

Status: Point in time view as at 01/04/2009.

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SCHEDULES

SCHEDULE 2 **U.K.**

TRANSITIONALS AND SAVINGS

PART 7 **U.K.**

PROPERTY INCOME

Lease premiums

- 35 Section 217 does not apply in relation to a lease granted pursuant to a contract entered into before 4 April 1963.

Lease premiums: sums payable instead of rent

- 36 Section 219 does not apply in relation to a lease granted—
(a) before 6 April 1963, or
(b) pursuant to a contract entered into before 4 April 1963.

Lease premiums: sums payable for surrender of lease

- 37 Section 220 does not apply in relation to a lease granted—
(a) before 6 April 1963, or
(b) pursuant to a contract entered into before 4 April 1963.

Lease premiums: assignments for profit of lease granted at undervalue

- 38 Section 222 does not apply in relation to a lease granted—
(a) before 6 April 1963, or
(b) pursuant to a contract entered into before 4 April 1963.

Lease premiums: pre-commencement receipts under ICTA treated as taxed receipts

- 39 (1) This paragraph relates to the operation of sections 227 to 235 where, in respect of a lease—
(a) there is a receipt of a Schedule A business or an overseas property business (within the meaning of section 65A(4) or 70A(4) of ICTA) as a result of section 34 or 35 of ICTA (treatment of premiums etc as rent and assignments for profit of lease granted at an undervalue) for a tax year before the tax year 2005-06 or an accounting period ending before 1 April 2009, or
(b) there would be such a receipt, but for the operation of section 37(2) or (3) of ICTA (reductions in certain receipts under section 34 or 35 of ICTA).

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In this paragraph and paragraph 40 a receipt falling within paragraph (a) or (b) is referred to as an “ICTA pre-commencement receipt”.

- (2) For the purposes of Chapter 4 of Part 4—
 - (a) the lease is treated as a taxed lease, and
 - (b) the ICTA pre-commencement receipt is treated as a taxed receipt.
- (3) For the purposes of that Chapter, the “receipt period” of a taxed receipt which is an ICTA pre-commencement receipt is—
 - (a) in the case of an ICTA pre-commencement receipt as a result of section 34 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease, and
 - (b) in the case of an ICTA pre-commencement receipt as a result of section 35 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease remaining at the date of the assignment.
- (4) For the purposes of that Chapter the “unreduced amount” of a taxed receipt which is an ICTA pre-commencement receipt is the amount of the ICTA pre-commencement receipt as a result of section 34 or 35 of ICTA, before the operation of section 37(2) or (3) of ICTA.
- (5) Sub-paragraph (6) applies to a taxed receipt which is an ICTA pre-commencement receipt arising as a result of section 34(2) of ICTA (obligation on tenant to carry out work under lease).
- (6) If the obligation to carry out work included the carrying out of work which gave or will give rise to expenditure for which an allowance has been, or may be, made under the enactments relating to capital allowances, the unreduced amount of the taxed receipt is calculated as if the obligation had not included the carrying out of that work.

Lease premiums: taking account of reductions under section 37(2) or (3) of ICTA

- 40 (1) This paragraph applies if—
- (a) in calculating the amount of an ICTA pre-commencement receipt, there is a reduction under section 37(2) or (3) of ICTA by reference to the amount chargeable on the superior interest for the purposes of that section, and
 - (b) as a result of paragraph 39(1) and (2) or section 227(4)(c) or (d) (lease taxed under ITTOIA 2005) the amount chargeable on the superior interest is the taxed receipt for the purposes of Chapter 4 of Part 4.
- (2) References to a reduction under section 37(2) or (3) of ICTA in an ICTA pre-commencement receipt by reference to the amount chargeable on the superior interest are to the difference between—
- (a) the amount of the ICTA pre-commencement receipt before the operation of section 37(2) or (3) of ICTA, and
 - (b) the amount of the receipt after the operation of that subsection,
- so far as attributable to the amount chargeable on the superior interest for the purposes of section 37 of ICTA.
- (3) In sections 230(5)(a) (meaning of “unused amount”) and 235(3)(a) (limit on reductions and deductions) references to reductions under section 288 of ITTOIA 2005 by reference to the taxed receipt include references to reductions under

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section 37(2) or (3) of ICTA in ICTA pre-commencement receipts by reference to the amount chargeable on the superior interest.

- (4) Sections 232 to 234 apply as follows—
- (a) the ICTA pre-commencement receipt is treated as if it were a lease premium receipt for the purposes of sections 233 and 234,
 - (b) references in those sections to the reduction under section 228 by reference to the taxed receipt are, in relation to the ICTA pre-commencement receipt, to the reduction under section 37(2) or (3) of ICTA by reference to the amount chargeable on the superior interest, and
 - (c) for the purposes of those sections the receipt period of the ICTA pre-commencement receipt is—
 - (i) in the case of an ICTA pre-commencement receipt as a result of section 34 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease, and
 - (ii) in the case of an ICTA pre-commencement receipt as a result of section 35 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease remaining at the date of the assignment.

Lease premiums: taking account of deductions for rent as a result of section 37(4) or 87(2) of ICTA

- 41 (1) Sub-paragraph (2) applies if—
- (a) in calculating the profits of a trade, profession or vocation for a tax year before the tax year 2005-06 or an accounting period ending before 1 April 2009, a person is treated as paying rent under section 87(2) of ICTA by reference to the amount chargeable for the purposes of that section, and
 - (b) as a result of paragraph 39(1) and (2) or section 227(4)(c) or (d) (lease taxed under ITTOIA 2005) the amount chargeable is the taxed receipt for the purposes of Chapter 4 of Part 4.
- (2) References in sections 230(5)(b) and 235(3)(c) to the deductions allowed for expenses under section 63 by reference to the taxed receipt include references to the deductions allowed in calculating the profits of the trade, profession or vocation for the rent that the person is treated as paying under section 87(2) of ICTA by reference to the amount chargeable.
- (3) Sub-paragraph (4) applies if—
- (a) in calculating the profits of a Schedule A business or an overseas property business (within the meaning of section 65A(4) or 70A(4) of ICTA) for a tax year before the tax year 2005-06 or an accounting period ending before 1 April 2009, a person is treated as paying rent as a result of section 37(4) of ICTA by reference to the amount chargeable on the superior interest for the purposes of that section, and
 - (b) as a result of paragraph 39(1) and (2) or section 227(4)(c) or (d) (lease taxed under ITTOIA 2005) the amount chargeable on the superior interest is the taxed receipt for the purposes of Chapter 4 of Part 4.
- (4) References in sections 230(5)(c) and 235(3)(b) to the deductions allowed for expenses under section 292 of ITTOIA 2005 by reference to the taxed receipt include references to the deductions allowed in calculating the profits of the Schedule A business or overseas property business (within the meaning of section 65A(4) or

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70A(4) of ICTA) for the rent that the person is treated as paying as a result of section 37(4) of ICTA by reference to the amount chargeable on the superior interest.

Lease premiums: time limits for claims for repayment of tax

- 42 (1) Until the Treasury by order appoints a day under this paragraph—
- (a) section 238 has effect as if “ 6 years ” were substituted for “4 years” in subsection (3) of that section, and
 - (b) section 239 has effect as if “ 6 years ” were substituted for “4 years” in subsection (3) of that section.
- (2) An order under this paragraph—
- (a) may appoint different days for different purposes, and
 - (b) may include transitional provision and savings.

Lease premiums: rules for determining effective duration of lease

- 43 (1) In relation to a lease granted after 24 August 1971 and before 1 April 2009, section 243 applies with the following modifications.
- (2) In subsection (1) for Rule 1 substitute—
- “*Rule 1:* A lease is not to be treated as having been granted for a term longer than one ending on a date before the end of the term for which the lease was granted if—
- (a) the terms of the lease or any other circumstances make it unlikely that the lease will continue beyond that date, and
 - (b) the premium was not substantially greater than it would have been had the term been one ending on that date.”
- (3) Omit subsection (3).
- 44 The amendments made by paragraph 626 of Schedule 1 (amendments of section 303 of ITTOIA 2005, which provides rules for determining the effective duration of a lease) do not have effect in relation to leases granted before 1 April 2009.
- 45 (1) In relation to a lease granted after 12 June 1969 and before 25 August 1971, for sections 243 and 244 substitute—

“243 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.

Rule 1: Where the terms of a lease include provision for the determination of the lease by notice given by the landlord, the lease is not to be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice so given.

Rule 2: A lease is not to be treated as having been granted for a term longer than one ending on a date before the end of the term for which the lease was granted, if the terms of the lease or any other circumstances make it unlikely that the lease will continue beyond that date.

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Rule 3: Where 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.

(2) Rule 2 applies by reference to the facts known or ascertainable at the time of the grant of the lease.

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

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

(2) This paragraph does not apply if the determination is for the purposes of section 221 (sums payable for variation or waiver of terms of lease).

46 (1) In relation to a lease granted before 13 June 1969, for sections 243 to 245 substitute—

“243 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.

Rule 1: Where the effective duration of a lease is being determined after the date on which the lease has for any reason come to an end, the duration is taken to have extended from its commencement to that date.

Rule 2: Where the terms of the lease include provision for the determination of the lease by notice given either by the landlord or by the tenant, the lease is not to be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice.

Rule 3: A lease is not to be treated as having been granted for a term longer than one ending on a date before the end of the term for which the lease was granted, if the terms of the lease or any other circumstances make it unlikely that the lease will continue beyond that date.

(2) Rules 2 and 3 are subject to Rule 1.

(3) Rules 2 and 3 apply in accordance with circumstances prevailing at the time of the determination.

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

(2) This paragraph does not apply if the determination is for the purposes of section 221 (sums payable for variation or waiver of terms of lease).

47 The amendments made by paragraphs 498 and 506 of Schedule 1 (amendments of sections 291(3)(a) and 393J(3)(a) of CAA 2001) do not have effect in relation to leases granted before 1 April 2009.

Lease premiums: meaning of “premium”

48 (1) In relation to a lease granted after 12 June 1969 and before 25 August 1971 sections 246 and 247 have effect with the following modifications.

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- (2) Section 246 has effect with the omission of subsections (4) and (5).
- (3) Section 247 has effect with the omission of—
 - (a) the words “or to a person connected with such a person” in subsection (1), and
 - (b) subsection (2).

Reverse premiums

- 49 (1) Section 250 does not apply to a reverse premium—
 - (a) which was received before 9 March 1999, or
 - (b) to which the recipient was entitled immediately before that date.
- (2) In determining whether a reverse premium was one to which the recipient was entitled immediately before 9 March 1999, no account is to be taken of any arrangements made on or after that date.

Deductions for expenditure on energy-saving items

- 50 Sections 251 to 253 do not apply to expenditure incurred before 8 July 2008.

Adjustment on change of basis

- 51 (1) Sections 261 and 262 apply to a change of basis taking effect for a period of account which ends after 31 March 2009.
- (2) For this purpose the period of account for which a change of basis takes effect is the first period of account for which the new basis is adopted.

Meaning of “mineral royalties”

- 52 The definition of “mineral royalties” in section 274(2) does not include any rent receivable before 6 April 1970.

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