

Effect of lapse of patent rights. ITA67 s286; CTA76 s21(1) and Sch1 par37 756.—(1) Where a person incurs capital expenditure on the purchase of patent rights and, before the end of the writing-down period, any of the following events occurs—

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

(b) the person sells all those rights or so much of those rights as the person still owns;

(c) the person sells part of those rights and the net proceeds of the sale (in so far as they consist of capital sums) are not less than the amount of the capital expenditure remaining unallowed;

no writing-down allowance shall be made to that person for the chargeable period related to the event or for any subsequent chargeable period.

(2) Where a person incurs capital expenditure on the purchase of patent rights and, before the end of the writing-down period, either of the following events occurs—

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

(b) the person sells all those rights or so much of those rights as the person still owns, and the net proceeds of the sale (in so far as they consist of capital sums) are less than the amount of the capital expenditure remaining unallowed;

there shall, subject to and in accordance with this Chapter, be made to that person for the chargeable period related to the event an allowance (in this Chapter referred to as a “balancing allowance”) equal to—

(i) if the event is the rights coming to an end, the amount of the capital expenditure remaining unallowed, and

(ii) if the event is a sale, the amount of the capital expenditure remaining unallowed less the net proceeds of the sale.

(3) Where a person who has incurred capital expenditure on the purchase of patent rights sells all or any part of those rights and the net proceeds of the sale (in so far as they consist of capital sums) exceed the amount of the capital expenditure remaining unallowed, if any, there shall, subject to and in accordance with this Chapter, be made on that person for the chargeable period related to the sale a charge (in this Chapter referred to as a “balancing charge”) on an amount equal to—

(a) the excess, or

(b) where the amount of the capital expenditure remaining unallowed is nil, the net proceeds of the sale.

(4) Where a person who has incurred capital expenditure on the purchase of patent rights sells a part of those rights and subsection (3) does not apply, the amount of any writing-down allowance made in respect of that expenditure for the chargeable period related to the sale or any subsequent chargeable period shall be the amount determined by—

(a) subtracting the net proceeds of the sale (in so far as they consist of capital sums) from the amount of the expenditure remaining unallowed at the time of the sale, and

(b) dividing the result by the number of complete years of the writing-down period which remained at the beginning of the chargeable period related to the sale,

and so on for any subsequent sales.

(5) References in this section to the amount of any capital expenditure remaining unallowed shall in relation to any event be construed as references to the amount of that expenditure less any writing-down allowances made in respect of that expenditure for chargeable periods before the chargeable period related to that event, and less also the net proceeds of any previous sale by the person who incurred the expenditure of any part of the rights acquired by the expenditure, in so far as those proceeds consist of capital sums.

(6) Notwithstanding subsections (1) to (5)—

(a) no balancing allowance shall be made in respect of any expenditure unless a writing-down allowance has been, or, but for the happening of the event giving rise to the balancing allowance, could have been, made in respect of that expenditure, and

(b) the total amount on which a balancing charge is made in respect of any expenditure shall not exceed the total writing-down allowances actually made in respect of that expenditure less, if a balancing charge has previously been made in respect of that expenditure, the amount on which that charge was made.