



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 3

#### PROPERTY INCOME

#### CHAPTER 4

##### PROFITS OF PROPERTY BUSINESSES: LEASE PREMIUMS ETC.

##### *Effective duration of lease*

### **303 Rules for determining effective duration of lease**

- (1) The following rules apply for determining the effective duration of a lease for the purposes of this Chapter.

*[<sup>F1</sup>Rule 1: If-*

- (a) the terms of the lease or any other circumstances make it unlikely that the lease will continue beyond a date before the end of the term for which the lease was granted, and
- (b) the premium was not substantially greater than it would have been had the term been one ending on that date,]

*Rule 2:* If the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the tenant, account may be taken of any circumstances making it likely that the lease will be so extended.

*Rule 3:* If the tenant or a person connected with the tenant is, or may become, entitled to a further lease or the grant of a further lease (whenever commencing)—

- (a) of the same premises, or

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(b) of premises including the whole or part of the same premises,

the term of the lease may be treated as continuing until the end of the term of the further lease.

(2) The rules are to be applied in accordance with section 304.

[<sup>F2</sup>(2A) In Rule 1 “premium” includes—

- (a) an amount treated as a premium under section 278 (amount treated as lease premium where work required),
- (b) a sum payable by the tenant under the terms subject to which the lease is granted instead of the whole or a part of the rent for a period,
- (c) a sum payable by the tenant under the terms subject to which the lease is granted as consideration for the surrender of the lease, and
- (d) a sum payable by the tenant (otherwise than by way of rent) as consideration for the variation or waiver of a term of the lease.]

(3) In this section and section 304, in relation to Scotland, “term”, where referring to the duration of a lease, means period.

#### **Textual Amendments**

- F1** Words in s. 303 substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 626\(2\)](#) (with [Pts. 1, 2, Sch. 2 para. 44](#))
- F2** S. 303(2A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 626\(3\)](#) (with [Pts. 1, 2, Sch. 2 para. 44](#))

#### **Modifications etc. (not altering text)**

- C1** S. 303 applied by [2001 c. 2, s. 360I\(3\)\(a\)](#) (as inserted (7.4.2005 with effect in relation to expenditure incurred on or after 11.4.2007) by [Finance Act 2005 \(c. 7\), s. 92, {Sch. 6 para. 1}](#); [S.I. 2007/949, art. 2](#))

### **304 Applying the rules in section 303**

(1) The rules in section 303 apply by reference to the facts known or ascertainable—

- (a) at the time of the grant of the lease, or
- (b) if the determination is for the purposes of section 281 (sums payable for variation or waiver of [<sup>F3</sup>terms] of lease), at the time when the contract for the variation or waiver is entered into.

(2) In applying those rules, it is assumed that all parties concerned, whatever their relationship, act as if they were at arm's length.

(3) Subsection (5) applies if—

- (a) special benefits were conferred by the lease or in connection with its grant, or
- (b) payments were made which one would not expect to be made by parties acting at arm's length unless such benefits had been conferred.

(4) But subsection (5) does not apply if it can be shown that the special benefits were not conferred nor the payments made for the purpose of [<sup>F4</sup>securing—

- (a) an income tax advantage in the application of this Chapter, or
- (b) a corporation tax advantage in the application of Chapter 4 of Part 4 of CTA 2009 (profits of property business: lease premiums etc).]

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- (5) In applying [<sup>F5</sup>paragraph (b) of] rule 1 in section 303, it is assumed that the special benefits would not have been conferred nor the payments made if the lease had been granted for a term ending on the date mentioned in that rule.
- (6) In this section “special benefits” means benefits other than—
- (a) vacant possession and beneficial occupation of the premises, or
  - (b) the right to receive rent at a reasonable commercial rate in respect of the premises.

**Textual Amendments**

- F3** Word in s. 304(1)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 627\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F4** Words in s. 304(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 627\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F5** Words in s. 304(5) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 627\(4\)](#) (with [Sch. 2 Pts. 1, 2](#))

**<sup>F6</sup>305 Information about effective duration of lease**

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**Textual Amendments**

- F6** S. 305 omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, [Sch. para. 44](#)

**Changes to legislation:**

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