expenditure incurred by the purchaser on that building shall be taken, for the purposes of this Schedule, to be-*

(a) the amount of the capital expenditure incurred on the construction of the building reduced by the aggregate amount of all annual allowances which, if the building from the time of its construction by a person to the date of its purchase by the purchaser had been owned by that person and had been in use as an industrial building for the purposes of a business of that person, could have been claimed by that person and made to him under this Schedule for each particular year of assessment *from* the year of assessment in which the expenditure on the construction of the building was incurred, up to and *including the immediately preceding* year of assessment in which the building was first used after its purchase as an

industrial building by the purchaser, if there had been sufficient adjusted income of that person from that business for the basis period for each of those particular years of assessment; or

(b) the amount of the purchase price of the building,

whichever is the smaller.

(1A). Where the purchased building referred to in subparagraph (1) is constructed prior to 1 January 2000 and that building was first used after its purchase as an industrial building -

(a) in the year of assessment 2000, all annual allowances referred to in subparagraph (1)(a) shall be allowances which could have been claimed or made for the year of assessment following the year of assessment in which the expenditure on the construction of that building was incurred up to and including the year of assessment 2000 (preceding year basis); or

(b) in the year of assessment 2001 or any subsequent year of assessment, all annual allowances referred to in subparagraph (1)(a) shall be allowances which could have been claimed or made for the year of assessment following the year of assessment in which the expenditure on the construction of that building was incurred up to and including the year of assessment immediately preceding, the year of assessment 2001 or any subsequent year of assessment in which that building was first used after its purchase as an industrial building, and for the avoidance of doubt, the allowance for the year of assessment 2000 shall consist of the allowances for the year of assessment 2000 (preceding year basis) and year of assessment 2000 (current year basis).

(2) For the purposes of this paragraph, where the amount of the capital expenditure incurred on the construction of the building is not known to the purchaser or the Director General, that amount shall be estimated by the Director General to the best of his judgement.



Schedule 3 subparagraph 5(1) amended by Act 619 of 2002 s8(c)(i), by substituting for the word "In" the words "Subject to subparagraph (1A), in", shall be deemed to come into operation on 1 January 2000 and shall have effect for the year of assessment 2000 in respect of basis period ending in the year 2000 and subsequent years of assessment.

Schedule 3 subparagraph 5(1)(a) amended by Act 619 of 2002 s8(c)(ii) (A), by substituting for the word "following" the word "from", shall be deemed to come into operation on 1 January 2000 and shall have effect for the year of assessment 2000 in respect of basis period ending in the year 2000 and subsequent years of assessment.

Schedule 3 subparagraph 5(1)(a) amended by Act 619 of 2002 s8(c)(ii) (A), by substituting for the words "including the particular" the words "including the immediately preceding", shall be deemed to come into operation on 1 January 2000 and shall have effect for the year of assessment 2000 in respect of basis period ending in the year 2000 and subsequent years of assessment.

Schedule 3 paragraph 5(1A) inserted by Act 619 of 2002 s8(c)(iii), shall be deemed to come into operation on 1 January 2000 and shall have effect for the year of assessment 2000 in respect of basis period ending in the year 2000 and subsequent years of assessment.

6. Qualifying building expenditure does not include-

(a) subject to paragraph 67, expenditure which is qualifying plant expenditure for the purposes of this Schedule;

(b) subject to paragraph 42, expenditure which is qualifying agriculture expenditure for the purposes of this Schedule; or

(c) expenditure which is qualifying mining expenditure for the purposes of Schedule 2.

*Qualifying agriculture expenditure*

7. (1) Subject to this Schedule, qualifying agriculture

expenditure for the purposes of this Schedule is capital expenditure incurred by a person on-

(2) For the purposes of this paragraph "agriculture" includes the reforestation of timber.

*Qualifying forest expenditure*

8. (1) Subject to this Schedule, qualifying forest expenditure for the purposes of this Schedule is capital expenditure incurred by a person on the construction in a forest of-

and which, if the forest ceases to be used for such extraction, would be likely to be of little or no value to any person except in connection with the extraction of timber from another forest or with a business which consists wholly or partly of the working of a farm.

(2) For the purposes of this paragraph, "forest", in relation to a person, means a forest in respect of which he has a concession or a licence to extract timber therefrom, being a forest in use by him for the extraction of timber therefrom for the purposes of a business of his which consists wholly or partly of that extraction.

*Qualifying renovation or refurbishment expenditure*

8A. (1) Subject to this Schedule, qualifying renovation or refurbishment expenditure for the purposes of this Schedule is capital expenditure incurred by a person on renovation or refurbishment of a premises which is used for the purpose of a business of his.

(2) For the purposes of this Schedule, the qualifying renovation or refurbishment expenditure shall be an amount incurred by a person between the period from 10 March 2009 to 31 December 2010 and total amount of expenditure for that period in respect of all of his sources consisting of a

business shall not exceed one hundred thousand ringgit.

(3) Qualifying renovation or refurbishment expenditure does not include –

(a) expenditure which is qualifying plant expenditure for the purposes of this Schedule;

(b) expenditure which is qualifying agriculture expenditure for the purposes of this Schedule;

(c) expenditure which is qualifying forest expenditure for the purposes of this Schedule; and

(d) expenditure which is qualifying mining expenditure for the purposes of Schedule 2.

8B. For the purpose of paragraphs 8A and 32B of this Schedule renovation or refurbishment expenditure shall be an expenditure prescribed by the Minister.

History

Paragraphs 8A and 8B of Schedule 3 are inserted by Act A1349 of 2009, s6(a), shall have effect for the year of assessment 2009 and subsequent years of assessment.

*Qualifying expenditure: initial allowances*

9. An allowance made under paragraphs 10 and 12 shall be known as an initial allowance.

History

Paragraph 9 amended by Act A1028 s6(a), by substituting for the word "to" the word "and", shall have effect for the year of assessment 1998 and subsequent years of assessment.

10. Subject to this Schedule, where in the basis period for a year of assessment a person has for the purpose of a business of his incurred qualifying plant expenditure, there shall be made to him in relation to the source consisting of that business for that year an allowance equal to one-fifth of the expenditure or such other fraction as may be prescribed.

History.

Schedule 3 paragraph 10 amended by Act 476 of 1992 s18(c), by inserting, immediately after the word "expenditure" at the end of paragraph 10, the words, "or such other fraction as may be prescribed", shall have effect for the year of assessment 1992 and subsequent years of assessment.

11. (*Deleted by Act A1028*).

History

Paragraph 11 deleted by Act A1028 s6(b), shall have effect for the year of assessment 1998 and subsequent years of assessment.

Paragraph 11 formerly read:

" 11. Subject to this Schedule, where in the basis period for a year of assessment a person has for the purposes of a business of his which consists of the working of a mine or the extraction of timber from a forest incurred qualifying plant expenditure on the provision of machinery or plant for getting tin-ore or extracting or dressing tin concentrates or for extracting timber from a forest or on the provision of machinery or plant for such other activities as may be prescribed, there shall be made to him in relation to the source consisting of that business for that year an allowance instead of the allowance under paragraph 10 equal to three-fifths of the expenditure, unless he elects in writing, when claiming an allowance for that year in respect of that expenditure, that the allowance be equal to one-fifth of that expenditure. "

11A. (*Deleted by Act A1028*).

History.

Paragraph 11A deleted by Act A1028 s6(c), shall have effect for the year of assessment 1998 and subsequent years of assessment.

Paragraph 11A formerly read:

" 11A. Subject to this Schedule, where in the basis period for a year of assessment a

person has for the purposes of a business of his which consists of construction of any works, roads, structures and buildings incurred qualifying plant expenditure on the provision of machinery or plant used directly in the construction of such works, roads, structures and buildings, there shall be made to him in relation to the source consisting of that business for that year an allowance instead of the allowance under paragraph 10 equal to three-tenths of the expenditure, unless he elects in writing, when claiming an allowance for that year in respect of that expenditure, that the allowance be equal to one-fifth of that expenditure. "

12. Subject to this Schedule, where in the basis period for a year of assessment a person has for the purposes of a business of his incurred qualifying building expenditure on the construction *or purchase* of a building, there shall be made to him in relation to the source consisting of that business for that year an allowance equal to one-tenth of that expenditure.

#### History

Schedule 3 paragraph 12 amended by Act 619 of 2002 s8(d), by inserting after the word "construction" the words "or purchase", shall have effect for the year of assessment 2002 and subsequent years of assessment.

13. Notwithstanding paragraphs 10 and 12-

#### History

Paragraph 13 amended by Act A1028 s6(d) ( i ), by substituting for the word "to" appearing after the words "Notwithstanding paragraphs 10" the word "and" , shall have effect for the year of assessment 1998 and subsequent years of assessment.

(a) no allowance shall be made to a person under paragraph 10 for a year of assessment in relation to an asset and a business of his if at the end of the

basis period for that year he was not the owner of the asset or it was not in use for the purposes of the business or, where the asset was disposed of by him in that period, he was not the owner of the asset or it was not in use, prior to its disposal, for the purposes of the business at some time in that period;

(b) *(Deleted by Act A1028).*

History.

Subparagraph (b) deleted by Act A1028 s6(d) (ii) , shall have effect for the year of assessment 1998 and subsequent years of assessment. Subparagraph (b) formerly read:

" (b) no allowance shall be made to a person under paragraph 11 or 11A for a year of assessment in relation to an asset and a business of his if at the end of the basis period for that year he was not the owner of the asset or it was not in use for the purposes of the business or, where the asset was disposed of by him in that period, he was not the owner of the asset or it was not in use, prior to its disposal, for the purposes of the business at some time in that period; and no such allowance shall be made unless, to the extent that the asset was used for the purposes of the business, it was used for any one or more of the kind of activities specified in paragraph 11 or 11A and taking place in Malaysia; "

(c) no allowance shall be made to a person under paragraph 12 for a year of assessment in relation to an asset and a business of his if at the end of the basis period for that year he was not the owner of the asset or it was not in use or was not about to be used as an industrial building or, where the asset was disposed of by him in that period, it was not in use, prior to its disposal, for the purposes of a business of his as an industrial building at some time in that period;

(d) where an allowance has been made to a person under paragraph 12 for a year of assessment in relation to a building and a business of his and that building was not in use or was not about to be used

as an industrial building for the purposes of that business of his at some time in the basis period for the next following year of assessment, a balancing charge equal to the amount of the allowance shall be made on him in relation to that business for that year of assessment for which the allowance was given.

13A. Notwithstanding paragraph 10 no initial allowance shall be made to a person for a year of assessment in relation to an asset and a business of his referred to in paragraph 2A, 2B or 2C, as the case may be.

#### History

Paragraph 13A amended by Act A1028 s6(e), by deleting the words ", 11 or 11A" , shall have effect for the year of assessment 1998 and subsequent years of assessment. Paragraph 13A formerly read: " 13A. Notwithstanding paragraph 10, 11 or 11A no initial allowance shall be made to a person for a year of assessment in relation to an asset and a business of his referred to in paragraph 2A, 2B or 2C, as the case may be.".

Schedule 3 paragraph 13A inserted by Act 476 of 1992 s18(d), shall have effect for the year of assessment 1992 and subsequent years of assessment.

#### *Qualifying expenditure: annual allowances*

14. An allowance made under paragraphs 15 to 16A shall be known as an annual allowance.

#### History

Schedule 3 paragraph 14 amended by Act 619 of 2002 s8(e), by substituting for the word "17" the word "16A", shall have effect for the year of assessment 2002 and subsequent years of assessment.

15. Subject to this Schedule, where a person has for the purposes of a business of his, incurred qualifying plant expenditure in relation to an asset and at the end of the basis period for a year of assessment he was the owner of

the asset and it was in use for the purposes of the business, there shall be made to him in relation to the source consisting of that business for that year an allowance equal to such proportion of that expenditure as may be prescribed.

15A. Deleted by Act 619.

History

Schedule 3 paragraph 15A is deleted by Act 619 of 2002 s8(f), with effect from the year of assessment 2002. Paragraph 15A formerly read:

" 15A. Subject to this Schedule, where a person has for the purposes of a business of his incurred qualifying plant expenditure in relation to an asset more than six years prior to the beginning of the basis period for the year of assessment 1981 and an annual allowance was made to him in relation to that source consisting of that business for a year of assessment prior to the year of assessment 1981 in respect of that expenditure, he may elect in writing that an annual allowance be made to him equal to one-half of the residual expenditure, if any, for the year assessment 1981 and the following year of assessment provided that he was the owner of the asset and it was in use for the purposes of his business at the end of the basis period for each of those years of assessment."

16. Subject to this Schedule, where a person has for the purposes of a business of his incurred qualifying building expenditure on the construction *or purchase* of a building and at the end of the basis period for a year of assessment he was the owner of the building and it was in use as an industrial building for the purposes of the business, there shall be made to him in relation to the source consisting of that business for that year an allowance equal to *three-hundredth* or such other fraction as may be prescribed of that expenditure.

16A. Subject to this Schedule, where a person has incurred qualifying building expenditure on the construction of a



building to which paragraph 67B applies and at the end of the basis period for a year of assessment the building was on lease to the Government, there shall be made to him in relation to the income from that lease for that year an allowance equal to three-fiftieths or such other fraction as may be prescribed of that expenditure.

#### History

Paragraph 16A inserted by Act A 600 of 2000 s13(a), shall have effect for the year of assessment 2000 in respect of the basis period ending in the year 1999 (preceding year basis) and subsequent years of assessment.

#### 17. Deleted by Act 619

#### History

Schedule 3 paragraph 17 is deleted by Act 619 of 2002 s8(h), with effect from the year of assessment 2002. Paragraph 17 formerly read:

"17. (1) Subject to this Schedule, where a person has for the purposes of a business of his incurred qualifying building expenditure on the purchase of a building and at the end of the basis period for a year of assessment he was the owner of that building and it was in use as an industrial building for the purposes of the business, there shall be made to him in relation to the source consisting of that business for that year an allowance equal to the permitted fraction or such other fraction as may be prescribed of that expenditure.

(2) In this paragraph "permitted fraction", in relation to qualifying building expenditure on the purchase of a building, means a fraction the numerator of which is one and the denominator of which is the number of years comprised in a period which begins with the year of assessment in the basis year for which the building was purchased and ends with the fiftieth year of assessment after the year of assessment in the basis year for which the building was constructed."

18. An allowance made to a person in relation to a business of his under paragraph 15 or 16 for a year of assessment in respect of any expenditure in relation to an asset shall not

exceed the amount of the residual expenditure at the end of the basis period for that year.

## History

Schedule 3 paragraph 18 amended by Act 619 of 2002 s8(i), by substituting for the words "15, 16 or 17" the words "15 or 16" , shall have effect for the year of assessment 2002 and subsequent years of assessment.

19. Where in relation to any particular asset the Director General is of the opinion that the proportion prescribed under paragraph 15 is too high or too low having regard to the use to which the asset is put, he may give a direction for such other proportion as he considers appropriate to be adopted in relation to the qualifying plant expenditure.

### *Special allowances for small value assets*

19A. (1) Where in the basis period for a year of assessment a person for the purposes of a business of his incurred qualifying plant expenditure in relation to an asset or assets, the value of each asset being not more than one thousand ringgit, and at the end of the basis period he was the owner of the asset and it was in use for the purposes of the business, there shall be made in lieu of the amount of the allowance which would otherwise fall to be made to him under paragraph 10 or 15, an allowance equal to the amount of that expenditure for that year of assessment:

Provided that where the total qualifying plant expenditure in respect of such asset for each year of assessment exceeds the amount of ten thousand ringgit, the total allowance that shall be made in respect of that expenditure under this paragraph shall be equal to such amount.

(2) Allowance under paragraph 10 or 15 in respect of the qualifying plant expenditure referred to in subparagraph (1)-

(a) shall be made a person if that person has not made a claim in respect of that expenditure under that subparagraph; or

(b) shall not be made to that person in respect of that expenditure which has been given allowance under that

subparagraph.” (Inserted by Act 644 of 2005)

(3) The proviso to subparagraph (1) shall not apply to a company resident in Malaysia which has a paid up capital in respect of ordinary shares of two million and five hundred thousand ringgit and less at the beginning of the basis period for a year of assessment.

(4) A company referred to in subparagraph (3) shall not include a company where more than—

(a) fifty per cent of the paid up capital in respect of ordinary shares of the second mentioned company is directly or indirectly owned by a related company;

(b) fifty per cent of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the second mentioned company; or

(c) fifty per cent of the paid up capital in respect of ordinary shares of the second mentioned company and the related company is directly or indirectly owned by another company.

(5) For the purpose of subparagraph (4), “related company” means a company which has a paid up capital in respect of ordinary shares of more than two million and five hundred thousand ringgit at the beginning of the basis period for a year of assessment.

History

Subparagraph 19A(3), (4) and (5) are inserted by Act 693 of 2009 s43(b), have effect for the year of assessment 2009 and subsequent years of assessment.

### *Agriculture allowances*

20. An allowance made under paragraph 22 or 23 shall be known as a agriculture allowance.

21. A person entitled to a agriculture allowance in respect of any expenditure shall not be entitled to an allowance under any other paragraph in respect of the same

expenditure.

22. Subject to this Schedule, where in the basis period for a year of assessment a person has for the purposes of a business of his incurred qualifying agriculture expenditure on the construction of-

22A. *(Deleted by Act A643)*

23. Subject to this Schedule, where in the basis period for a year of assessment a person has for the purposes of a business of his incurred qualifying agriculture expenditure to which paragraph 22 does not apply, there shall be made to him in relation to the source consisting of that business for that year and for the following year of assessment an allowance equal to one-half of that expenditure.

24. Subject to this Schedule, where a person (in this paragraph referred to as the "transmitter") would but for this paragraph be entitled to an agriculture allowance for a year of assessment in respect of qualifying agriculture expenditure incurred by him in relation to an asset for the purposes of a business of his and in the basis period for that year that asset is transferred or transmitted by operation of law or otherwise to some other person (in this paragraph referred to as the "recipient")-

(a) the transmitter shall for that year be entitled to only a part of that allowance, being a part which bears the same proportion to the whole of that allowance as the number of days comprised in the period which begins at the beginning of that basis period and ends on the day of transfer or transmission bears to the number three hundred and sixty-five; and

(b) where the asset is-

(i) a farm used by the recipient for the purposes of a business of his which consists wholly or partly of the working of the farm; or

(ii) a building which is used by the recipient for the purposes of that business and is adjacent to or closely in the vicinity of that farm or another plantation of his forming part of that

business,

the recipient shall be entitled for the year of assessment in the basis period for which the transfer or transmission took place to the other part of that allowance, and for subsequent years of assessment to any agriculture allowance which would have been made to the transmitter if the asset had not been transferred or transmitted and had continued to be owned and used by the transmitter for the purposes of his business at all material times.

25. Notwithstanding paragraphs 22 to 24, no agriculture allowance shall be made to a person for a year of assessment in relation to an asset and a business of his-

(a) where the asset is transferred or transmitted in the basis period for that year, if it was not in use for the purposes of the business within one month (or such further period as the Director General may allow) before that transfer or transmission took place; or

(b) in any other case, if at the end of the basis period for that year he was not the owner of the asset or it was not in use for the purposes of the business.

#### *Agriculture charges*

26. *(Deleted by Act 755 of 2013)*

#### History

Paragraph 26 is deleted by Act 755 of 2013 s35, wef 11 January 2013. The paragraph previously read:

26. Where the business of a person consists wholly or partly of the working of a farm and in a basis period for a year of assessment any sum first becomes payable to him in that period, being a sum in respect of a grant or other payment by the Government, a State Government or a statutory authority which is intended directly or indirectly to relieve him of the burden of any capital expenditure incurred by him on that farm, an agriculture charge equal to that sum shall be made on him in relation to the source consisting of that business for that year:

Provided that, where that person ceased to possess that farm in the basis period for a year of assessment (being a basis period which elapsed before the time when the grant or other payment first became payable), the grant or other payment shall be deemed to have first become payable in that elapsed period.”.

27. Where in the basis period for a year of assessment a person disposes of an asset and in relation to that asset and a business of his an agriculture allowance has been made to him for a year of assessment, and the qualifying agriculture expenditure incurred in relation to that asset was incurred over a period ending on a particular day and the disposal of the asset took place less than five years after that day, there shall be made on him in relation to the source consisting of that business for that first-mentioned year of assessment an agriculture charge equal to the amount of-

(a) that agriculture allowance; or

(b) where an agriculture allowance in relation to that asset has been made to him for more than one year of assessment, the aggregate of all those allowances for all those years,

and where that asset is disposed of by that person after the end of the basis period (for a year of assessment) in which that business has permanently ceased to be carried on by him, the disposal shall be deemed to have been made in that basis period:

Provided that within three months (or such further period as the Director General may allow) of the beginning of the year of assessment following that first-mentioned year of assessment or, where that asset was disposed of by that person after the end of that last-mentioned basis period, the year of assessment following that in which he disposed of that asset, he may by notice in writing delivered to the Director General elect that the amount of any agriculture charge falling to be made on him in respect of the amount of that aggregate for that first-mentioned year be divided by the number of years of assessment for which those allowances were made; and an agriculture charge equal to the amount resulting from that division shall be made on him in relation to the source consisting of that business for each

of those years of assessment.

## History

Paragraph 27 of Schedule 3 is amended by Act 755 of 2013 para 35(b), by substituting for the word "six" the word "five", comes into force on 1 January 2014.

Paragraph 27, Schedule 3 of the principal Act, amended by Act 631 of 2003, by substituting for the word "ten" the word "six", deemed to have come into operation on 13 September 2003.

Paragraph 27, Schedule 3 of the principal Act also amended by Act 631 of 2003 by inserting after the words "the beginning of" the words "the year of assessment following"; with effect for the year of assessment 2000(current year) and subsequent years of assessment.

Paragraph 27, Schedule 3 of the principal Act, formerly read as:

27. Where in the basis period for a year of assessment a person disposes of an asset and in relation to that asset and a business of his an agriculture allowance has been made to him for a year of assessment, and the qualifying agriculture expenditure incurred in relation to that asset was incurred over a period ending on a particular day and the disposal of the asset took place less than ten years after that day, there shall be made on him in relation to the source consisting of that business for that first-mentioned year of assessment an agriculture charge equal to the amount of-

(a) that agriculture allowance; or

(b) where an agriculture allowance in relation to that asset has been made to him for more than one year of assessment, the aggregate of all those allowances for all those years,

and where that asset is disposed of by that person after the end of the basis period (for a year of assessment) in which that business has permanently ceased to be carried on by him, the disposal shall be deemed to have been made in that basis period:

Provided that within three months (or such further period as the Director General may allow) of the beginning of following that first-mentioned year of assessment or, where that asset was disposed of by that person after the end of that last-mentioned basis period, the year of assessment following that in which he disposed of that asset, he may by notice in writing delivered to the Director General elect that the amount of any agriculture charge falling to be made on him in respect of the amount of that aggregate for that first-mentioned year be divided by the number of years of assessment for which those allowances were made; and an agriculture charge equal to the amount resulting from that division shall be made on him in relation to the source consisting of that business for each of those years of assessment.

#### *Forest allowances and forest charges*

28. An allowance made under paragraph 30, 30A or 31 shall be known as a forest allowance and a charge made under paragraph 32 shall be known as a forest charge.

29. A person entitled to a forest allowance in respect of any expenditure shall not be entitled to an allowance under any other paragraph in respect of the same expenditure.

30. Subject to this Schedule, where in the basis period for a year of assessment a person has for the purposes of a business of his incurred qualifying forest expenditure on the construction of-

(a) a building of the kind referred to in paragraph 8 (1) (b) there shall be allowed to him in relation to the source consisting of that business for that year and for each of the four following years of assessment an allowance equal to one-fifth of that expenditure; and

(b) a road or building of the kind referred to in paragraph 8 (1) (a) there shall be made to him in relation to the source consisting of that business for that year and each of the nine following years of assessment an allowance equal to one-tenth of that expenditure.



30A. Subject to this Schedule, where in the basis period for a year of assessment prior to the year of assessment 1970 a person has for the purposes of a business of his incurred qualifying forest expenditure on the construction of a building of the kind referred to in paragraph 8 (1) (b) and a forest allowance was made to him in relation to the source consisting of that business for a year of assessment prior to the year of assessment 1970 in respect of that expenditure there shall be allowed to him for the year of assessment 1970 and for each of the four following years of assessment an allowance equal to one-fifth of the difference between that qualifying forest expenditure and the forest allowances made to him in respect of that qualifying expenditure for years of assessment prior to the year of assessment 1970.

31. Where a person in relation to a business of his in the basis period for a year of assessment permanently ceases to extract timber from a forest in relation to which he has incurred qualifying forest expenditure, there shall be made to him in relation to the source consisting of that business for that year an allowance in an amount equal to the excess, if any, of that expenditure over the total of any allowances made to him under paragraph 30 or 30A in relation to that expenditure; and he shall not be entitled to an allowance under paragraph 30 or 30A in relation to that expenditure for any year of assessment subsequent to that first-mentioned year of assessment.

32. (1) Where a person who in relation to a business of his and a forest has incurred qualifying forest expenditure disposes of that forest, there shall be made on him in relation to the source consisting of that business for the year of assessment in the basis period for which the disposal took place a forest charge equal to the amount of any allowance or to the aggregate amount of any allowances made to him in relation to that expenditure under paragraph 30, 30A or 31; and where a forest is disposed of by that person after the end of the basis period (for a year of assessment) in which that business has permanently ceased to be carried on by him, the disposal shall be deemed to have been made in that basis period:

Provided that within three months (or such further period as the Director General may allow) of the beginning of the year of assessment following that year in which he disposed of the forest he may by notice in writing delivered

to the Director General elect that the amount of that forest charge be divided by the number of years of assessment for which those allowances were made, and in lieu of that charge a forest charge equal to the amount resulting from that division shall be made on him in relation to the source consisting of that business for each of those years of assessment.

(2) For the purposes of this paragraph, a person shall be taken to have disposed of a forest if, having a concession or licence to extract timber therefrom, he transfers or assigns that concession or licence or surrenders that concession or licence for valuable consideration.

#### *Renovation or refurbishment allowances*

32A. (1) Subject to this Schedule, where in the basis period for a year of assessment a person has for the purposes of a business of his incurred qualifying renovation or refurbishment expenditure, there shall be made to him in relation to the source consisting of that business for that year and the immediate following year of assessment an allowance equal to one-half of that expenditure.

(2) No renovation or refurbishment allowances shall be made to a person for a year of assessment and a business of his, if at the end of the basis period for that year of assessment the premises which has been renovated or refurbished is not in use by that person for the purpose of his business.

32B. Subject to paragraph 8A, where a person incurs between the period from 10 March 2009 to 31 December 2010 capital expenditure on renovation or refurbishment of a premises which is used for the purpose of a business and such capital expenditure qualifies both as qualifying renovation or refurbishment expenditure and qualifying building expenditure, that person shall elect to claim an allowance in respect of that capital expenditure as qualifying renovation or refurbishment expenditure, or qualifying building expenditure.

## History

Paragraphs 32A and 32B of Schedule 3 are inserted by Act A1349 of 2009, s6(b), shall have effect for the year of assessment 2009 and subsequent years of assessment.

### *Qualifying expenditure: balancing allowances and balancing charges*

33. Allowances made under paragraph 34 and charges made under paragraph 35 shall be known as balancing allowances and balancing charges respectively.

34. Subject to this Schedule, where in the basis period for a year of assessment a person disposes of an asset in relation to which he has incurred qualifying expenditure for the purposes of a business of his and residual expenditure at the date of its disposal exceeds its disposal value, there shall be made to him in relation to the source consisting of that business for that year an allowance equal to the amount of the excess.

35. Subject to this Schedule, where in the basis period for a year of assessment a person disposes of an asset in relation to which he has incurred qualifying expenditure for the purposes of a business of his and its disposal value exceeds the residual expenditure at the date of its disposal, there shall be made on him in relation to that business source for that year a charge equal to the amount of the excess.

## History

Paragraph 35 amended by Act 639 of 2004 s28(c) (i), by substituting for the colon at the end of the paragraph a full stop, with effect from year of assessment 2005 and subsequent years of assessment.

Paragraph 35 also amended by Act 639 of 2004 s28(c) (ii), by deleting the proviso to the paragraph, with effect from year of assessment 2005 and subsequent years of assessment.

Paragraph 35 formerly read as:

35. Subject to this Schedule, where in the basis period for a year of assessment a person disposes of an asset in relation to which he has incurred qualifying expenditure for the purposes of a business of his and its disposal value exceeds the residual expenditure at the date of its disposal, there shall be made on him in relation to that business source for that year a charge equal to the amount of the excess:

Provided that no charge shall be made on him under this paragraph if that asset is an industrial building and it is disposed of by him after the basis period (in relation to that business) for the year of assessment which is the fiftieth year of assessment after the year of assessment in the basis year for which that building was constructed.

Special provision relating to paragraph 35 of Schedule 3

30. Notwithstanding the provision of paragraph 35 of Schedule 3 to the principal Act, where prior to the coming into operation of the amendment to that paragraph under paragraph 28(c) of this Act, a person has incurred capital expenditure on the construction or the purchase of a building which is used as an industrial building, no charge (if any) shall be made on that person under paragraph 35 Schedule 3 to the principal Act as amended if the building is disposed off after the basis period for a year of assessment which is the fiftieth year of assessment after the year of assessment in the basis year in which that building was constructed.

36. No allowance shall be made for a year of assessment under paragraph 34 to a person in relation to an asset which has been disposed of unless an initial or annual allowance in relation to that asset has been made or would have been made, if claimed, to him:

Provided that this paragraph shall not apply in respect of any amount incurred under paragraph 67C.

History

Paragraph 36 is amended by Act 6963 Of 2009 s43(c), by substituting for the full stop at the end of the paragraph a

colon; and by inserting the following proviso:

"Provided that this paragraph shall not apply in respect of any amount incurred under paragraph 67C.",

has effect for the year of assessment 2009 and subsequent years of assessment.

37. A charge made on a person under paragraph 35 in relation to an asset shall not exceed the total of all allowances made to him under this Schedule in relation to that asset.

*Qualifying expenditure: Licensed private hospital, maternity home and nursing home*

37A. The provisions of this Schedule relating to industrial building shall apply, *mutatis mutandis*, to a private hospital, maternity home and nursing home licensed under the provisions of any written law for the time being in force relating to registration of private hospital, maternity home and nursing home, or where no such law is in force, approved by the Director General after consultation with the Director General of Health; and in such application the reference to capital expenditure incurred on the construction of a building shall include any capital expenditure incurred on the alteration or renovation of rented premises for the purpose of carrying on therein a private hospital, maternity home or nursing home.

*Qualifying expenditure: Building used for research*

History

Title before paragraph 37B is amended by Act 693 of 2009 s43(d), by deleting the words "*or training*", has effect for the year of assessment 2009 and subsequent years of assessment.

37B. The provisions of this Schedule relating to industrial building shall apply, *mutatis mutandis*, to a building or part thereof being in use for the purpose of -

## History

Schedule 3 subparagraph 37B(a) amended by Act 513 of 1994 s27(a), by substituting for the words "section 34A(1)(a)" the words "sections 34A(1)(a) and 34B(4)", shall have effect for the year of assessment 1994 and subsequent years of assessment.

(b) *(Deleted by Act 693 of 2009)*

## History

Subsubparagraph 37B(b) is deleted by Act 693 of 2009 s43(e), has effect for the year of assessment 2009 and subsequent years of assessment. The Subsubparagraph previously read:

"(b) research undertaken by a company which is participating in industrial adjustment approved under section 31A of the Promotion of Investments Act 1986;..

(c) *(Deleted by Act 544)*

## History.

Subparagraph 37B( c ) in Schedule 3 deleted by Act 544 of 1996 s15(a ), shall have effect for the year of assessment 1996 and subsequent years of assessment. Subparagraph 37B( c ) in Schedule 3 formerly read:

"(c) industrial, technical or vocational training approved by the Minister;".

Schedule 3 subparagraph 37B(c ) substituted by Act 531 of 1995 s20(a)(i), shall have effect for the year of assessment 1995 and subsequent years of assessment. Schedule 3 subparagraph 37B(c ) formerly read:

"(c) industrial training approved by the Minister; or".

(d) *(Deleted by Act 693 of 2009)*

## History

Subsubparagraph 37B(d) is deleted by Act 693 of 2009 s43(e), has effect for the year of assessment 2009 and subsequent years of assessment. The Subsubparagraph previously read:

"(d) training undertaken by a company mentioned in subparagraph (b) in respect of its employees; or".

Schedule 3 subparagraph 37B(d ) amended by Act 531 of 1995 s20(a)(ii), by substituting for the comma at the end of subparagraph (d) the punctuation mark and word "; or", shall have effect for the year of assessment 1995 and subsequent years of assessment.

(e) research undertaken by a research and development company or a contract research and development company as defined in section 2 of the Promotion of Investments Act 1986,

## History.

Schedule 3 subparagraph 37B(e ) inserted by Act 531 of 1995 s20(a)(iii), shall have effect for the year of assessment 1995 and subsequent years of assessment.

and in such application, the reference to capital expenditure incurred on the construction of a building or part thereof, shall include any capital expenditure incurred on the alteration or renovation of rented premises for the purpose of carrying on therein such research and the building or part thereof shall be deemed to be in use for the purposes of the business referred to in section 34A, notwithstanding that in the case of research referred to in subparagraph (a), such research is not related to that business.

## History

Paragraph 37B is amended by Act 693 of 2009 s43 (e):

(i) by deleting the words “, industrial training or training”;

(ii) by substituting for the colon a full stop;

(iii) by deleting the proviso. The proviso previously read:

"Provided that the provisions of this Schedule relating to industrial building shall not apply to capital expenditure incurred on a building or part thereof for the purpose mentioned in subparagraph (b) or (d) where such expenditure is incurred after ten years from the date of approval of industrial adjustment under section 31 A of the Promotion of Investments Act 1986."

has effect for the year of assessment 2009 and subsequent years of assessment

*Qualifying expenditure: Building used for warehouse*

37C. The provisions of this Schedule relating to industrial building shall apply, *mutatis mutandis*, to a building or part thereof used by a person solely for the purpose of storage of goods for export or for the storage of imported goods which are to be processed and distributed or re-exported and there shall be substituted for the amount of the allowance which would otherwise fall to be made to him under paragraph 12 or 16 an allowance of an amount equal to one-tenth of the qualifying expenditure for that year and for each of the nine following years of assessment.

*Qualifying expenditure: Machinery or plant used for research*

37D. The provisions of this Schedule relating to qualifying plant expenditure shall apply, *mutatis mutandis*, to capital expenditure incurred on the provision of machinery or plant used for the purposes of research approved by the Minister within the meaning of section 34A; and in such application the machinery or plant shall be deemed to be in use for the purposes of the business referred to in section 34A, notwithstanding that such research is not related to that business.

*Qualifying expenditure: Building used for*



*approved service project*

37E. The provisions of this Schedule relating to industrial buildings shall apply, *mutatis mutandis*, to a building or part thereof used by a person solely for the purpose of the provision of services and modernisation of operations in relation to an approved service project as defined under Schedule 7B.

*Qualifying expenditure: Building used for hotel*

37F. The provisions of this Schedule relating to industrial buildings shall apply, *mutatis mutandis*, to a building or part thereof used by a person solely for the purpose of an hotel and that hotel is registered with the Ministry of Tourism.

History :

Schedule 3, paragraph 37F is amended ACT 661 of 2006 s31(a), by deleting the words "Culture, Arts and", shall have effect for the year of assessment 2007 and subsequent years of assessment. The paragraph previously read:

"37F. The provisions of this Schedule relating to industrial buildings shall apply, *mutatis mutandis*, to a building or part thereof used by a person solely for the purpose of an hotel and that hotel is registered with the Ministry of Culture, Arts and Tourism."

Schedule 3 paragraph 37F inserted by Act 619 of 2002 s8(k), shall have effect for the year of assessment 2002 and subsequent years of assessment.

*Qualifying expenditure: Airport*

37G. The provisions of this Schedule relating to industrial buildings shall apply, *mutatis mutandis*, to an airport and the reference to capital expenditure incurred in relation to that airport shall include the capital expenditure on the construction, reconstruction, extension, improvement or purchase of any building, runway or ancillary structures.

History.

Schedule 3 paragraph 37G inserted by Act 619 of 2002 s8(k), shall be deemed to have effect for the year of assessment 2001 and subsequent years of assessment.

*Qualifying expenditure: Motor racing circuit*

37H. The provisions of this Schedule relating to industrial buildings shall apply, *mutatis mutandis*, to a motor racing circuit approved by the Minister and the reference to capital expenditure incurred in relation to that motor racing circuit shall include the capital expenditure on the construction, reconstruction, extension or improvement of that motor racing circuit or ancillary structures.

History.

Schedule 3 paragraph 37H inserted by Act 619 of 2002 s8(k), shall be deemed to have effect for the year of assessment 2001 and subsequent years of assessment.

*Disposal subject to control, etc.*

38. (1) Paragraphs 39 and 40 shall apply where a person disposes an asset in relation to which an initial or annual allowance or an agriculture allowance or forest allowance has been made or would have been made, if claimed, to him and at the time of the disposal-

- (a) the disposer of the asset is a person over whom the acquirer of the asset has control;
- (b) the acquirer of the asset is a person over whom the disposer of the asset has control;
- (c) some other person has control over the disposer and acquirer of the asset;
- (d) the disposal is affected in consequence of a scheme of reconstruction or amalgamation of companies; or

(e) the disposal is affected by way of a settlement or gift or by devolution of the property in the asset on death,

the disposer of the asset, the asset, in question and the acquirer of the asset being in those paragraphs referred to as the disposer, the asset and the acquirer respectively.

(2) In this paragraph "control", in relation to a company, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other company, or by virtue of any powers conferred by the articles of association or other document regulating that or any other company, that the affairs of the first-mentioned company 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 of the partnership, or to more than one-half of the divisible profits of partnership, or in relation to a limited liability partnership, means the right to a share of more than one-half of the capital contribution whether in cash or in kind of the limited liability partnership and in relation to business trust, means the right to not less than fifty per cent of residual profits of the business trust available for distribution, or not less than fifty per cent of any residual assets of the business trust available for distribution on a winding up.

## History

Paragraph 38(2) is amended by Act 755 of 2013 para 35(c), by substituting for the words "divisible profits of partnership" the words "divisible profits of partnership, or in relation to a limited liability partnership, means the right to a share of more than one-half of the capital contribution whether in cash or in kind of the limited liability partnership and in relation to business trust, means the right to not less than fifty per cent of residual profits of the business trust available for distribution, or not less than fifty per cent of any residual assets of the business trust available for distribution on a winding up", comes into force on 26 December 2012.

38A. (1) Paragraphs 39 and 40 shall apply where a company disposes of an asset in respect of industrial building to a unit trust in relation to which an initial or annual allowance has been made or would have been made, if claimed, to the company.

(2) For the purpose of this paragraph—

(a) “unit trust” has the same meaning assigned to it in section 61A; and

(b) “company” means a company which holds not less than fifty per cent of residual profits of the unit trust available for distribution, or not less than fifty per cent of any residual assets of the unit trust available for distribution on a winding up.

#### History

Subparagraph 38A(2) is substituted by Act 755 of 2013 para 35(d), has effect for the year of assessment 2013 and subsequent years of assessment. The subparagraph previously read:

“(2) For the purpose of this paragraph, “unit trust” has the same meaning assigned to it under section 61A.”.

Paragraph 38A is inserted by Act 683 of 2007 s34(a), has effect for the year of assessment 2008 and subsequent years of assessment.

38A. Paragraphs 39 and 40 shall apply where a partnership or a company is converted into a limited liability partnership in accordance with section 29 or 30 of the Limited Liability Partnerships Act 2012 and the partnership or that company disposes of an asset to that limited liability partnership in relation to which an initial or annual allowance has been made or would have been made, if claimed by the partnership or the company.

#### History

Paragraph 38A to Schedule 3 is inserted by Act 761 of 2014 paragraph 32(a), comes into force on 24 January 2014

39. (1) Subject to any rules made under paragraph 40, the

disposal of the asset shall be deemed to have taken place on the first day of the disposer's final period for a sum equal to the disposer's residual expenditure on that day.

(2) In this paragraph "the disposer's final period" means, in relation to the disposal and acquisition of the asset, the basis period (appropriate to the disposer's business for the purposes of which qualifying expenditure has been incurred in relation to the asset) for the year of assessment which coincides with the first year of assessment for which an initial or annual allowance may be made to the acquirer in relation to the asset if it is used for the purposes of a business carried on by the acquirer or as an industrial building.

40. Any qualifying expenditure incurred by the acquirer in relation to the asset to which regard would be had but for this paragraph shall be disregarded for the purposes of this Schedule and the acquirer shall be deemed to have incurred qualifying expenditure in relation to the asset of an amount equal to the sum ascertained under paragraph 39 in relation to the asset; and in relation to the asset-

(a) the date on which the acquirer shall be treated as having incurred the expenditure so deemed to have been incurred by him;

(b) the withdrawal of any allowance which would but for paragraph 39 and this paragraph fall to be made to the disposer;

(c) the amount of any allowance or charge to be made to or on the acquirer; and

(d) such other matters as may be considered necessary by the Minister,

shall be determined in such manner as may be prescribed by rules to be made for the purposes of paragraphs 38, 38A, 38B, 39 and this paragraph.

History

Paragraph 40 is amended by Act 761 of 2014 paragraph 32(b), by inserting after the words "38A," the words "38B,"

comes into force on 24 January 2014

Paragraph 40 is amended by Act 683 of 2007 s34(b) by inserting after the words "38," the words "38A", has effect for the year of assessment 2008 and subsequent years of assessment.

*Asset used in more than one business*

41. In any case where a person has incurred qualifying expenditure in relation to an asset and any one or more of the following circumstances are found-

the amount of any initial or annual allowances to be made to that person from time to time in any of those circumstances and any balancing allowance or balancing charge to be made on him on the disposal of the asset, and such other matters as may be considered necessary by the Minister, shall be determined in such manner as may be prescribed by rules made for the purposes of this paragraph.

*Certain buildings treated as industrial buildings*

42. (1) Where an industrial building is in use in the basis period for a year of assessment for the purposes of a business of a person and a building is constructed by him and provided by him as living accommodation for an individual employed by him in that business, that last-mentioned building shall be treated as an industrial building in use as an industrial building for the purposes of that business at any time that it is occupied by an individual so employed, and there shall be substituted for the amount of the initial allowance which would otherwise fall to be made to him under paragraph 12 an initial allowance equal to two-fifths of the qualifying expenditure incurred by that person on that last-mentioned building:

Provided that, where the expenditure incurred by that person on the construction of that last-mentioned building is expenditure of a kind to which paragraph 7 or 8 is applicable, that person may within three months (or within such further period as the Director General may allow) of

the beginning of the year of assessment in the basis period for which that expenditure was incurred by notice in writing delivered to the Director General elect that, in lieu of having allowances made to him under paragraph 22 or 30 in relation to that expenditure, allowances be made to him under this paragraph.

(2) For the purposes of this paragraph, in relation to a business of a person, "employee" does not include a director, an individual having control of that business or an individual who is a member of the management, administrative or clerical staff engaged in that business.

42A. (1) Where a person carrying on a manufacturing, hotel or tourism business or an approved service project under Schedule 7B has incurred in the basis period for a year of assessment expenditure on the construction or purchase of a building for the purposes of that business for the provision of living accommodation for individuals employed by him in that business, that building shall be treated as an industrial building for the purposes of that business at any time that it is occupied by individuals so employed, and there shall be substituted for the amount of the allowance which would otherwise fall to be made to him under paragraph 12, 16 or 42 an allowance equal to one-tenth of the qualifying expenditure for that year and for each of the nine following years of assessment.

(2) Where a person has for the purposes of a business of his incurred in the basis period for a year of assessment expenditure on the construction or purchase of a building for the purposes of that business for the provision of child care facilities for individuals employed by him in that business, that building shall be treated as an industrial building for the purposes for that business at any time that it is used by individuals so employed, and there shall be substituted for the amount of the allowance which would otherwise fall to be made to him under paragraph 12, 16 or 42 an allowance equal to one-tenth of the qualifying expenditure for that year for each of the nine following years of assessment.

(3) Notwithstanding any other provision of this Schedule, for the purposes of this paragraph the qualifying expenditure

in the case of a purchased building shall be the purchase price of that building.

(4) For the purposes of subparagraph (1), "individuals employed by him" does not include a director, and individual having control of that business or an individual who is a member of the management, administrative or clerical staff engaged in that business.

## History

Schedule 3 paragraph 42A amended by Act 619 of 2002 s8(l), by deleting the words ",17", shall have effect for the year of assessment 2002 and subsequent years of assessment.

Schedule 3 paragraph 42A inserted by Act 513 of 1994 s27(b), shall have effect for the year of assessment 1994 and subsequent years of assessment.

42B. Where in the basis period for a year of assessment a person has for the purposes of a business of his incurred capital expenditure on the construction or purchase of a building for a school or an educational institution approved by the Minister of Education or Minister of Higher Education or any relevant authority, that building shall be treated as an industrial building for the purposes of that business and there shall be substituted for the amount of the allowance which would otherwise fall to be made to him under paragraph 12, 16 or 42 an allowance equal to one-tenth of the qualifying expenditure for that year and for each of the nine following years of assessment.

42C. Where in the basis period for a year of assessment a person has for the purposes of a business of his incurred capital expenditure on the construction or purchase of a building for the purposes of industrial, technical or vocational training approved by the Minister, that building shall be treated as an industrial building for the purposes of that business and there shall be substituted for the amount of the allowance which would otherwise fall to be made to him under paragraph 12, 16 or 42 an allowance equal to one-tenth of the qualifying expenditure for that year and for



each of the nine following years of assessment.

## History

Schedule 3 paragraph 42C amended by Act 619 of 2002 s8(l), by deleting the words ",17", shall have effect for the year of assessment 2002 and subsequent years of assessment.

Schedule 3 paragraph 42C inserted by Act 544 of 1996 s15(c), shall have effect for the year of assessment 1996 and subsequent years of assessment.

## *Interpretation*

43. In this Schedule "asset", except where the context otherwise requires, means an asset in relation to which qualifying expenditure, qualifying agriculture expenditure or qualifying forest expenditure, as the case may be, has been incurred.

44. Any reference in this Schedule to any asset or to any relevant interest therein shall be construed whenever necessary as including a reference to a part of any asset or of any relevant interest therein (or, in the case of an asset or any relevant interest therein held in undivided shares, the undivided share in the asset or in the relevant interest therein); and, when it is so construed, the Director General shall make such necessary apportionments as may be just and reasonable to give proper effect to this Schedule.

45. For the purposes of this Schedule, capital expenditure incurred on-

46. Where a person incurs capital expenditure under a hire purchase agreement on the provision of any machinery or plant for the purposes of a business of his, he shall for the purposes of this Schedule be taken to be the owner of that machinery or plant; and the qualifying expenditure incurred by him on that machinery or plant in the basis period for a year of assessment shall be taken to be the capital portion of any instalment payment (or, where there is more than one such payment, of the aggregate of those payments) made

by him under that agreement in that period.

47. For the purposes of this Schedule, where an asset consists of a building the owner thereof shall be taken to be the owner of the relevant interest in the building.

48. A building in respect of which qualifying expenditure has been incurred is disposed of within the meaning of this Schedule on the occurrence of any of the following events:

(a) the sale, transfer or assignment of the relevant interest in the building;

(b) where that interest depends on the duration of a concession, the coming to an end of the concession;

(c) where that interest is a leasehold interest, the determination of that relevant interest otherwise than on the person entitled thereto acquiring the reversion;

(d) the demolition or destruction of the building, or on the building ceasing to be used as an industrial building.

49. In this Schedule "relevant interest", in relation to a building on which qualifying building expenditure has been incurred, means (subject to paragraphs 50 and 51) the interest in the building to which the person who incurred that expenditure was entitled when he incurred it.

50. Where-

(a) a person is entitled to two or more interests in a building when he incurs qualifying expenditure on it; and

(b) one of those interests is an interest which is reversionary on all the others,

that reversionary interest shall be the relevant interest for the purposes of this Schedule.

51. An interest shall not cease to be the relevant interest for the purposes of this Schedule by reason of the creation of any lease or other interest to which that first-mentioned interest is subject; and, where the relevant interest is a

leasehold interest and is extinguished by 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.

52. (1) An asset in relation to which qualifying agriculture expenditure has been incurred by a person is disposed of within the meaning of this Schedule on the occurrence of any of the following events-

- (a) on the sale of the relevant interest in that asset;
- (b) where the relevant interest is a leasehold interest and the lease comes to an end, if an incoming lessee or the owner of the interest in immediate reversion makes any payment to that first-mentioned person;
- (c) on the transfer or transmission of the asset for valuable consideration; or
- (d) on the asset ceasing to be used by him for the purposes of a business of his which consists wholly or partly of the working of a farm.

(2) For the purposes of this paragraph, "relevant interest" shall have the meaning which it would have if in paragraphs 49 and 50 the reference to-

- (a) a building, were to land or a building;
- (b) qualifying building expenditure, were to qualifying agriculture expenditure;
- (c) the building, were to land or a building; and
- (d) qualifying expenditure, were to qualifying agriculture expenditure.

53. (1) Any reference in this Schedule to the disposal, purchase, transfer or transmission of any asset includes a reference to the disposal, purchase, transfer or transmission, as the case may be, of that asset together with any other asset, whether or not qualifying expenditure, qualifying agriculture expenditure or qualifying forest expenditure, as the case may be, has been incurred on that

last- mentioned asset, and in any such case so much of the disposal value or the purchase price, as the case may be, of those assets as, on a just apportionment, is properly attributable to the first-mentioned asset shall, for the purposes of this Schedule, be deemed to be the disposal value or the purchase price, as the case may be, of that first-mentioned asset.

(2) For the purposes of this paragraph, all the assets which are disposed of, purchased, transferred or transmitted in pursuance of one bargain shall be deemed to be disposed of, purchased, transferred, or transmitted, as the case may be, together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate disposals, purchases, transfers or transmissions, as the case may be, of those assets.

(3) Subparagraphs (1) and (2) of this paragraph shall apply, with any necessary modifications, to the disposal, purchase, transfer or transmission of any asset or the relevant interest in any asset together with any other asset or relevant interest in any other asset.

54. Where any person has incurred expenditure in relation to an asset which is allowed to be deducted under Chapter 4 of Part III in computing the adjusted income or adjusted loss of that person for the basis period for a year of assessment from a business of his, that expenditure shall not be treated as qualifying expenditure or qualifying agriculture expenditure or qualifying forest expenditure or qualifying renovation or refurbishment expenditure in relation to that asset.

## History

Paragraph 54 of Schedule 3 is amended by Act A1349 of 2009, s 6 (c), by inserting after the words "qualifying forest expenditure" the words "or qualifying renovation or refurbishment expenditure", shall have effect for the year of assessment 2009 and subsequent years of assessment.

55. For the purposes of this Schedule-

(a) in the case of any expenditure incurred on the construction of a building, the day on which that expenditure

is incurred is the day on which the construction of the building is completed and in the case of any expenditure incurred on the provision of machinery or plant for the purposes of a business the day on which that expenditure is incurred is the day on which the machinery or plant is capable of being used for the purposes of the business; and

(b) in any other case, the day on which the amount of any expenditure becomes payable is the day on which that amount of expenditure is incurred:

Provided that, where a person incurs expenditure for the purposes of a business of his which he is about to carry on, that expenditure shall be deemed to be incurred when he commences to carry on the business.

56. For the purposes of this Schedule, an asset which is temporarily disused in relation to a business of a person shall be deemed to be in use for the purposes of the business if it was in use for the purposes of the business immediately before becoming disused and if during the period of disuse it is constantly maintained in readiness to be brought back into use for those purposes.

57. If an asset which is temporarily disused in relation to a business of a person ceases to be ready for use for the purposes of the business or if its disuse can no longer reasonably be regarded as temporary, it shall be deemed to have ceased at the beginning of the period of disuse to be used for the purposes of the business, and all such assessments shall be made as may be necessary to counteract the benefit of any allowances made to him for any year of assessment by reason of the application of paragraph 56 in relation to the asset.

58. For the purposes of this Schedule, a building is purchased by a person on the sale, transfer or assignment to him of a relevant interest in the building.

59. Any reference in this Schedule to the date of any sale, purchase, transfer or transmission shall be construed as a reference to the date of completion of the sale, purchase,

transfer or transmission, as the case may be, or the date when possession of the asset the subject matter of the sale, purchase, transfer or transmission, as the case may be (or of the asset in which there is a relevant interest which is the subject matter of the sale, purchase, transfer or transmission, as the case may be) is given, whichever is the earlier.

60. Where a person who owns a building grants a lease thereof and that building is in use as an industrial building, then, in the application of this Schedule to that person in relation to that building any reference to a business of his shall be taken to be a reference to the source in respect of any income to which that person is entitled under that lease, and any reference to a basis period (in relation to any such reference to a business) shall be taken to be a reference to the basis period in relation to that source.

61. Any plant or machinery which is used for the purposes of a business and in respect of which qualifying expenditure has been incurred is disposed of within the meaning of this Schedule if it is sold, discarded or destroyed or if it ceases to be used for the purposes of that business.

61A. (1) Notwithstanding paragraph 48 or 61, as the case may be, but subject to this paragraph, where in the basis period for a year of assessment an asset for which qualifying capital expenditure has been incurred is classified as asset held for sale in accordance with generally accepted accounting principles, such asset shall be deemed to have ceased to be used for the purposes of that paragraph.

(2) Where subparagraph (1) applies and the asset is sold in the basis period the asset is classified as asset held for sale, the disposal value of the asset for the purposes of this schedule shall be an amount equal to its market value at the date it was classified as asset held for sale or the net proceeds of the sale, whichever is greater.

(3) Where in the basis period for a year of assessment an asset for which qualifying capital expenditure has been incurred is classified as asset held for sale in accordance

with generally accepted accounting principles, such asset shall be deemed to have ceased to be used for the purposes of paragraph 48 or 61, as the case may be, in the following basis period—

(a) where the asset is sold in the following basis period; or

(b) where the asset is not sold after the end of the following basis period.

(4) For the purpose of subsection (3), the disposal value of the asset shall be—

(a) in the case where the asset is sold in the following basis period, an amount equal to its market value at the end of the basis period such asset is held for sale or the net proceeds of the sale, whichever is greater;

(b) in the case where the asset is not sold in the following basis period, the market value of the asset at the end of that following basis period.

(5) Where paragraph (4) applies, in determining the residual expenditure of such asset for that following basis period, the total qualifying expenditure incurred by that person shall be reduced by an amount of annual allowance which would have been made to him for that following basis period as if the asset had been in use in that following basis period for the purpose of business of his.

(6) Where an asset deemed ceased to be used in accordance with subparagraph (3)(b) is brought into use by the person in a business of his in a basis period for any year of assessment after the basis period the asset is deemed ceased to be used—

(a) that person shall be deemed to have incurred qualifying capital expenditure for that asset equal to its market value at the date it is brought into use for the purpose of that business; and

(b) no initial allowance shall be made to that person in relation to an asset under subparagraph (a).

(7) In this paragraph, “market value” in the case of an

industrial building, means the market value as determined by a valuation officer employed by the government.

## History

Paragraph 61A is inserted by Act 755 of 2013 para 3(e), has effect for the year of assessment 2013 and subsequent years of assessment.

62. (1) Subject to sub-paragraph (2), for the purposes of this Schedule, where an asset is disposed of by a person, its disposal value shall be taken to be an amount equal to its market value at the date of its disposal or, in the case of its disposal by way of sale, transfer or assignment-

(a) an amount equal to its market value at the date of the sale, transfer or assignment, as the case may be; or

(b) the net proceeds of the sale, transfer or assignment as the case may be, whichever is the greater:

Provided that, where the asset is disposed of in such circumstances that insurance or compensation moneys are received by that person in respect of the asset, its disposal value shall be taken to be an amount equal to its market value at the date of its disposal or those moneys, whichever is the greater.

(2) Where an asset of the kind to which paragraph 2 (2) applies is disposed of, the disposal value shall be deemed to be an amount which bears the same proportion to the disposal value ascertained under subparagraph (1) as the qualifying plant expenditure ascertained under paragraph 2 (2) bears to the qualifying plant expenditure ascertained under paragraph 2 (1).

(3) Where pursuant to an agreement with the Government, State Government or a local authority in respect of a privatisation project an asset used in the privatisation project is disposed of to the Government, State Government or local authority, as the case may be, its disposal value shall be taken to be an amount equal to the net proceeds of the disposal.

## History.



Schedule 3 subparagraph 62(3) inserted by Act 451 of 1991 s25(b), shall have effect for the year of assessment 1991 and subsequent years of assessment.

(4) Notwithstanding paragraph 62(1) where an asset in relation to which the person has incurred qualifying plant expenditure for the purposes of a business of his is disposed of by way of gift, its disposal value shall be deemed to be zero if the gift is made to -

(a) a technical or vocational training institute established and maintained by the government or a statutory body;

(b) a technical or vocational training institute as approved by the Minister; or

(c) an approved research institute as defined in section 34B.

History.

Schedule 3 subparagraph 62(4) inserted by Act 531 of 1995 s20(b), shall have effect for the year of assessment 1995 and subsequent years of assessment.

63. Subject to paragraphs 64 to 66, a building is an industrial building within the meaning of this Schedule if it is used for the purposes of a business and-

(a) it is used as a factory;

(b) it is used as a dock, wharf, jetty or other similar building

(c) it is used as a warehouse and the business consists or mainly consists of the hire of storage space to the public;

(d) the business is that of a water or electricity undertaking supplying water or electricity for consumption by the public or is that of a telecommunication undertaking providing telecommunication services to the public.

History.

Schedule 3 subparagraph 63(d) amended by Act 451 of 1991 s25(c), by inserting immediately after the words "the

public" the words "or is that of a telecommunication undertaking providing telecommunication services to the public", shall have effect for the year of assessment 1991 and subsequent years of assessment.

(e) it is used in connection with the working of a farm and the business consists or mainly consists of the working of the farm, with or without other farms; or

(f) it is used in connection with the working of a mine and the business consists or mainly consists of the working of a mine, with or without other mines.

64. In paragraph 63 (a) "factory" includes-

(a) a building consisting of a mill, workshop (other than a workshop used for the repair or servicing of goods, if the repair or servicing is carried out in conjunction with or incidentally to the business of selling those goods) or other building for the housing of machinery or plant of any description for the manufacture of any product or the subjecting of goods or materials to any process or the generating of power used for the purposes of that manufacture or process; and

(b) a building (within the same curtilage as a building which is used as a factory) used for the storage of any raw material, fuel or stores necessary for the manufacture of that product or the processing of those goods or materials, or for the storage of that product or those goods or materials when processed prior to the sale thereof.

65. (1) Where a building is an industrial building, any building provided as a canteen, rest-room, recreation room, lavatory, bathhouse, bathroom, or wash-room for persons employed in the business for the purposes of which that industrial building is used shall be treated as an industrial building.

(2) In the case of a farm, where a building is provided for the welfare of persons, or as living accommodation for a person, employed in connection with the working of a farm, then, if the building is likely to be of little or no value to any person except in connection with the working of that farm or of another farm, that building shall be treated as an industrial building.

(3) Subject to paragraph 67B, a building used as a dwelling house (not being for accommodation of the kind mentioned in subparagraph (2)) or a retail shop, showroom or office is not and shall not be treated as an industrial building.

#### History

Subparagraph 65(3) amended by Act A 619 of 2002 s8(m), by deleting for the words ", hotel", shall have effect for the year of assessment 2002 and subsequent years of assessment.

Subparagraph 65(3) amended by Act A 600 of 2000 s13(b), by substituting for the word "A" the words "Subject to paragraph 67B, a", shall have effect for the year of assessment 2000 in respect of the basis period ending in the year 1999 (preceding year basis) and subsequent years of assessment.

66. Where part of a building or of an extension of a building is used as an industrial building and the other part of the building or extension, as the case may be, is not so used, then, if the capital expenditure incurred on the construction of the part which is not so used is not more than one-tenth of the capital expenditure incurred on the construction of the whole building or extension, as the case may be, the building or extension, as the case may be, shall be treated as an industrial building for the purposes of this Schedule; and, where the whole or some of the capital expenditure incurred on the construction of the part not so used is not identifiable as the capital expenditure incurred on the whole building or extension, as the case may be, that last-mentioned expenditure or the part thereof not identifiable as incurred on the respective parts of the building or extension, as the case may be, shall be apportioned by reference to the respective floor areas of those respective parts or in such other manner as the Director General may direct.

67. Where capital expenditure is incurred on preparing, cutting, tunnelling or levelling land in order to prepare a site for the installation of machinery or plant to be used for the purposes of a business, then, if that expenditure amounts to more than seventy-five per cent of the aggregate of that

expenditure and the capital expenditure incurred on that machinery or plant, the machinery or plant shall as regards that aggregate expenditure be treated for the purposes of this Schedule as a building so long as that machinery or plant is used for the purposes of that business; and that aggregate expenditure shall be treated as the amount of the qualifying expenditure incurred on that building, which shall be treated as disposed of if that plant or machinery is disposed of.

67A. Where pursuant to an agreement with the Government a person incurs capital expenditure on the construction, reconstruction, extension or improvement of any public road and ancillary structures which expenditure is recoverable through toll collection, the road and ancillary structures as regards such expenditure shall, for the purposes of this Schedule, be treated as a building and the provisions of this Schedule relating to industrial building shall apply, *mutatis mutandis*, to such building:

Provided that-

67B. (1) A building constructed by a person pursuant to an agreement entered into between that person and the Government on a build-lease-transfer basis shall, subject to the approval of the Minister, be treated as an industrial building for the purposes of this Schedule.

(2) Where subparagraph (1) applies -

(a) the balance of residual expenditure under paragraph 68 of this Schedule shall be reduced by the amount of any compensation received; and

(b) the disposal value of the asset shall be taken to be zero when the agreement expires or is terminated.

History.

Paragraph 67B inserted by Act A 600 of 2000 s13(c), shall have effect for the year of assessment 2000 in respect of the basis period ending in the year 1999 (preceding year basis) and subsequent years of assessment.

67C. (1) For the purpose of this Schedule, where—

(a) a person has incurred qualifying plant expenditure in respect of an asset for the purposes of a business of his and in the basis period for a year of assessment the asset is disposed of; and

(b) pursuant to any written laws or agreement, that person is subsequently required to dismantle and remove the asset and restore the site on which the asset is located,

the residual expenditure under paragraph 68 of this Schedule shall be deemed to include any amount incurred for dismantling and removing the asset and restoring the site.

(2) Notwithstanding paragraph 61, in this paragraph “disposed of” means discarded, destroyed or ceased to be used for the purposes of the business.

(3) This paragraph shall not apply if the asset which has been dismantled and removed is subsequently used for any other business of that person or any other person.

(4) The amount incurred in subparagraph (1) shall not include any amount paid which are subject to section 109B, if tax has not been deducted therefrom and paid to the Director General under that section:

Provided that this paragraph shall not apply if the person has paid the amount referred to in subsection 109B(2).

#### History

Paragraph 67C is inserted by Act 693 of 2009 s43 (f), has effect for the year of assessment 2009 and subsequent years of assessment.

68. A reference in this Schedule to residual expenditure at any date in relation to an asset in respect of which qualifying expenditure has been incurred by a person is to be construed as a reference to the total qualifying expenditure incurred by him on the provision, construction or purchase

of the asset before that date, reduced by-

(a) the amount of any initial allowance made to that person in relation to that asset for any year of assessment;

(b) any annual allowance made to that person in relation to that asset for any year of assessment before that date;

(c) any annual allowance which, if it had been claimed (or could have been claimed, if the expenditure in respect of the asset had been qualifying expenditure and if the asset had been in use for the purposes of a business of his) by that person in relation to that asset, would have been made to him for a year of assessment before that date.

69. Any reference in this Schedule to an allowance made to a person for a year of assessment or to an allowance to which a person is entitled under this Schedule for a year of assessment is a reference to-

(a) an allowance which is claimed for a year of assessment and is made or is due to be made for that year (any such allowance being treated as having been made at the end of the basis period for the appropriate source consisting of a business for that year); and

(b) an allowance which would have been made or to which that person would have been entitled in relation to a source consisting of a business of his for a year of assessment but for an insufficiency or absence of adjusted income or the existence of an adjusted loss for the basis period for that year.

70. In this Schedule "purchase price", in relation to the purchase of an industrial building, includes any legal fee, stamp duty or other incidental expenditure incurred by the purchaser in connection with the purchase, but does not include so much of the purchase price of the building and of any land or an interest therein purchased with the building as is attributable to the land or that interest; and, for the purposes of paragraph 53, the building and that land or the interest therein, as the case may be, shall be treated as being separate assets.

#### *Supplemental provisions*

71. Where a person has incurred qualifying expenditure in relation to an asset which is owned by that person for a period of less than two years, except by reason of the death of that person or any other reasons as the Director General thinks appropriate, that any allowance which but for this paragraph would fall to be made to him in relation to that asset shall not be made; and, where any such allowance has been made, a balancing charge in an amount equal to any such allowance shall be made to him for the year of assessment in the basis period for which the asset was disposed of by him (being the basis period appropriate to the source consisting of the business for the purposes of which the expenditure was incurred).

#### History

Paragraph 71 of Schedule 3 is amended by Act A1349, s6(d), by substituting for the words "(except by reason of the death of that person), the Director General may direct" the words "except by reason of the death of that person or any other reasons as the Director General thinks appropriate," shall have effect for the year of assessment 2009 and subsequent years of assessment.

72. *(Repealed by Act A226).*

73. Where qualifying expenditure has been incurred by a person in relation to an asset used for the purposes of a business of his, then, if the asset is used only partly for the purposes of the business, any allowance to be made to that person under this Schedule for a year of assessment in relation to the asset shall consist of so much of what would have been the amount of the allowance claimed and due for that year if the asset had been used in the basis period for that year wholly for the purposes of the business, as shall be determined by the Director General having regard to all the circumstances of the case:

Provided that in ascertaining the residual expenditure at any date in relation to the asset regard shall be had, with respect to any allowance claimed in relation to that asset for any year of assessment, to the full amount of that allowance which but for this paragraph would then have been made to him for that year in relation to that asset.

74. Where a person has a source within the meaning of sections 55 to 58, any allowance or charge to be made to or on him for a year of assessment in relation to a source and to an asset for a year of assessment shall be determined in such manner as may be prescribed by rules made for the purposes of this paragraph.

75. Where, by reason of an insufficiency or absence of adjusted income of a person from a business of his for the basis period for a year of assessment or by reason of the existence of an adjusted loss from the business for that period, effect cannot be given or cannot be given in full to any allowance or to the aggregate amount of any allowances fallen to be made to him for that year in relation to the source consisting of that business, that allowance or that aggregate amount, as the case may be, which has not been so made (or so much thereof as has not been so made to him for that year) shall be deemed to be, an allowance to be made to him for the first subsequent year of assessment for the basis period for which there is adjusted income from that business, and so on for subsequent years of assessment until the whole amount of the allowance or that aggregate amount to be made to him has been made to him.

75A. Any allowance or aggregate amount of allowance for a year of assessment which has not been so made to a company as ascertained under paragraph 75 shall not be made to that company for the purposes of this Schedule and section 42 unless the Director General is satisfied that the shareholders of that company on the last day of the basis period for the year of assessment in which that allowance or that aggregate amount has not been so made were substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which that allowance or that aggregate amount would otherwise be made to that company under this Schedule and available for the purposes of that section and that allowance or that aggregate amount which but for this paragraph would have been made to the company in a year of assessment shall be disregarded for subsequent years of assessment.

Special provision relating to paragraph 75A



(1) Notwithstanding the provisions of section 42 of the principal Act, paragraph 75 of Schedule 3 to principal Act and paragraph 75A of that Schedule as introduced by section 32 of this Act, any allowance or aggregate amount of allowances which has not been so made to a company as ascertained under paragraph 75 for any year of assessment preceding year of assessment 2006 shall not be made to that company under that Schedule for the purpose of section 42 of the principal Act unless the Director General is satisfied that the shareholders of that company on the last day of the basis period for the year of assessment 2005 were substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which that allowance or that aggregate amount would otherwise be made to that company under that Schedule and available for the purpose of section 42 of the principal Act and that allowance or that aggregate amount which but for this subsection would have been made to that company in a year of assessment shall be disregarded for subsequent years of assessment.

(2) For the purpose of subsection (1)-

(a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates-

(i) more than fifty per cent of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same person; and

(ii) more than fifty per cent of the nominal value of the allotted shares in respect of the ordinary shares in the company is held by or on behalf of the same person;

(b) shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company;

(c) the amount of allowance which has not been so made for any year of assessment referred to in that subsection shall consist of an amount of allowance falling to be made under Schedule 3 to the principal Act for that year of assessment but shall not include any amount of allowance deemed to have been made for that year of assessment pursuant to paragraph 75 of that Schedule; and

(d) where the basis period of a company for the year of assessment 2005 ends on or after 1 October 2005, the last day of the basis period for that company for the year of assessment 2005 shall be deemed to be 30 September 2005.

(3) Where there is a substantial change in the shareholders of a company referred to subsection (1), the Minister may under special circumstances exempt that company from the provisions of that subsection.

(4) In this section, "ordinary share" has the same meaning assigned to it under subsection 44(5C) of the principal Act. (Pindaan Akta 644, Tahun 2005)

75AA. Where a partnership or a company is converted into a limited liability partnership in accordance with section 29 or 30 of the Limited Liability Partnerships Act 2012, any allowance or aggregate amount of allowances for a year of assessment which has not been so made to that partnership or company as ascertained under paragraph 75 shall be made to that limited liability partnership for the purposes of this schedule and section 42 for the following year of assessment.

History

Paragraph 75AA is inserted by Act 755 of 2013 para 35(c), comes into force on 26 December 2012.

75B. (1) For the purpose of paragraph 75A-

(a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates-

(i) more than fifty per cent of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same person; and

(ii) more than fifty per cent of the nominal value of the allotted shares in respect of ordinary share in the company is held by or on behalf of the same person;

(b) shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company; and

(c) any allowance or aggregate amount of allowances which has not been so made for any year of assessment referred to in that paragraph shall consist of an allowance falling to be made under this Schedule for that year of assessment but shall not include any amount of allowance deemed to have been made for that year of assessment pursuant to paragraph 75.

(2) In this paragraph, "ordinary share" has the same meaning assigned to it under subsection 44(5C).

75C. Where there is a substantial change in the shareholders of a company referred to in paragraph 75A, the Minister may under special circumstances exempt that company from the provisions of paragraph 75A.". (Pindaan Akta 644, Tahun 2005)

76. A person shall not be entitled to an allowance under this Schedule for a year of assessment unless he makes a claim for the allowance for that year in accordance with paragraph 77.

76A. Where in a year of assessment a partnership or a company is converted into a limited liability partnership in accordance with section 29 or 30 of the Limited Liability Partnerships Act 2012, the limited liability partnership shall not be entitled to an allowance under this Schedule in relation to an asset which is transferred to that limited liability partnership for that year of assessment unless for that year of assessment no allowance in relation to that asset has been claimed by the partners of that partnership or that company in accordance with paragraph 77.

History

Paragraph 76A to Schedule 3 is inserted by Act 761 of 2014

paragraph 32(c), comes into force on 24 January 2014.

77. (1) Any claim by a person for an allowance under this Schedule for a year of assessment shall be made in a written statement containing such particulars as may be requisite to show that the claimant is entitled to the allowance and a certificate signed by the claimant verifying those particulars.

(2) Any claim to be made by a person for a year of assessment in accordance with this paragraph shall be furnished with a return of his income made under section 77 or 77A for that year.

History.

Subparagraph 77(2) Schedule 3 amended by Act A1151 of 2002 s25(a)(i), by substituting for the word "delivered" the word "furnished" and by s25(a)(ii), by inserting after the word "77" the words "or 77A" , with effect from year of assessment 2004 and subsequent years of assessment.

78. Where in the case of a business of a person the basis periods for two years of assessment overlap, the period common to those periods shall be deemed for the purposes of this Schedule to fall into the earlier of those periods and not into the later of those periods.

79. Where as regards a business of a person the Director General has exercised the power conferred upon him by section 21A(3) to direct that the basis period for a year of assessment shall consist of a specified period, any allowance or charge to be made on or to that person under this Schedule in relation to the source consisting of that business for that year shall be ascertained by reference to such a period as shall be determined by the Director General, and that last-mentioned period shall be taken to be the basis period for that year in the application of this paragraph with this Schedule.

History.

Paragraph 79 Schedule 3 amended by Act A1151 of 2002 s25(b)(ii), by deleting the words "21(3) or", with effect from year of assessment 2004 and subsequent

years of assessment.

Paragraph 79 Schedule 3 amended by Act A1151 of 2002 s25(b)(i), by inserting after the word "21(3)" the words "or 21A(3)", shall be deemed to have effect from year of assessment 2002 and subsequent years of assessment.

80. The Minister may prescribe a building which is constructed or purchased by any person and used by him for the purposes of his business as an industrial building and the amount of the allowance or allowances which would otherwise fall to be made to him under paragraph 12, 16 or 42.

History.

Paragraph 80 Schedule 3 is inserted by Act 624 of 2002 s24(1), shall come into operation on 21 September 2002.

81. The Minister may prescribe any capital expenditure incurred by a person in his business as qualifying agriculture expenditure under paragraph 7 and the amount of the allowance or allowances in respect of that qualifying agriculture expenditure which would otherwise fall to be made to him under paragraphs 22 and 23.”.

History

Paragraph 81 Schedule 3 is inserted by Act 631 of 2003 s19, with effect for the year of assessment 2003 and subsequent years of assessment.

History

Paragraph 81 Schedule 3 is inserted by Act 631 of 2003 s19, with effect for the year of assessment 2003 and subsequent years of assessment.

(a) the balance of residual expenditure under paragraph 68 of this Schedule shall be reduced by the amount of any compensation received; and

(b) the disposal value of the asset shall be taken to be zero when the agreement expires or is terminated.(a) the provision of machinery or plant, includes capital expenditure incurred on the reconstruction of that machinery or plant;

(b) the construction of a building, includes capital expenditure incurred on the reconstruction or rebuilding of that building.History

Schedule 3 paragraph 42B amended by Act 661 of 2006 s31(b), by inserting after the word "Education" the words "or Minister of Higher Education", shall have effect for the year of assessment 2007 and subsequent years of assessment.

Schedule 3 paragraph 42B amended by Act 619 of 2002 s8(l), by deleting the words ",17", shall have effect for the year of assessment 2002 and subsequent years of assessment.

Schedule 3 paragraph 42B inserted by Act 544 of 1996 s15(c), shall have effect for the year of assessment 1996 and subsequent years of assessment.History

Subparagraph 42A(1) of Schedule 3 amended by Act 557 of 1997 s22, by substituting for the words "business of manufacturing" the words "manufacturing, hotel or tourism business or an approved service project under Schedule 7B.", shall have effect for year of assessment 1997 and subsequent years of assessment.(a) that expenditure was incurred for and that asset is used for the purposes of two or more businesses of his;

(b) that expenditure was incurred and the asset was used for the purposes of one business of his and thereafter the asset is used in that business and in another business, or two or more other businesses, of his;

(c) that expenditure was incurred and the asset was used for the purposes of one business of his and thereafter the asset ceases to be used in that business and is used in another business, or two or more other businesses, of his; or

(d) after any of the circumstances referred to in the preceding subparagraphs, the asset is disposed of or, where it was used in two or more businesses of his, it was disposed of in relation to one or more of those businesses,(a) the disposer of the asset is a person over whom the acquirer of the asset has control;

(b) the acquirer of the asset is a person over whom the

disposer of the asset has control;

(c) some other person has control over the disposer and acquirer of the asset;

(d) the disposal is effected in consequence of a scheme of reconstruction or amalgamation of companies; or

(e) the disposal is effected by way of a settlement or gift or by devolution of the property in the asset on death,History.

Schedule 3 paragraph 37E and heading inserted by Act 544 of 1996 s15(b), shall have effect for the year of assessment 1996 and subsequent years of assessment.

### History

Schedule 3 paragraph 37C amended by Act 619 of 2002 s8(j), by substituting for the words "12, 16 or 17" the word "12 or 16", shall have effect for the year of assessment 2002 and subsequent years of assessment

Paragraph 37C amended by Act 578 of 1998 s20, by substituting for the word "re-exported" the words "distributed or re-exported and there shall be substituted for the amount of the allowance which would otherwise fall to be made to him under paragraph 12, 16 or 17 an allowance of an amount equal to one tenth of the qualifying expenditure for that year and for each of the nine following years of assessment.", shall have effect for the year of assessment 1998 and subsequent years of assessment.(a) research approved by the Minister within the meaning of section 34A (1) (a) and 34B (4);(a) that agriculture allowance; or

(b) where an agriculture allowance in relation to that asset has been made to him for more than one year of assessment, the aggregate of all those allowances for all those years, (a) a building for the welfare of persons or as living accommodation for a person referred to in paragraph 7 (1) (d) there shall be made to him in relation to the source consisting of that business for that year and for each of the four following years of assessment an allowance equal to one-fifth of that expenditure; and

(b) any other building referred to in paragraph 7 (1) (d) there shall be made to him in relation to the source consisting of

that business for that year and for each of the nine following years of assessment an allowance equal to one-tenth of that expenditure. History

Schedule 3 paragraph 16 amended by Act 619 of 2002 s8(g)(i), by inserting after the word "construction" the words "or purchase", shall have effect for the year of assessment 2002 and subsequent years of assessment.

Schedule 3 paragraph 16 amended by Act 619 of 2002 s8(g)(ii), by substituting for the word "one-fiftieth" the word "three-hundredth" , shall have effect for the year of assessment 2002 and subsequent years of assessment.

Special provision relating to paragraph 16 of Schedule 3

Notwithstanding the provisions of paragraph 16 of Schedule 3 to the principal Act, where an annual allowance has been made to a person in respect of a purchased building, and that allowance has been calculated based on a permitted fraction under paragraph 17 of Schedule 3 to the principal Act before the coming into operation of the deletion of that paragraph under paragraph 8(h) of this Act, which is higher than three-hundredth, the annual allowance for a year of assessment for that building shall be calculated based on the higher fraction and that allowance shall not exceed the amount of the residual expenditure at the end of the basis period for that year of assessment.

History

Special provision relating to paragraph 16 of Schedule 3 inserted by Act 619 of 2002 s9, shall have effect for the year of assessment 2002 and subsequent years of assessment.

(a) a road or building used for the purposes of a business of his which consists wholly or partly of the extraction of timber from the forest; or

(b) a building provided by him for the welfare of persons, or as living accommodation for a person, employed in or in connection with such extraction, (a) the clearing and preparation of land for the purposes of agriculture;

(b) the planting (but not replanting) of crops on land cleared for planting;



(c) the construction on a farm of a road or bridge;

(d) the construction on a farm of a building used for the purposes of a business of that person which consists wholly or partly of the working of the farm, or the construction on that farm of a building which is provided by that person for the welfare of persons, or as living accommodation for a person, employed in or in connection with the working of that farm and which, if the farm ceases to be worked, is likely to be of little or no value to any person except in connection with the working of another farm. (a) expenditure incurred on the alteration of an existing building for the purpose of installing that machinery or plant and other expenditure incurred incidentally to the installation thereof; and

(b) expenditure incurred on preparing, cutting, tunnelling or levelling land in order to prepare a site for the installation of that machinery or plant, but if the expenditure exceeds ten per cent of the aggregate of itself and any other expenditure (being qualifying plant expenditure) incurred for the purposes of the business this subparagraph shall not apply;

(c) expenditure incurred on fish ponds, animal pens, chicken houses, cages, buildings (other than those used wholly or partly for the living accommodation of a director, an individual having control of that business or an individual who is a member of the management, administrative or clerical staff engaged in the business), and other structural improvements on land which are used for the purposes of poultry farms, animal farms, inland fishing industry or other agricultural or pastoral pursuits.