



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART II

PROVISIONS RELATING TO THE SCHEDULE A CHARGE AND THE ASSOCIATED SCHEDULE D CHARGES

General

21 Persons chargeable.

- (1) ^{M1}Income tax under Schedule A shall be charged on and paid by the persons receiving or entitled to the profits or gains in respect of which tax under that Schedule is directed by the Income Tax Acts to be charged.
- (2) Subsection (1) above does not apply for the purposes of the Corporation Tax Acts.

Marginal Citations

M1 SOURCE-1970 s. 68

VALID FROM 31/07/1998

[^{F1}21A Computation of amount chargeable.

- (1) Except as otherwise expressly provided, the profits of a Schedule A business are computed in the same way as the profits of a trade are computed for the purposes of Case I of Schedule D.
- (2) The following provisions apply in accordance with subsection (1)—
section 72 (apportionment);
the provisions of Chapter V of Part IV (computational provisions relating to the Schedule D charge), except as mentioned in subsection (4) below;

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section 577 (business entertainment expenses);
 section 577A (expenditure involving crime);
 sections 579 and 580 (redundancy payments);
 sections 588 and 589 (training courses for employees);
 sections 589A and 589B (counselling services for employees);
 section 73(2) of the ^{M2}Finance Act 1988 (consideration for restrictive undertakings);
 section 43 of the ^{M3}Finance Act 1989 (deductions in respect of certain emoluments);
 section 76 of that Act (expenses in connection with non-approved retirement benefit schemes);
 sections 112 and 113 of that Act (expenditure in connection with provision of security asset or service);
 sections 42 and 46(1) and (2) of the Finance Act 1998 (provisions as to computation of profits and losses).

- (3) Section 74(1)(d) of this Act (disallowance of provisions for future repairs) applies in relation to a Schedule A business as if the reference to premises occupied for the purposes of the trade were to premises held for the purposes of the Schedule A business.
- (4) The following provisions in Chapter V of Part IV of this Act do not apply, or are excepted from applying, in accordance with subsection (1)—
 section 82 (interest paid to non-residents),
 section 87 (treatment of premiums taxed as rent),
 section 96 (farming and market gardening: relief for fluctuating profits), and
 section 98 (tied premises: receipts and expenses treated as those of trade).]

Textual Amendments

- F1** Ss. 21-21B substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) for s. 21 by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 4** (with Sch. 5 paras. 73, 76)

Marginal Citations

- M2** 1988 c. 39.
M3 1989 c. 26.

VALID FROM 31/07/1998

[^{F1}21B Application of other rules applicable to Case I of Schedule D.

The following provisions apply for the purposes of Schedule A in relation to a Schedule A business as they apply for the purposes of Case I of Schedule D in relation to a trade—

- sections 103 to 106, 108, 109A and 110 (post-cessation receipts and expenses, etc.);
 section 113 (effect for income tax purposes of change in the persons engaged in carrying on trade);

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section 337(1) (effect of company beginning or ceasing to carry on trade);
section 401(1) (pre-trading expenditure);
section 44 of and Schedule 6 to the Finance Act 1998 (change of accounting basis).]

Textual Amendments

- F1** Ss. 21-21B substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) for s. 21 by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 4** (with Sch. 5 paras. 73, 76)

VALID FROM 31/07/1998

[^{F2}21C The Schedule A charge and mutual business.

- (1) The following provisions have effect for the purpose of applying the charge to tax under Schedule A in relation to mutual business.
- (2) The transactions or relationships involved in mutual business are treated as if they were transactions or relationships between persons between whom no relationship of mutuality existed.
- (3) Any surplus arising from the business is regarded as a profit (and any deficit as a loss) if it would be so regarded if the business were not mutual.
- (4) The person—
 - (a) to whom the profit arises for corporation tax purposes, or
 - (b) who is regarded as receiving or entitled to the profit for income tax purposes,
 is the person who would satisfy that description if the business were not mutual business.
- (5) Nothing in this section affects the operation of section 488 (co-operative housing associations).]

Textual Amendments

- F2** S. 21C inserted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 5** (with Sch. 5 paras. 73, 76)

22 Assessments.

- (1) ^{M4}The profits or gains arising to a person for any chargeable period which are assessable to tax under Schedule A may, if they arise from more than one source, be assessed in one or more assessments, and in the latter case, each assessment may relate to profits or gains from one or more sources.
- (2) ^{M5}Subject to subsection (3) below, where an assessment to income tax under Schedule A for any year of assessment is made in that year—

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- (a) it shall be made on the basis that all sources of income and all amounts relevant in computing profits or gains are the same as for the last preceding year of assessment, and
 - (b) tax shall be leviable accordingly, but any necessary adjustments shall be made after the end of the year, whether by way of assessment, repayment of tax or otherwise, to secure that tax is charged by reference to the rents or receipts to which the person assessed becomes entitled in the year of assessment.
- (3) If before the 1st January in any year a person delivers a statement in writing to the inspector—
- (a) showing that since the beginning of the last preceding year of assessment he has ceased to possess one or more sources of income chargeable under Schedule A, and
 - (b) giving the aggregate of the rents and receipts relevant for the purposes of Schedule A to which he has become or is likely to become entitled in the current year (“the current aggregate”), and
 - (c) showing that the current aggregate is less than the aggregate of such rents and receipts to which he became entitled in the last preceding year (“the previous aggregate”), and that it would not have been less if he had not ceased to possess the said source or sources,

then, if the inspector is satisfied as to the correctness of the statement, an assessment made on that person in the current year shall be made on an amount which bears to the amount arrived at under subsection (2)(a) above the same proportion as the current aggregate bears to the previous aggregate, and subsection (2)(b) above shall apply accordingly.

Marginal Citations

- M4** SOURCE-1970 s. 69(1)
M5 SOURCE-1979 s. 69(2)

23 Collection from lessees and agents.

- (1) ^{M6}In any case where—
- (a) any tax under Schedule A is charged in respect of profits or gains arising from any land to a person who is not the occupier of the land, and
 - (b) the tax is not paid by that person (“the person in default”),
- the tax may be recovered in accordance with the following provisions of this section.
- (2) ^{M7}Subject to subsection (3) below, the collector may from time to time, by notice in such form as may be prescribed by the Board, require any lessee of the land or any part thereof whose interest is derived, directly or indirectly, from that held by the person in default, (a “derivative lessee”), to pay to him, on the date or dates specified in the notice, such sum or sums as may be required to satisfy the tax.
- (3) ^{M8}The sum demanded from a derivative lessee to be paid during any period shall not exceed the amount of the rent or other payments arising out of the land which becomes due from him at the end of the period and payable to the person in default or to another derivative lessee.

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- (4) ^{M9}In default of payment by a derivative lessee of any amount duly demanded of him under subsection (2) above, that amount may be recovered from him in like manner as if he had been charged with tax of that amount.
- (5) ^{M10} Where any sum on account of tax has been collected from a derivative lessee in pursuance of this section, he may deduct that sum from any subsequent payment arising and payable as mentioned in subsection (3) above, and shall be acquitted and discharged of the amount so deducted.
- (6) ^{M11}Where under subsection (5) above, or under that subsection as applied by this subsection, a sum is deducted from an amount payable to another derivative lessee—
- (a) that subsection shall apply as if the sum had been collected from him under a demand made under subsection (2) above by the collector; and
 - (b) where the amounts from which he is entitled, under subsection (5) above, to make deductions during the following 12 months are less than that sum, he shall be entitled to recover from the Board an amount equal to the difference, which shall be treated as reducing the tax recovered under the preceding provisions of this section.
- (7) ^{M12}In any case where—
- (a) rents or receipts from land are received by any person (“the agent”) on behalf of another (“the principal”), and
 - (b) any tax under Schedule A charged on the principal has not been paid,
- the collector may by notice, in such form as may be prescribed by the Board, require the agent to pay to the collector in or towards the satisfaction of the tax any sums from time to time received by the agent on behalf of the principal on account of rents or receipts from any land (including any sums so received which are in his hands when the notice is given) until the liability in respect of the tax has been satisfied; and the agent shall pay all such sums over to the collector accordingly, and the payment shall acquit and discharge him as against the person on whose behalf he received them.
- (8) ^{M13}If the agent fails to comply with the requirements of a notice duly served on him, he shall be liable to a penalty not exceeding [^{F3}£300] for each failure, and non-compliance as respects sums in his hands when the notice is given, or as respects any one payment subsequently received by him, shall be treated as a separate failure.

Textual Amendments

- F3** 1989 s.170(1) in relation to things done or omitted on or after 27 July 1989. Previously “£50”.

Marginal Citations

- M6** SOURCE-1970 s. 70(1)
M7 SOURCE-1970 s. 70(1)(a)
M8 SOURCE -1970 s. 70(1)(b)
M9 SOURCE-1970 s. 70(1)(c)
M10 SOURCE-1970 s.70(1)(d)
M11 SOURCE-1970 s. 70(1)(e)
M12 SOURCE-1970 s. 70(2)
M13 SOURCE-1970 s. 70(2)

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24 Construction of Part II.

- (1) ^{M14}In this Part, except where the context otherwise requires—
- “lease” includes an agreement for a lease, and any tenancy, but does not include a mortgage or heritable security, and “lessee”, “lessor” and “letting” shall be construed accordingly;
 - “lessee” and “lessor” include respectively the successors in title of a lessee or a lessor;
 - “premises” includes any land; and
 - “premium” includes any like sum, whether payable to the immediate or a superior landlord or to a person connected (within the meaning of section 839) with the immediate or a superior landlord.
- (2) ^{M15}For the purposes of this Part, any sum (other than rent) paid on or in connection with the granting of a tenancy shall be presumed to have been paid by way of premium except in so far as other sufficient consideration for the payment is shown to have been given.
- (3) ^{M16}Where paragraph (c) of section 38(1) applies, the premium, or an appropriate part of the premium, payable for or in connection with either lease mentioned in that paragraph may be treated as having been required under the other.
- (4) References in this section to a sum shall be construed as including the value of any consideration, and references to a sum paid or payable or to the payment of a sum shall be construed accordingly.
- (5) ^{M17}In the application of this Part to Scotland—
- “assignment” means an assignation;
 - “intermediate landlord” means, where an occupying lessee is a sub-lessee, any person for the time being holding the interest of landlord under a sub-lease which comprises the property of which the occupying lessee is sub-lessee, but does not include the immediate landlord;
 - “premium” includes in particular a grassum payable to any landlord or intermediate landlord on the creation of a sub-lease; and
 - “reversion” means the interest of the landlord in the property subject to the lease.
- (6) ^{M18}In Schedule A and in sections 25 to 31—
- (a) references to a lease extend only to a lease conferring a right, as against the person whose interest is subject to the lease, to the possession of the premises;
 - (b) “rent” includes a payment by the tenant to defray the cost of work of maintenance of, or repairs to, the demised premises, not being work required by the lease to be carried out by the tenant; and
 - (c) “tenant’s repairing lease” means a lease where the tenant is under an obligation to maintain and repair the whole or substantially the whole of the premises comprised in the lease.
- (7) For the purposes of Schedule A and sections 25 to 31, a lease shall be taken to be at a full rent if the rent reserved under the lease (including an appropriate sum in respect of any premium under the lease) is sufficient, taking one year with another, to defray the cost to the lessor of fulfilling his obligations under the lease and of meeting any expenses of maintenance, repairs, insurance and management of the premises subject to the lease which fall to be borne by him.

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Marginal Citations

M14 SOURCE-1970 s. 90(1); 1972 s. 81(3)

M15 SOURCE-1970 s. 90(2)

M16 SOURCE-1970 s. 90(2A), (2B); 1972 s. 81(4)

M17 SOURCE-1970 s. 90(3)

M18 SOURCE-1970 s. 71(2)

Deductions and other allowances

25 Deductions from rent: general rules.

- (1) ^{M19}In computing for the purposes of Schedule A the profits or gains arising to a person (the “person chargeable”) in any chargeable period, the amounts of any permitted deductions shall be deducted from rent to which he becomes entitled under a lease in that period.
- (2) ^{M20}In this section—
- “permitted deductions” means any payments, except any payment of interest, made by the person chargeable in respect of any of the following matters—
- maintenance, repairs, insurance or management;
 - any services provided by him otherwise than by way of maintenance or repairs, being services which he was obliged to provide but in respect of which he received no separate consideration;
 - rates or other charges on the occupier which the person chargeable was obliged to defray;
 - any rent, rentcharge, ground annual, feuduty or other periodical payment reserved in respect of, or charged on or issuing out of, land;
- being payments which are deductible in accordance with subsections (3) to (9) below and section 26; and
- “void period” means a period during which the person chargeable was not in occupation of the premises or any part thereof but was entitled to possession thereof.
- (3) ^{M21}There may be deducted from rent to which the person chargeable becomes entitled in a chargeable period the amount of any permitted deduction which became due in that period, or at an earlier time falling within the currency of the lease, in so far as the payment—
- was made in respect of the premises comprised in the lease, and
 - in the case of a payment for maintenance or repairs, was incurred by reason of dilapidation attributable to a period falling within the currency of the lease or, in the case of any other payment, was incurred in respect of such a period.
- (4) Where the person chargeable became the landlord after the lease began, references in subsection (3) above to the currency of the lease shall not include any time before he became the landlord.

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- (5) ^{M22}In the case of a lease at a full rent, subsection (3) above shall have effect as if references to the currency of the lease included any period (“a previous qualifying period”)—
- (a) during which the person chargeable was the landlord in relation to a previous lease of the premises, being a lease at a full rent; or
 - (b) which was a void period beginning either with the termination of an earlier lease at a full rent of the premises or with the acquisition by the person chargeable of the interest in the premises giving him the right to possession thereof;
- but a period shall not be a previous qualifying period if it preceded a period ending before the beginning of the lease which was not itself a previous qualifying period.
- (6) Where during any period the conditions necessary for the period to be a previous qualifying period were fulfilled as respects part of the premises, but not the whole, the period shall be treated as a previous qualifying period as respects that part of the premises only, and subsection (5) above shall have effect accordingly, any necessary apportionment being made of rent, payments or other matters.
- (7) ^{M23}In the case of a lease at a full rent, not being a tenant’s repairing lease, there may also be deducted the amount of any payment made in respect of other premises by the person chargeable—
- (a) in so far as that amount could be deducted under subsections (3) and (5) above from rent to which he became entitled in the chargeable period under a lease of those other premises, being a lease at a full rent, or could be so deducted if that rent were not insufficient, or
 - (b) if any part of the chargeable period is, in respect of those other premises, a void period beginning with the termination of a lease at a full rent, in so far as the amount could be so deducted if the lease had continued until the end of the period.
- (8) ^{M24}Where by reason of any change of circumstances a lease ceases to be, or becomes, a tenant’s repairing lease, or ceases to be, or becomes, a lease at a full rent, subsections (5) and (7) above shall apply in relation to the lease as it subsists after the change of circumstances as if it were a new lease granted when the change occurred.
- (9) ^{M25}Where the person chargeable retains possession of a part of the premises and that part is used in common by persons respectively occupying other parts of the premises, this section shall apply as if a payment made in respect of the part used in common had been made in respect of those other parts.

Marginal Citations

- M19** SOURCE-1970 ss. 71(1), 72(1)
M20 SOURCE-1970 s. 72(1), (7)
M21 SOURCE- 1970 s. 72(2)
M22 SOURCE-1970 s. 72(3)
M23 SOURCE-1970 s. 72(4)
M24 SOURCE-1970 s. 72(5)
M25 SOURCE-1970 s. 72(6)

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26 Deductions from rent: land managed as one estate.

- (1) ^{M26}Where this section applies to an estate for a chargeable period, the owner shall be treated—
- (a) in relation to a part of the estate which for any portion of that period is not comprised in a lease under which he is the landlord, as if he were entitled under a lease of that part at a full rent (not being a tenant's repairing lease) to rent for that portion, becoming due from day to day, at a rate per annum equal to the relevant annual value, and
 - (b) in relation to a part of the estate which for any portion of that period is comprised in a lease under which he is the landlord, not being a lease at a full rent, as if the lease were at a full rent, and as if the rent so far as it relates to that part were at a rate per annum not less than the relevant annual value;
- and section 25 shall apply accordingly.
- (2) In any case where subsection (1) above applies—
- (a) a payment relating to premises comprised in the estate shall not be deductible from rent in respect of premises not so comprised; and
 - (b) paragraph (a) of that subsection shall not apply to premises occupied by the owner wholly and exclusively for purposes connected with the management of the estate or for the purposes of a trade, profession or vocation.
- (3) ^{M27}This section shall apply to an estate if, at the end of the year 1962-63, the land comprised in the estate was managed as one estate and the owner for the time being of the estate by notice to the inspector so elects; but such an election—
- (a) must be made within 12 months after the end of the first chargeable period for which the person making it became entitled to make it or such further time as the Board may allow;
 - (b) except in the case of the first election that can be made under this subsection or the first election made under section 73(2) of the 1970 Act, shall not have effect unless an election under this section has had effect as respects the immediately preceding ownership;
 - (c) shall apply in relation to the estate throughout the ownership of the person making it.
- (4) ^{M28}Where in any chargeable period the estate comprises premises not included in it at the end of the year 1962-63, subsection (1) above (but not subsection (2)) shall apply in relation to the chargeable period as if the premises were not included in the estate in that period.
- (5) ^{M29}Subsection (4) above shall not have effect in relation to any premises if—
- (a) at the end of the year 1962-63 the owner of the remainder of the estate as then subsisting was entitled under trusts arising under a settlement or on an intestacy, or in Scotland, under a disposition by way of liferent and fee, to an interest such that, on the occurrence of some future event or events, he might become the owner of the premises in question, and
 - (b) before the end of that year, the premises and the remainder of the estate, as then subsisting, were together managed as one estate.
- (6) ^{M30}In this section—
- “estate” means land in one ownership managed as one estate (but without prejudice to section 27); and

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“relevant annual value”, in relation to any part of an estate, means the annual value of that part ascertained in accordance with section 837.

Modifications etc. (not altering text)

- C1** S. 26 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by [Finance Act 1995](#) (c. 4), s. 39(3), [Sch. 6 para. 5](#)

Marginal Citations

- M26** SOURCE-1970 s. 73(1)
M27 SOURCE-1970 s. 73(2)
M28 SOURCE-1970 s. 73(3)
M29 SOURCE-1970 s. 73(3)
M30 SOURCE-1970 s. 73(4)

27 Deductions from rent: maintenance funds for historic buildings.

- (1) ^{M31}Where a building or land which is qualifying property for the purposes of paragraph 3(1) of Schedule 4 to the ^{M32}Inheritance Tax Act 1984 (maintenance funds for historic buildings) forms part of an estate in relation to which an election has effect under section 26—
- (a) the election shall not cease to have effect by reason only of another part of the estate becoming comprised in, and managed by the trustees of, a settlement in relation to which the Treasury give a direction under paragraph 1 of that Schedule, and
 - (b) while such a direction has effect that other part shall be treated as continuing to form part of the estate to which the election relates.
- (2) In any case where—
- (a) a person becomes the owner of any such building or land as is mentioned in subsection (1) above, and
 - (b) that building or land, in the immediately preceding ownership, formed part of an estate in relation to which an election under section 26 had effect,
- any other part of that estate which continues to be or becomes comprised in a settlement of the kind mentioned in subsection (1) above shall, while such a direction as is mentioned in that subsection has effect, be treated as part of the estate in relation to which an election under section 26 may be made by him.
- (3) Where by virtue of this section an election has effect in relation to an estate part of which is comprised in a settlement—
- (a) there may be treated as deductible from the rents arising from that part—
 - (i) any payments which are made in respect of the other part of the estate by the trustees of the settlement and which would be so deductible under section 25 if that part were also comprised in the settlement; and
 - (ii) any payments made in respect of the other part of the estate by its owner to the extent to which they cannot be deducted by him under that section in the chargeable period in which they become due because of an insufficiency of the rents arising in that period from that part; and

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- (b) any relief available to the trustees under section 33 in respect of the part of the estate comprised in the settlement shall instead be available to the owner of the other part of the estate.
- (4) Where by virtue of this section an election has effect in relation to an estate part of which is comprised in a settlement, the election shall not cease to have effect in relation to any of that part by reason of its ceasing to be comprised in that settlement if either—
- (a) it becomes comprised in another settlement in circumstances such that by virtue of paragraph 9(1) of Schedule 4 to the ^{M33}Inheritance Tax Act 1984 there is (or would but for paragraph 9(4) be) no charge to inheritance tax in respect of the property so ceasing; or
- (b) both immediately before and immediately after its so ceasing it is property in respect of which a direction has effect under paragraph 1 of that Schedule.
- (5) The inclusion by virtue of this section in an estate of property comprised in a settlement shall not be construed as requiring it to be treated as the property of the person who owns the remainder of the estate or as affecting any question as to the person entitled to the income arising from that property.

Modifications etc. (not altering text)

- C2** S. 27(3)(a) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by [Finance Act 1995 \(c. 4\), s. 39\(3\), Sch. 6 para. 6\(1\)](#)
- C3** S. 27(3)(b) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by [Finance Act 1995 \(c. 4\), s. 39\(3\), Sch. 6 para. 6\(2\)](#)

Marginal Citations

- M31** SOURCE-1980 s. 53; 1982 Sch. 10 para. 3; ITA Sch. 8 para 18
- M32** 1984 c.51.
- M33** 1984 c. 51.

28 Deductions from receipts other than rent.

^{M34}Subject to section 122, where a person becomes entitled in a chargeable period to a sum other than rent payable under a lease, then in computing for the purposes of Schedule A the profits or gains arising to that person in that period, there shall be deducted from that sum—

- (a) so much of any payment made by that person as was made in respect of maintenance, repairs, insurance or management of premises to which the sum relates and constituted an expense of the transaction under which he became entitled to that sum;
- (b) so much of any rent, rentcharge, ground annual, feuduty or other periodical payment made by that person as was reserved in respect of, or was charged upon or issued out of, premises to which the sum relates and constituted an expense of that transaction;
- (c) so much of any other payment made by that person as constituted an expense of that transaction, not being an expense of a capital nature; and
- (d) where, in or before the chargeable period, that person entered into any like transaction, any amount which, under paragraphs (a) to (c) above, is deductible from a sum to which he is entitled under that like transaction in the

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period, or was deductible from a sum to which he was so entitled in a previous chargeable period but has not been deducted.

Marginal Citations

M34 SOURCE-1970 ss. 71(1), 74(1)

29 Sporting rights.

- (1) ^{M35}Subject to subsection (2) below, in any case where the person entitled to possession of any land (“the person chargeable”)—
- (a) is in the practice of granting sporting rights over the land for payment, but
 - (b) in any year of assessment, such rights are for any reason not granted by him,
- the aggregate of any amounts paid by him which, if such rights had been granted in that year (the “relevant year”), would have been deductible under section 28 from payments receivable by him in respect of the grant shall be treated for the purposes of section 25(7) as a deduction which, by virtue of section 25(3), might have been made by him from rent to which he was entitled for that year under a lease of the land, being a lease at a full rent.
- (2) ^{M36}If in the relevant year sporting rights over the land are exercised—
- (a) by the person chargeable, or
 - (b) by any other person at his invitation, or
 - (c) where the person chargeable is a close company, by a person who is, within the meaning of Part XI, a director of, or a participator in, that company,
- the aggregate referred to in subsection (1) above shall be treated as reduced by an amount equal to the price which might reasonably be expected to have been paid for that exercise of the rights if the person exercising them had had to give full consideration therefor.
- (3) ^{M37}For the purposes of subsection (2) above, an exercise of sporting rights shall be disregarded if it gives rise to a charge to tax under Schedule E by virtue of section 154.
- (4) Where the person chargeable is a company, section 9(1) shall not have effect so as to require references in that subsection to a year of assessment to be read as references to an accounting period, but any deduction thereby authorised shall be apportioned between the accounting periods (if more than one) comprising the year of assessment.
- (5) In this section, “sporting rights” means rights of fowling, shooting or fishing, or of taking or killing game, deer or rabbits.

Marginal Citations

M35 SOURCE-1970 ss. 71(1), 75(1)

M36 SOURCE-1970 s. 75(1)

M37 SOURCE-1970 s. 75(2), (3), (4); 1970 Sch. 9 para. 12

30 Expenditure on making sea walls.

- (1) ^{M38}Where in any year of assessment the owner or tenant of any premises incurs any expenditure in the making of any sea wall or other embankment necessary for the

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preservation or protection of the premises against the encroachment or overflowing of the sea or any tidal river, he shall be treated for the purposes of sections 25, 28 and 31 as making in that year of assessment and in each of the succeeding 20 years of assessment a payment in relation to the premises preserved or protected by the embankment of an amount equal to a twenty-first part of the expenditure and incurred in respect of dilapidation attributable to the year.

- (2) Where the whole of that person's interest in the premises or any part thereof is transferred (whether by operation of law or otherwise) to some other person—
- (a) the amount of the payment which he would be so treated as making for the year of assessment in which the transfer takes place shall be treated as being made partly by the transferor and partly by the transferee, as may be just; and
 - (b) the transferee shall, to the exclusion of the transferor, be treated in any subsequent year—
 - (i) where the interest transferred is in the whole of the premises, as having made the whole of the payment for that year, and
 - (ii) where the interest transferred is in part only of the premises, as having made so much of the payment as is properly referable to that part of the premises.
- (3) For the purposes of subsection (2) above, where an interest in any premises is a lease and that lease comes to an end, that interest shall be deemed to have been transferred—
- (a) if an incoming lessee makes any payment to the outgoing lessee in respect of the embankment in question, to the incoming lessee, and
 - (b) in any other case, to the owner of the interest in immediate reversion on the lease and, in relation to Scotland, the expression “the owner of the interest in immediate reversion on the lease” shall be construed as a reference to the landlord.
- (4) In relation to a company, section 9(1) shall not have effect so as to require references in this section to a year of assessment to be read as references to an accounting period, but any deduction authorised by this section shall be apportioned between the accounting periods (if more than one) comprising the year of assessment, other than any such period ended before the expenditure is incurred, or transfer takes place, by virtue of which the company is entitled to the deduction.
- (5) This section shall not apply in relation to any expenditure in respect of which a capital allowance has been made.

Modifications etc. (not altering text)

- C4** S. 30(1) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by [Finance Act 1995 \(c. 4\), s. 39\(3\), Sch. 6 para. 7](#)
- C5** See 1979(C) s.34(4)(b)—restriction, by reference to capital allowances, of capital losses for purpose of capital gains.

Marginal Citations

- M38** SOURCE-1970 s. 76

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31 Provisions supplementary to sections 25 to 30.

- (1) ^{M39}Schedule 1, which makes provision in relation to certain expenditure incurred before the beginning of the year 1963-64, shall have effect (and the preceding provisions of this Part shall have effect subject to that Schedule).
- (2) ^{M40}Any reference in this section to a deduction is a reference to a sum which is deductible under any of the provisions of sections 25 to 30 and Schedule 1, and any reference to a sum which can be deducted or which is deductible shall be construed accordingly.
- (3) Subject to subsections (4) to (7) below, where a sum or part of a sum can be deducted for the chargeable period in which it is paid, it shall be so deducted, and, where it cannot, it shall be deducted for the earliest chargeable period for which it can be deducted.
- (4) ^{M41}Where for any chargeable period the amount from which deductions can be made is sufficient to allow the deduction from that amount of some, but not all, of different sums or parts of sums which are deductible, the sum or parts to be deducted for that period shall in the aggregate be equal to that amount, and, subject to that requirement, shall be such as the person whose liability to tax is in question may choose.
- (5) No deduction shall be made in respect of—
 - (a) a payment made by any person to the extent that the payment has been or will be—
 - (i) balanced by the receipt of insurance moneys, or
 - (ii) recovered from, or in any other manner borne by, some other person, otherwise than by means of an amount on the profits or gains arising from which the first-mentioned person would be chargeable under Schedule A, or
 - (b) a payment made by a person other than a company, if payable under deduction of income tax.
- (6) An amount, or part of an amount, shall not be deducted more than once from any sum, or from more than one sum, and shall not in any case be deducted if it has otherwise been allowed as a deduction in computing the income of any person for tax purposes.
- (7) Where, on account of a payment made in any chargeable period, a deduction falls to be made from any rents or receipts to which the person making the payment became entitled in a previous period, all such adjustments of liability to tax shall be made, by repayment or otherwise, as may be necessary to give effect to the deduction.

Marginal Citations

M39 SOURCE-1970 s. 71(1)

M40 SOURCE-1970 s. 77(1); 1987 Sch. 15 para. 13

M41 SOURCE- 1970 s. 77(2)–(5)

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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VALID FROM 19/07/2007

[^{F4}31ZA Deduction for expenditure on energy-saving items

- (1) This section applies if—
 - (a) a company carries on a Schedule A business in relation to land which consists of or includes a dwelling-house,
 - (b) the company incurs expenditure in acquiring and installing an energy-saving item in the dwelling-house or in a building containing the dwelling-house (see subsections (5) to (7)),
 - (c) the expenditure is incurred before 1st April 2015,
 - (d) a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital prohibition rule (see subsection (8)), and
 - (e) no allowance under the Capital Allowances Act may be claimed in respect of the expenditure.
- (2) In calculating the profits of the Schedule A business, a deduction for the expenditure is allowed.
- (3) But any deduction is subject to—
 - (a) section 31ZB (restrictions on the relief), and
 - (b) any provision made by regulations under section 31ZC.
- (4) If, on a just and reasonable apportionment of any expenditure, part of the expenditure would qualify for the relief (but the remainder would not), a deduction is allowed for that part.
- (5) “Energy-saving item” means an item of an energy-saving nature of such description as is for the time being specified in regulations made by the Treasury.
- (6) The Treasury may by regulations provide for an item to be an energy-saving item only if it satisfies such conditions as may be—
 - (a) specified in, or
 - (b) determined in accordance with,the regulations.
- (7) The conditions may include conditions imposed by reference to information or documents issued by any body, person or organisation.
- (8) In this section—

“the capital prohibition rule” means the rule in section 74(1)(f) or (g) (capital expenditure), as applied by section 21A, and

“the wholly and exclusively rule” means the rule in section 74(1)(a) or (e) (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 21A.]

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Textual Amendments

F4 Ss. 31ZA-31ZC inserted (with effect in accordance with s. 17(2) of the amending Act) by Finance Act 2007 (c. 11), s. 17(1); S.I. 2008/1521, art. 2

VALID FROM 19/07/2007

[^{F4}31ZB Restrictions on relief

- (1) This section restricts deductions that would otherwise be allowable under section 31ZA.
- (2) No deduction is allowed if, when the energy-saving item is installed, the dwelling-house—
 - (a) is in the course of construction, or
 - (b) is comprised in land in which the company does not have an interest or is in the course of acquiring an interest or further interest.
- (3) No deduction is allowed in respect of expenditure in an accounting period if—
 - (a) the Schedule A business consists of or includes the commercial letting of furnished holiday accommodation for the purposes of section 503, and
 - (b) the dwelling-house constitutes some or all of that accommodation for the accounting period.
- (4) No deduction is allowed in respect of expenditure treated by section 401 (as applied by section 21B) as incurred on the date on which the company starts to carry on the Schedule A business unless the expenditure was incurred not more than 6 months before that date.
- (5) No deduction is allowed in respect of expenditure incurred in acquiring and installing the energy-saving item in a building containing the dwelling-house in so far as the expenditure is not for the benefit of the dwelling-house.]

Textual Amendments

F4 Ss. 31ZA-31ZC inserted (with effect in accordance with s. 17(2) of the amending Act) by Finance Act 2007 (c. 11), s. 17(1); S.I. 2008/1521, art. 2

VALID FROM 19/07/2007

[^{F4}31ZC Regulations

- (1) In relation to any deduction under section 31ZA, the Treasury may make regulations for—
 - (a) restricting or reducing the amount of expenditure for which the deduction is allowable,
 - (b) excluding entitlement to the deduction in such cases as may be specified in, or determined in accordance with, the regulations,

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- (c) determining who is (and is not) entitled to the deduction if different persons have different interests in land that consists of or includes the whole or part of a building containing one or more dwelling-houses,
 - (d) making apportionments if the Schedule A business is carried on by persons in partnership or an interest in land is beneficially owned by persons jointly or in common.
- (2) The apportionments that may be made include apportionments to persons within the charge to income tax.
- (3) Regulations under this section may—
- (a) make different provision for different cases, and
 - (b) contain incidental, supplemental, consequential and transitional provision and savings (including provision as to appeals in relation to apportionments mentioned in subsection (1)(d)).]

Textual Amendments

- F4** Ss. 31ZA-31ZC inserted (with effect in accordance with s. 17(2) of the amending Act) by Finance Act 2007 (c. 11), s. 17(1); S.I. 2008/1521, art. 2

VALID FROM 22/07/2004

[^{F5}31A Deductions for expenditure by landlords on energy-saving items

- (1) This section applies to a Schedule A business if the land mentioned in paragraph 1(1) of Schedule A consists of or includes a dwelling-house.
- (2) In computing for the purposes of income tax the profits of a Schedule A business to which this section applies, a deduction shall be allowed in respect of any expenditure to which subsection (3) applies.
That is subject to any provision of regulations under subsection (13).
- (3) This subsection applies to expenditure as respects which the numbered conditions set out in the following provisions of this section (“the qualifying conditions”) are satisfied.
- (4) Condition 1 is that the expenditure is incurred in the provision of a qualifying energy-saving item in the dwelling-house.
- (5) Condition 2 is that the expenditure is incurred on or after 6th April 2004 but before 6th April 2009.
- (6) Condition 3 is that the expenditure is incurred wholly and exclusively for the purposes of the Schedule A business.
- (7) Condition 4 is that the expenditure is capital expenditure.
- (8) Condition 5 is that, apart from this section, the expenditure is not deductible in computing the profits of the Schedule A business.

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- (9) Condition 6 is that no allowance under the Capital Allowances Act may be claimed in respect of the expenditure.
- (10) Condition 7 is that the expenditure is not incurred in respect of the provision of an item in a dwelling-house which, at the time when the item is installed,—
- (a) is in the course of construction, or
 - (b) is comprised in land in which the person claiming the deduction under this section does not have an interest or is in the course of acquiring an interest or further interest.
- (11) Condition 8 is that for the purposes of section 503 (letting of furnished holiday accommodation to be treated as a trade for certain purposes) either—
- (a) the Schedule A business does not consist to any extent in the commercial letting of furnished holiday accommodation, or
 - (b) if it does so consist to any extent, the dwelling-house does not constitute any or all of the furnished holiday accommodation in question.
- (12) Condition 9 is that the income of the person claiming the deduction is not computed in accordance with paragraph 9 or 11 of Schedule 10 to the Finance (No. 2) Act 1992 (furnished accommodation) in respect of any qualifying residence which consists of or includes the dwelling-house.
- (13) The Treasury may by regulations make provision for any of the following purposes—
- (a) restricting or reducing the amount of expenditure in respect of which deductions may be claimed under this section;
 - (b) excluding entitlement to a deduction under this section in such cases as may be specified in, or determined in accordance with, the regulations;
 - (c) determining which of two or more persons is (and which is not) entitled to a deduction under this section in cases where different persons have different interests in land consisting of or including the whole or part of a building containing one or more dwelling-houses;
 - (d) making apportionments (including apportioning amounts to companies which are not entitled to a deduction under this section) in cases where—
 - (i) a Schedule A business is carried on by two or more persons in partnership, or
 - (ii) an interest in land is beneficially owned by two or more persons jointly or in common.
- (14) Section 31B supplements this section.]

Textual Amendments

- F5** Ss. 31A, 31B inserted (with effect in accordance with s. 143(2) of the amending Act) by Finance Act 2004 (c. 12), s. 143(1)

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VALID FROM 22/07/2004

[^{F5}31B Provisions supplementary to section 31A

- (1) This section has effect for the purpose of supplementing section 31A and shall be construed as one with that section.
- (2) Section 31A does not have effect for the purposes of corporation tax.
- (3) No deduction may be made under section 31A unless a claim is made.
- (4) Where, on a just and reasonable apportionment of any expenditure, the qualifying conditions—
 - (a) would be satisfied as respects some part or parts of the expenditure, but
 - (b) would not be satisfied as respects the remainder of the expenditure,
 a deduction under section 31A shall be allowed in respect of the part or parts mentioned in paragraph (a) but not in respect of the remainder.
 Any such deduction is subject to, and must be in accordance with, the other provisions of this section and regulations under section 31A(13).
- (5) Expenditure incurred by a person—
 - (a) for the purposes of a Schedule A business, but
 - (b) before the time when he begins to carry on that business,
 is not deductible under section 31A by virtue of section 401 (relief for pre-trading expenditure) unless the expenditure is incurred not more than 6 months before that time (and on or after 6th April 2004).
 The reference to section 401 is a reference to that section as it applies for the purposes of Schedule A in relation to a Schedule A business by virtue of section 21B.
- (6) “Qualifying energy-saving items” are items of any of the following descriptions—
 - (a) cavity wall insulation;
 - (b) loft insulation.
- (7) The Treasury may by regulations amend subsection (6)—
 - (a) by adding further descriptions of items; or
 - (b) by removing or varying descriptions of items.
- (8) The Treasury may by regulations provide that an item is to be regarded as an item of any particular description in subsection (6) only if it satisfies such conditions as may be specified in, or determined in accordance with, the regulations.
- (9) The conditions that may be imposed by regulations under subsection (8) include conditions imposed by reference to information or documents issued by any body, person or organisation.
- (10) The provision that may be made by regulations under this section or section 31A which are made on or before 31st December 2004 includes provision—
 - (a) having effect before the date on which the regulations are made, or
 - (b) having effect in relation to expenditure incurred before that date.

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- (11) Any reference to the provision of a qualifying energy-saving item is a reference to the acquisition of such an item and its installation in the dwelling-house.]

Textual Amendments

- F5** Ss. 31A, 31B inserted (with effect in accordance with s. 143(2) of the amending Act) by Finance Act 2004 (c. 12), s. 143(1)

32 Capital allowances for machinery and plant used in estate management.

- (1) ^{M42}Subject to the provisions of this section, [^{F6}Part II of the 1990 Act], and such other provisions of the Tax Acts as relate to allowances or charges under [^{F6}that Part], shall apply with any necessary adaptations in relation to machinery or plant provided for use or used by a person entitled to rents or receipts falling within Schedule A for the maintenance, repair or management of premises in respect of which those rents or receipts arise as they apply in relation to machinery or plant provided for use or used for the purposes of a trade.
- (2) Except as provided by subsection (3) below, the Tax Acts shall apply in relation to any allowances or balancing charges which fall to be made by virtue of this section as if they were to be made in taxing a trade.
- (3) ^{M43}Allowances and balancing charges which by virtue of this section fall to be made to or on a person for any chargeable period shall be made by—
- (a) adding the amount of any such allowances to the expenditure on maintenance, repair or management of the premises which is deductible under sections 25 or 28 in computing his profits or gains for the purposes of Schedule A; and
 - (b) deducting the amount on which any such charge is to be made from that expenditure (or from the sum of that expenditure and any addition made to it under this subsection);
- and [^{F7}section 73 of the 1990 Act] (manner of making allowances or charges) shall not apply.
- (4) Any charge falling to be made under this section shall, in so far as a deduction cannot be made for it under subsection (3)(b) above, be made under Case VI of Schedule D.
- (5) ^{M44}No allowance or balancing charge shall be made by virtue of this section for any chargeable period in respect of expenditure incurred by any person on machinery or plant, except in pursuance of an election made by him for that period; but an election for any chargeable period shall have effect as an election for that and all subsequent chargeable periods.
- (6) Any such election shall be made by notice to the inspector either for all machinery or plant provided for use or used for the maintenance, repair or management of the relevant premises or for any class of machinery or plant so provided or used; but an election for machinery or plant of any class shall not be made for any chargeable period after payments made in that or a subsequent chargeable period for the maintenance, repair or management of the relevant premises have been taken into account in an assessment or claim for repayment of tax which has been finally determined.
- (7) Corresponding allowances or charges in the case of the same machinery or plant shall not be made under [^{F8}Part II of the 1990 Act] (whether for the same or different

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chargeable periods) both in computing profits or gains for the purposes of Schedule A and in some other way; and, on any assessment to tax, expenditure to which an election under this section applies shall not be taken into account otherwise than under [F8that Part].

- (8) The Tax Acts shall have effect as if this section were contained in [F9Part II of the 1990 Act].

Textual Amendments

- F6** 1990(C) s.164and Sch.1 para.8(2)(a).Previously
“Chapter II of Part I of the 1968 Act and Chapter I of Part III of the Finance Act 1971,”
and
“those Chapters”
respectively.
- F7** 1990(C) s.164and Sch.1 para.8(2)(b).Previously
“sections 46 of the 1968 Act and 48 of the Finance Act 1971”.
- F8** 1990(C) s.164and Sch.1 para.8(2)(c).Previously
“Chapter II of Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971”,and
“those chapters”
respectively.
- F9** 1990(C) s.164and Sch.1 para.8(2)(d).Previously
“Chapter II of Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971, as the case may require.”.

Modifications etc. (not altering text)

- C6** S. 32 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), Sch. 6 para. 8; and s. 32 (as so modified) applied in part by Capital Allowances Act 1990 (c. 1), s. 67(3) (as amended by Sch. 6 para. 32 of the modifying Act)

Marginal Citations

- M42** SOURCE-1970 s. 78 (1); 1971 s. 47(2)
M43 SOURCE-1970 S. 78(2); 1971 S. 47(2)
M44 SOURCE-1970 S. 78(3)–(6); 1971 s. 47(2)

33 Agricultural land: allowance for excess expenditure on maintenance.

- (1) Where in the case of an estate which consists of or includes agricultural land—
- (a) ^{M45}provision is made in sections 25 to 32 for the deduction of a sum in respect of payments in a chargeable period for maintenance, repairs, insurance or management of the estate, or in respect of allowances for machinery or plant provided for use or used on the estate, and
 - (b) owing to the insufficiency of rents and receipts to which the owner of the estate becomes entitled in that period, whether from the estate or from other property, the sum in question cannot be deducted (other amounts deductible under Schedule A being treated as deductible in priority thereto),

then, subject to subsection (2) below, the sum in question shall be treated as if it were the amount of an allowance falling to be made under [F10the 1990 Act] by way of discharge or repayment of tax, and available primarily against agricultural income as defined in [F10section 133] of that Act.

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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- (2) The sum in question shall not exceed the sum which would have fallen to be so treated if—
- (a) the estate had not included such parts thereof as were used wholly for purposes other than purposes of husbandry, and
 - (b) payments or allowances in respect of parts thereof which were used partly for purposes of husbandry and partly for other purposes were reduced to an extent corresponding to the extent to which those parts were used for other purposes.
- (3) ^{M46}In this section—
- “agricultural land” means land, houses or other buildings in the United Kingdom occupied wholly or mainly for the purposes of husbandry; and
- “estate” means any land (including any houses or other buildings) managed as one estate.

[^{F11}(4) Sections 141 and 145 of the 1990 Act shall apply as if this section were contained in Part V of that Act.]

Textual Amendments

F10 1990(C) s.164 and Sch.1 para.8(3)(a). *Previously*

“the 1968 Act”

and

“section 69”

respectively.

F11 1990(C) s.164 and Sch.1 para.8(3)(b). *Previously*

“(4) Sections 71 and 74 of the 1968 Act shall apply as if this section were contained in Part I of that Act.”.

Modifications etc. (not altering text)

C7 See 1979(C) s.34(4)(a)—allowance under s.33 not to be treated as a capital allowance in computing capital losses.

Marginal Citations

M45 SOURCE-1970 s. 79(1); 1987 Sch. 15 para. 13

M46 SOURCE-1970 s. 79(2)

VALID FROM 16/07/1992

[^{F12} Connected persons]

Textual Amendments

F12 Ss. 33A, 33B inserted (16.7.1992 with effect in relation to rents or receipts accruing on or after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), s. 57(1)(2).

^{F13}**33A Rents or receipts payable by a connected person.**

- (1) Subsection (2) below applies where—

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- (a) any rents or receipts in respect of which a person is chargeable to tax under Schedule A accrue in a chargeable period of his earlier than the one in which they are payable,
 - (b) the person by whom they are payable is entitled to a deduction in respect of them in computing his profits or gains for tax purposes, and
 - (c) the two persons are connected with one another when the rents or receipts accrue, or were connected with one another at any time before they accrue and after both 9th March 1992 and the making of the lease or other agreement under which they accrue.
- (2) The chargeable person shall be regarded for the purposes of Schedule A as becoming entitled to the rents or receipts in the chargeable period in which they accrue (rather than in the chargeable period in which they become payable).
- (3) For the purposes of this section, any rents or receipts shall be taken to accrue at the times at which, and in the amounts in which, they are taken to accrue for the purposes of calculating the deduction mentioned in subsection (1)(b) above.
- (4) Section 839 (connected persons) shall apply for the purposes of this section.

Textual Amendments

- F13** S. 33A inserted (16.7.1992 with effect in relation to rents or receipts accruing on or after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), s. 57(1)(2).

^{F14}**33B Rents or receipts relating to land in respect of which a connected person makes payments to a third party.**

- (1) Subsection (2) below applies where—
- (a) any rents or receipts in respect of which a person is chargeable to tax under Schedule A accrue in a chargeable period of his earlier than the one in which they are payable,
 - (b) the land to which the rents or receipts relate is land in respect of which another person becomes entitled to a relevant tax deduction at any time before the rents or receipts become payable,
 - (c) the two persons are connected with one another when the rents or receipts accrue, or were connected with one another at any time before they accrue and after both 9th March 1992 and the making of the lease or other agreement referred to in subsection (4) below, and
 - (d) section 33A(2) does not apply.
- (2) The chargeable person shall be regarded for the purposes of Schedule A as becoming entitled to the rents or receipts in the chargeable period in which they accrue (rather than in the chargeable period in which they become payable).
- (3) For the purposes of this section, any rents or receipts payable to the chargeable person shall be taken to accrue at the times at which, and in the amounts in which, they would be taken to accrue for the purposes of calculating a deduction in respect of them in computing his profits or gains for tax purposes if—
- (a) they were payable by him instead of to him, and
 - (b) he were assessable to tax under Case I of Schedule D in respect of his profits or gains.

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

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- (4) In this section, “relevant tax deduction”, in relation to a person and any land, means a deduction (in computing the person’s profits or gains for tax purposes) in respect of any rents or other sums payable after they accrue under a lease or other agreement relating to the land or any part of it.
- (5) For the purposes of this section—
- (a) a person shall be regarded as becoming entitled to a relevant tax deduction when the rents or other sums to which the deduction relates accrue, and
 - (b) any rents or other sums to which a relevant tax deduction relates shall be taken to accrue at the times at which, and in the amounts in which, they are taken to accrue for the purposes of calculating the deduction.
- (6) Section 839 (connected persons) shall apply for the purposes of this section.

Textual Amendments

- F14** S. 33B inserted (16.7.1992 with effect in relation to rents or receipts accruing on or after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), s. 57(1)(2).

Premiums, leases at undervalue etc

34 Treatment of premiums etc. as rent or Schedule D profits.

- (1)^{M47} Where the payment of any premium is required under a lease, or otherwise under the terms subject to which a lease is granted, and the duration of the lease does not exceed 50 years, the landlord shall be treated for the purposes of the Tax Acts as becoming entitled when the lease is granted to an amount by way of rent (in addition to any actual rent) equal to—

$$P - \frac{(PyY)}{50}$$

where P is the premium and Y is the number of complete periods of 12 months (other than the first) comprised in the duration of the lease.

- (2) Where the terms subject to which a lease is granted impose on the tenant an obligation to carry out any work on the premises, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord (in addition to any other premium) of an amount equal to the amount by which the value of the landlord’s estate or interest immediately after the commencement of the lease exceeds what its then value would have been if those terms did not impose that obligation on the tenant.
- (3)^{M48} Subsection (2) above shall not apply in so far as the obligation requires the carrying out of work the payment for which would, if the landlord and not the tenant were obliged to carry it out, be deductible from the rent under sections 25 to 30.
- (4)^{M49} Where, under the terms subject to which a lease is granted, a sum becomes payable by the tenant in lieu of the whole or a part of the rent for any period, or as consideration for the surrender of the lease, the lease shall be deemed for the purposes of this section

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- to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum; but—
- (a) in computing tax chargeable by virtue of this subsection in respect of a sum payable in lieu of rent, the duration of the lease shall be treated as not including any period other than that in relation to which the sum is payable; and
 - (b) notwithstanding anything in subsection (1) above, rent treated as arising by virtue of this subsection shall be deemed to become due when the sum in question becomes payable by the tenant.
- (5) Where, as consideration for the variation or waiver of any of the terms of a lease, a sum becomes payable by the tenant otherwise than by way of rent, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum; but—
- (a) in computing tax chargeable by virtue of this subsection, the duration of the lease shall be treated as not including any period which precedes the time at which the variation or waiver takes effect, or falls after the time at which it ceases to have effect; and
 - (b) notwithstanding anything in subsection (1) above, rent treated as arising by virtue of this subsection shall be deemed to become due when the contract providing for the variation or waiver is entered into.
- (6) ^{M50}Where a payment falling within subsection (1), (4) or (5) above is due to a person other than the landlord, no charge to tax shall arise under that subsection, but any amount which would otherwise fall to be treated as rent shall be treated as profits or gains of that other person chargeable under Case VI of Schedule D.
- (7) Subsection (6) above shall not apply in relation to any payment falling within subsection (5) above unless it is due to a person who is, within the meaning of section 839, connected with the landlord.
- (8) ^{M51}Where an amount by reference to which a person is chargeable to tax by virtue of this section is payable by instalments (“the tax instalments”), the tax chargeable by reference to that amount may, if that person satisfies the Board that he would otherwise suffer undue hardship, be paid at his option by such instalments as the Board may allow over a period not exceeding eight years and ending not later than the time at which the last of the tax instalments is payable.
- (9) Section 22(2) and (3) shall not apply in relation to amounts which, in computing profits or gains for the purposes of Schedule A, are relevant only by virtue of this section.

Modifications etc. (not altering text)

- C8** See 1976(D) s.34 and Sch.6 para.4. 1976(D) repealed by 1985 ss.93, 98(6) and Sch.27 Part. X with effect from 19 March 1985.
- C9** See 1979(C) s.106 and Sch.3 paras.5 and 7—exclusion of amounts taxed under this section in computing capital gains.

Marginal Citations

- M47** SOURCE-1970 s. 80(1), (2)
- M48** SOURCE-1970 s. 80(2); 1987 Sch. 15 para. 13
- M49** SOURCE-1970 s. 80(3), (4)
- M50** SOURCE-1970 s. 80(5)
- M51** SOURCE-1970 s. 80(6), (7); 1972 s. 81(1)

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35 Schedule D charge on assignment of lease granted at an undervalue.

- (1)^{M52} This section applies to any lease of a duration not exceeding 50 years where the terms subject to which it was granted are such that the grantor, having regard to values prevailing at the time it was granted and on the assumption that the negotiations for the lease were at arm's length, could have required the payment of an additional sum by way of premium, or additional premium, for the grant of the lease; and in this section any such additional sum is referred to as the "amount foregone".
- (2) On any assignment of a lease to which this section applies for a consideration—
- (a) where the lease has not previously been assigned, exceeding the premium, if any, for which it was granted, or
 - (b) where the lease has been previously assigned, exceeding the consideration for which it was last assigned,
- the amount of the excess, in so far as it is not greater than the amount foregone reduced by the amount of any such excess arising on a previous assignment of the lease, shall in the same proportion as the amount foregone would, under section 34(1), have fallen to be treated as rent if it had been a premium under the lease, be treated as profits or gains of the assignor chargeable to tax under Case VI of Schedule D.
- (3)^{M53} If there is submitted to the inspector, by the grantor or any assignor or assignee of the lease, a statement showing whether or not a charge to tax arises or may arise under this section and, if so, the amount on which the charge arises or may arise, then, if the inspector is satisfied as to the accuracy of the statement, he shall certify the accuracy thereof.

Modifications etc. (not altering text)

- C10** See 1979(C) s.106 and Sch.3 para.6(2)—1979(C) s.31 (*exclusion from capital gains computation of sums charged to income tax or corporation tax*) not to apply to amounts on which tax paid under s.35.
- C11** S. 35 excluded (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\)](#), s. 8, [Sch. 3 para. 9\(1\)](#)
- C12** S. 35 excluded (19.9.1994) by [Coal Industry Act 1994 \(c. 21\)](#), ss. 21, 68(4), [Sch. 4 para. 15\(1\)](#) (with s. 40(7)); S.I. 1994/2189, [art. 2](#), Sch. S. 35 excluded (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\)](#), s. 8, [Sch. 3 para. 9\(1\)](#)
 S. 35 excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\)](#), ss. 135, 149(1)(f), [Sch. 7 para. 21\(1\)](#)
- C13** S. 35(2) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by [Finance Act 1995 \(c. 4\)](#), s. 39(3), [Sch. 6 para. 10](#)

Marginal Citations

- M52** SOURCE-1970 s. 81(1)
M53 SOURCE-1970 s. 81(2)

36 Schedule D charge on sale of land with right to reconveyance.

- (1)^{M54} Where the terms subject to which an estate or interest in land is sold provide that it shall be, or may be required to be, reconveyed at a future date to the vendor or a person connected with him, the vendor shall be chargeable to tax under Case VI of Schedule D on any amount by which the price at which the estate or interest is sold exceeds the price at which it is to be reconveyed or, if the earliest date at which in accordance with those terms it would fall to be reconveyed is a date two years or more after the sale, on that excess reduced by one-fiftieth thereof for each complete year (other than the first) in the period between the sale and that date.

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- (2) Where, under the terms of the sale, the date of the reconveyance is not fixed, then—
- (a) if the price on reconveyance varies with the date, the price shall be taken, for the purposes of this section, to be the lowest possible under the terms of the sale, and
 - (b) there shall be repaid to the vendor, on a claim made before the expiry of six years after the reconveyance takes place, any amount by which tax assessed on him by virtue of this section exceeded the amount which would have been so assessed if that date had been treated for the purposes of this section as the date fixed by the terms of the sale.
- (3) ^{M55}Where the terms of the sale provide for the grant of a lease directly or indirectly out of the estate or interest to the vendor or a person connected with him, this section shall, subject to subsection (4) below, apply as if the grant of the lease were a reconveyance of the estate or interest at a price equal to the sum of the amount of the premium (if any) for the lease and the value at the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run.
- (4) Subsection (3) above shall not apply in any case where the lease is granted and begins to run within one month after the sale.
- (5) ^{M56}In this section references to a person connected with another shall be construed in accordance with section 839.

Modifications etc. (not altering text)

- C14** S. 36 excluded (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), ss. 252\(1\)\(3\), Sch. 24 para. 24](#)
- C15** See 1976(D) Sch.6 para.4. 1976(D)repealed by 1985 ss.93, 98(6)and Sch.27 Part Xwith effect from 19March 1985.
- C16** S. 36(1) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by [Finance Act 1995 \(c. 4\), s. 39\(3\), Sch. 6 para. 11](#)
- C17** See 1979(C) s.106and Sch.3 para.6(3)—effect of claim under s.36(2)(b)on computation of capital gains.
- C18** See 1979(C) s.106and Sch.3 para.5(3)—deduction of amounts chargeable under s.36in computing capital gains.

Marginal Citations

- M54** SOURCE-1970 s. 82(1), (2)
- M55** SOURCE-1970 S. 82(3)
- M56** SOURCE-1970 s. 82(1), (3)

37 Premiums paid etc: deductions from premiums and rent received.

- (1) ^{M57}This section applies in any case where in respect of a lease of any premises—
- (a) tax has become chargeable under the provisions of section 34 or 35 on any amount (disregarding any reduction in that amount under ^[F15]subsection (2) or (3) below); or
 - (b) tax would have become so chargeable on that amount but for the operation of ^[F15]subsection (2) or (3) below], or but for any exemption from tax;
- and ^[F15]that amount] is in this section referred to as “the amount chargeable on the superior interest” and any such lease is referred to as “the head lease”.

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(2) Where—

- (a) a lease is granted out of, or there is a disposition of, the head lease, and
- (b) in respect of that grant or disposition a person would, apart from this subsection, be chargeable under section 34 or 35 on any amount (“the later chargeable amount”),

then the amount on which he is so chargeable shall, subject to subsection (3) below, be the excess (if any) of the later chargeable amount over the appropriate fraction of the amount chargeable on the superior interest.

- (3) Where a person would, apart from subsection (2) above, be chargeable under section 34 or 35 in respect of a lease or disposition which extends to a part only of the premises subject to the head lease, the amount on which he is so chargeable shall be the excess (if any) of the later chargeable amount over the appropriate fraction of the amount chargeable on the superior interest as, on a just apportionment, is attributable to that part of the premises.

- (4) ^{M58}Subject to subsection (5) below, the person for the time being entitled to the head lease shall be treated for the purposes of deductions under sections 25 and 26 from rent receivable by him in respect of those or other premises as paying rent for those premises (in addition to any actual rent), becoming due from day to day, during any part of the period in respect of which the amount chargeable on the superior interest arose for which he was entitled to the head lease, and, in all, bearing to that amount the same proportion as that part of the period bears to the whole.

- (5) ^{M59}Where subsection (2) above applies, subsection (4) above shall apply for the period in respect of which the later chargeable amount arose only if the appropriate fraction of the amount chargeable on the superior interest exceeds the later chargeable amount, and shall then apply as if the amount chargeable on the superior interest were reduced in the proportion which that excess bears to that appropriate fraction.

- (6) Where subsection (3) above applies, subsections (4) and (5) above shall be applied separately to the part of the premises referred to in subsection (3) above and to the remainder of the premises, but as if for any reference to the amount chargeable on the superior interest there were substituted a reference to that amount proportionately adjusted.

- (7) ^{M60}For the purposes of this section—

- (a) the appropriate fraction of the amount chargeable on the superior interest is the fraction—

$$\frac{A}{B}$$

where—

A is the period in respect of which the later chargeable amount arose; and

B is the period in respect of which the amount chargeable on the superior interest arose; and

- (b) the period in respect of which an amount arose—

- (i) where it arose under section 34, shall be the period treated in computing the amount as being the duration of the lease;

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- (ii) where it arose under section 35, shall be the period treated in computing the amount as being the duration of the lease remaining at the date of the assignment.
- (8) ^{M61} Where the amount chargeable on the superior interest arose under section 34(2) by reason of an obligation which included the carrying out of work in respect of which any capital allowance has fallen or will fall to be made, subsections (1) to (6) above shall apply as if the obligation had not included the carrying out of that work and that amount had been calculated accordingly.
- (9) ^{M62} An amount or part of an amount shall not be deducted under this section more than once from any sum, or from more than one sum, and shall not in any case be so deducted if it has been otherwise allowed as a deduction in computing the income of any person for tax purposes.

Textual Amendments

- F15** 1990 s.89 and Sch.14 para.2 (correction of errors)—*deemed always to have had effect. Previously* “subsection (2) below”, “this subsection”
and
“the amount of that tax”
respectively.

Modifications etc. (not altering text)

- C19** S. 37 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by [Finance Act 1995 \(c. 4\), s. 39\(3\), Sch. 6 para. 12](#)
- C20** See 1979(C) s.106 and Sch.3 para.6(1)—*allowance under this subsection to be deducted from any loss on disposal of lease.*
- C21** See 1976(D) Sch.6 para.4(4)—*no account to be taken of any deduction of realised development value. 1976(D) repealed by 1985 ss.93, 98(6) and Sch.27 Part X with effect from 19 March 1985.*

Marginal Citations

- M57** SOURCE-1970 s. 83(1); 1978 s. 32(2)
- M58** SOURCE-1970 s. 83(2)
- M59** SOURCE-1970 s. 83(3)
- M60** SOURCE-1970 s. 83(4)
- M61** SOURCE-1970 s. 83(5)
- M62** SOURCE-1970 s. 83(7)

VALID FROM 06/04/2005

[^{F16}37A Section 37(4) and reductions in receipts under ITTOIA 2005

- (1) This section applies if—
- (a) in calculating the amount that falls to be treated as a receipt of a UK property business under Chapter 4 of Part 3 of ITTOIA 2005 (“the ITTOIA receipt”), there is a reduction under section 288 of that Act by reference to a taxed receipt, and
 - (b) the taxed receipt is the amount chargeable on the superior interest for the purposes of section 37.

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- (2) Section 37(4) shall apply for the period in respect of which the ITTOIA receipt arose only if the appropriate fraction of the amount chargeable on the superior interest exceeds the amount of the ITTOIA receipt given by the formula in section 277, 279, 280, 281 or 282 of ITTOIA 2005, as the case may be.
- (3) Section 37(4) shall then apply as if the amount chargeable on the superior interest were reduced in the proportion which that excess bears to that appropriate fraction.
- (4) Subsection (5) applies if—
- (a) the ITTOIA receipt is in respect of a lease granted out of the taxed lease,
 - (b) the taxed lease is the head lease for the purposes of section 37, and
 - (c) the lease granted as mentioned in paragraph (a) does not extend to the whole of the premises subject to the head lease.
- (5) Section 37(4) and subsections (2) and (3) above shall be applied separately to the part of the premises subject to the lease and to the remainder of the premises, but as if for any reference to the amount chargeable on the superior interest there were a reference to that amount proportionately adjusted.
- (6) For the purposes of this section the appropriate fraction of the amount chargeable on the superior interest is the fraction—

$$\frac{A}{B}$$

where—

A is the period in respect of which the ITTOIA receipt arose, and

B is the period in respect of which the amount chargeable on the superior interest arose for the purposes of section 37.

- (7) For the purposes of this section the period in respect of which an ITTOIA receipt arose is its receipt period (within the meaning of Chapter 4 of Part 3 of ITTOIA 2005 (see section 288(6))).
- (8) In this section the following expressions have the same meaning as in Chapter 4 of Part 3 of ITTOIA 2005—
- “reduction under section 288 by reference to a taxed receipt” (see section 290(6) of that Act),
 - “taxed lease” (see section 287(4) of that Act), and
 - “taxed receipt” (see section 287(4) of that Act).
- (9) In the application of this section to Scotland, references to a lease granted out of a taxed lease are to be construed as references to a sublease of land subject to the taxed lease.]

Textual Amendments

- F16** S. 37A inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 21](#) (with [Sch. 2](#))

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38 Rules for ascertaining duration of leases.

- (1) ^{M63}In ascertaining the duration of a lease for the purposes of sections 34 to 36—
- (a) in any case where—
 - (i) any of the terms of the lease (whether relating to forfeiture or any other matter) or any other circumstances render it unlikely that the lease will continue beyond a date falling before the expiry of the term of the lease, and
 - (ii) the premium was not substantially greater than it would have been, on the assumptions required by subsections (3) and (4) below, had the term been one expiring on that date,

the lease shall not be treated as having been granted for a term longer than one ending on that date;
 - (b) 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; and
 - (c) where the tenant or a person connected with him (within the meaning of section 839) is or may become entitled to a further lease or the grant of a further lease (whenever commencing) of the same premises or of premises including the whole or part of the same premises, the term of the lease may be treated as not expiring before the term of the further lease.
- (2) ^{M64}Subsection (1) above shall be applied by reference to the facts which were known or ascertainable at the time of the grant of the lease, or in relation to tax under section 34(5), at a time when the contract providing for the variation or waiver is entered into.
- (3) It shall be assumed in applying subsection (1) above that all parties concerned, whatever their relationship, act as they would act if they were at arm's length.
- (4) In any case where—
- (a) by the lease or in connection with the granting of it benefits were conferred other than—
 - (i) vacant possession and beneficial occupation of the premises, or
 - (ii) the right to receive rent at a reasonable commercial rate in respect of the premises, or
 - (b) payments were made which would not be expected to be made by parties acting at arm's length if no other benefits had been so conferred,
- it shall also be assumed, unless it is shown that the benefits were not conferred or the payments made for the purpose of securing a tax advantage in the application of this Part, that the benefits would not have been conferred nor the payments made had the lease been for a term ending on the date mentioned in subsection (1)(a) above.
- (5) ^{M65}Where an inspector has reason to believe that a person has information relevant to the ascertainment of the duration of a lease in accordance with subsections (1) to (4) above, the inspector may by notice require him to give, within a time specified in the notice, such information on the matters so specified as is in his possession; but a solicitor shall not be so required to do more, in relation to anything done by him on behalf of a client, than state that he is or was so acting and give the name and address of his client.
- (6) ^{M66}In this section in relation to Scotland, the expression “term”, where referring to the duration of a lease, means period.

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(7) ^{M67}This section has effect subject to paragraphs 2 and 3 of Schedule 30.

Modifications etc. (not altering text)

C22 S. 38(1)(a)(4) excluded (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 77, Sch. 17 paras. 5(4)(6), 6(1), 7.

C23 See 1990(C) s.11(4)—rules applied in connection with leases for industrial buildings and structures.

Marginal Citations

M63 SOURCE-1970 S. 84(1)(b)–(d); 1972 s. 81(2)(a), (b)

M64 SOURCE-1970 s. 84(2); 1972 s. 81(2)(c)

M65 SOURCE-1970 s. 84(3A); 1972 s. 81(5)

M66 SOURCE-1970 s. 84(3); 1972 s. 81(2)(d)

M67 SOURCE-1970 s. 84(4)

39 Saving for pre-1963 leases, and special relief for individuals.

- (1) ^{M68}Subject to subsection (2) below, sections 34 to 36 shall not apply in relation to a lease granted, or an estate or interest in land sold, before the beginning of the year 1963-64 or in pursuance of a contract entered into before 4th April 1963.
- (2) Section 34(5) shall apply to the variation or waiver of any terms of a lease (not being a variation or waiver made in pursuance of a contract entered into before 4th April 1963) notwithstanding that the lease was granted before the beginning of the year 1963-64.
- (3) *Schedule 2 shall have effect for giving relief on a claim being made by him in that behalf from any increase in an individual's liability to income tax which is attributable to amounts being treated by virtue of section 34, 35 or 36 as receipts for a single year of assessment rather than as receipts for the period in relation to which they are chargeable*^{F17}.

Textual Amendments

F17 Repealed by 1988(F) ss.75, 148 and Sch. 14 Part IV for 1988-89 and subsequent years.

Marginal Citations

M68 SOURCE-1970 s. 85(1)

Supplemental: Schedules A and D

40 Tax treatment of receipts and outgoings on sale of land.

- (1) ^{M69}Where—
 - (a) by virtue of a contract for the sale of an estate or interest in land there falls to be apportioned between the parties a receipt or outgoing in respect of the estate or interest which becomes due after the making of the contract but before the time to which the apportionment falls to be made, and
 - (b) a part of the receipt is therefore receivable by the vendor in trust for the purchaser or, as the case may be, a part of the outgoing is paid by the vendor as trustee for the purchaser,

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the purchaser shall be treated for the purposes of tax under Schedule A as if that part had become receivable or payable on his behalf immediately after the time to which the apportionment falls to be made.

- (2) Where by virtue of such a contract there falls to be apportioned between the parties a receipt or outgoing in respect of the estate or interest which became due before the making of the contract, the parties shall be treated for the purposes of tax under Schedule A as if the contract had been entered into before the receipt or outgoing became due, and subsection (1) above shall apply accordingly.
- (3) Where on the sale of an estate or interest in land there is apportioned to the vendor a part of a receipt or outgoing in respect of the estate or interest which is to become receivable or be paid by the purchaser after the making of the apportionment, then for the purposes of tax under Schedule A—
 - (a) when the receipt becomes due or, as the case may be, the outgoing is paid, the amount of it shall be treated as reduced by so much thereof as was apportioned to the vendor, and
 - (b) the part apportioned to the vendor shall be treated as if it were of the same nature as the receipt or outgoing and had become receivable, or had been paid, directly by him immediately before the time to which the apportionment is made and, where it is part of an outgoing, had become due immediately before that time.
- (4) Any reference in subsection (1) or (2) above to a party to a contract shall include a person to whom the rights and obligations of that party under the contract have passed by assignment or otherwise.
- (5) This section shall apply as respects tax under Case VI of Schedule D in a case falling within paragraph 4 of Schedule A as it applies as respects tax under Schedule A in other cases.

Marginal Citations

M69 SOURCE-1970 s. 86

41 Relief for rent etc. not paid.

- (1)^{M70} Where on a claim in that behalf a person proves—
 - (a) that he has not received an amount which he was entitled to receive in respect of any rents or receipts on the profits or gains arising from which he would be chargeable under Schedule A; and
 - (b) if the non-receipt of that amount was attributable to the default of another person by whom it was payable, that the claimant has taken any reasonable steps available to him to enforce payment; or
 - (c) if the claimant waived payment of that amount, that the waiver was made without consideration, and was reasonably made in order to avoid hardship;
 then subject to subsection (2) below, the claimant shall be treated for tax purposes for all relevant chargeable periods as if he had not been entitled to that amount, and such adjustments shall be made, by repayment or otherwise, as the case may require.
- (2) If all or any part of that amount is subsequently received, the claimant or, if he is dead, his executors or administrators shall not later than six months thereafter give notice

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to the inspector, and such readjustment of liability to tax (for all relevant chargeable periods) shall be made as may be necessary, and may be made at any time at which it could be made if it related only to tax for the chargeable period in which the amount, or that part of the amount, is received.

- (3) ^{M71}Subsection (1) above shall apply in relation to sums chargeable to tax under Case VI of Schedule D by virtue of any provision of sections 34 to 36 as it applies to profits or gains chargeable to tax under Schedule A.

Marginal Citations

M70 SOURCE-1970 s. 87(1)

M71 SOURCE-1970 s. 87(2)

42 Appeals against determinations under sections 34 to 36.

- (1) ^{M72}Where it appears to the inspector that the determination of any amount on which a person may be chargeable to tax by virtue of section 34, 35 or 36 may affect the liability to income tax, corporation tax or capital gains tax of other persons he may give notice to those persons as well as to the first-mentioned person of the determination he proposes to make and of the rights conferred on them by this section.
- (2) Any person to whom such a notice is given may, within 30 days after the date on which it is given, object to the proposed determination by notice given to the inspector.
- (3) Where notices have been given under subsection (1) above and no notice of objection is duly given under subsection (2) above the inspector shall make the determination as proposed in his notices and the determination shall not be called in question in any proceedings.
- (4) Where a notice of objection is duly given the amount mentioned in subsection (1) above shall be determined in like manner as an appeal and shall be so determined by the Special Commissioners or such body of General Commissioners as may be agreed on by the person to be charged and all persons who have given notice of objection.
- (5) All persons to whom notices have been given under subsection (1) above may take part in any proceedings under subsection (4) above and in any appeal arising out of those proceedings and shall be bound by the determination made in the proceedings or on appeal, whether or not they have taken part in the proceedings; and their successors in title shall also be so bound.
- (6) A notice under subsection (1) above may, notwithstanding any obligation as to secrecy or other restriction on the disclosure of information, include a statement of the grounds on which the inspector proposes to make the determination.
- (7) An inspector may by notice require any person to give within the time specified in the notice such information as appears to the inspector to be required for deciding whether to give a notice under subsection (1) above to any person.

Modifications etc. (not altering text)

C24 S. 42 applied (3.11.2004 with effect in accordance with reg. 1(1) of the affecting S.I.) by The Energy-Saving Items (Deductions for Expenditure etc.) Regulations 2004 (S.I. 2004/2664), **reg. 4**

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Marginal Citations

M72 SOURCE- 1972 s. 82

VALID FROM 01/05/1995

^{F18}42A Non-residents and their representatives.

- (1) The Board may by regulations make provision for the charging, assessment, collection and recovery on or from prescribed persons falling within subsection (2) below of prescribed amounts in respect of the tax which is or may become chargeable under Schedule A on the income of any person who has his usual place of abode outside the United Kingdom (“the non-resident”).
- (2) A person falls within this subsection if he is—
 - (a) a person by whom any such sums are payable to the non-resident as fall, or would fall, to be treated as receipts of a Schedule A business carried on by the non-resident; or
 - (b) a person who acts on behalf of the non-resident in connection with the management or administration of any such business.
- (3) A person on whom any obligation to make payments to the Board is imposed by regulations under this section shall be entitled—
 - (a) to be indemnified by the non-resident for all such payments; and
 - (b) to retain, out of any sums otherwise due from him to the non-resident, or received by him on behalf of the non-resident, amounts sufficient for meeting any liabilities under the regulations to make payments to the Board which have been discharged by that person or to which he is subject.
- (4) Without prejudice to the generality of the preceding provisions of this section, regulations under this section may include any or all of the following provisions, that is to say—
 - (a) provision for the amount of any payment to be made to the Board in respect of the tax on any income to be calculated by reference to such factors as may be prescribed;
 - (b) provision for the determination in accordance with any such regulations of the period for which, the circumstances in which and the times at which any payments are to be made to the Board;
 - (c) provision for requiring the payment of interest on amounts which are not paid to the Board at the times required under any such regulations;
 - (d) provision as to the certificates to be given in prescribed circumstances to the non-resident by a person falling within subsection (2) above, and as to the particulars to be included in any such certificate;
 - (e) provision for the making of repayments of tax to the non-resident and for such repayments to be made in prescribed cases to persons falling within subsection (2) above;
 - (f) provision for the payment of interest by the Board on sums repaid under any such regulations;
 - (g) provision for the rights and obligations arising under any such regulations to depend on the giving of such notices and the making of such claims and determinations as may be prescribed;

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- (h) provision for the making and determination of applications for requirements of any such regulations not to apply in certain cases, and for the variation or revocation, in prescribed cases, of the determinations made on such applications;
 - (i) provision for appeals with respect to questions arising under any such regulations;
 - (j) provision requiring prescribed persons falling within subsection (2)(b) above to register with the Board;
 - (k) provision requiring persons registered with the Board and other prescribed persons falling within subsection (2) above to make returns and supply prescribed information to the Board and to make available prescribed books, documents and other records for inspection on behalf of the Board;
 - (l) provision for the partnership, as such, to be treated as the person falling within subsection (2) above in a case where a liability to make any payment under the regulations arises from amounts payable or things done in the course of a business carried on by any persons in partnership;
 - (m) provision which, in relation to payments to be made by virtue of this section in respect of any tax or to any sums retained in respect of such payments, applies (with or without modifications) any enactment or subordinate legislation having effect apart from this section with respect to cases in which tax is or is treated as deducted from any income.
- (5) Interest required to be paid by any regulations under this section shall be paid without deduction of tax and shall not be taken into account in computing any income, profits or losses for any tax purposes.
- (6) Regulations under this section may—
- (a) make different provision for different cases; and
 - (b) contain such supplementary, incidental, consequential and transitional provision as appears to the Board to be appropriate;
- and the provision that may be made by virtue of paragraph (b) above may include provision which, in connection with any other provision made by any such regulations, modifies the operation in any case of section 59A of the Management Act or Schedule 21 to the Finance Act 1995 (payments on account of income tax).
- (7) In this section—
- “prescribed” means prescribed by, or determined by an officer of the Board in accordance with, regulations made by the Board under this section; and
 - “subordinate legislation” has the same meaning as in the ^{M73} Interpretation Act 1978.
- (8) This section shall have effect—
- (a) as if references in this section to a Schedule A business included references to any activities which would be comprised in a Schedule A business if they were carried on by an individual, rather than by a company; and
 - (b) in relation to companies that carry on such activities, as if the reference in subsection (1) above to tax which is or may become chargeable under Schedule A included a reference to tax which is or may become chargeable under Case VI of Schedule D.]

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Textual Amendments

F18 S. 42A inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 40(1)

Marginal Citations

M73 1978 c. 30.

43 Non-residents.

- (1) ^{M74}Section 78 of the Management Act (taxation of non-residents in name of agent) shall not apply to tax on profits or gains chargeable to tax under Schedule A, or on any of the profits or gains chargeable under Case VI of Schedule D—
- in a case falling within paragraph 4 of Schedule A; or
 - which arise under the terms of a lease, but to a person other than the landlord, or otherwise arise out of any disposition or contract such that if they arose to the person making it they would be chargeable under Schedule A,
- where payment is made (whether in the United Kingdom or elsewhere) directly to a person whose usual place of abode is outside the United Kingdom, but sections 349(1) and 350 shall apply in relation to the payment as they apply to annual payments charged with tax under Case III ^{F19}. . . of Schedule D and not payable out of profits or gains brought into charge to income tax.
- (2) Subsection (1) above shall apply in relation to sums chargeable to tax under Case VI of Schedule D by virtue of any provision of sections 34 to 36 as it applies to profits or gains chargeable to tax under Schedule A.
- (3) Where by virtue of subsection (1) above the income tax chargeable for any year of assessment on a person's profits or gains chargeable to tax under Schedule A or Case VI of Schedule D or both would, apart from this subsection, be greater than the tax which would be chargeable thereon apart from section 22(2) and (3), then, on a claim in that behalf being made, relief shall be given from the excess, whether by way of repayment or otherwise.

Textual Amendments

F19 Words "or IV" in s. 43(1) repealed (retrospectively) by Finance Act 1994 (c. 9), ss. 146, 258, Sch. 17 para. 1, Sch. 26 Pt. V(22), Note

Marginal Citations

M74 SOURCE-1970 s. 89

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VALID FROM 28/07/2000

[^{F20} Rent factoring

Textual Amendments

F20 Ss. 43A-43G and cross-heading inserted (with effect in accordance with s. 110(2) of the amending Act) by Finance Act 2000 (c. 17), s.110(1)

43A Finance agreement: interpretation.

- (1) A transaction is a finance agreement for the purposes of sections 43B to 43F if in accordance with normal accounting practice the accounts of a company which receives money under the transaction would record a financial obligation (whether in respect of a lease creditor or otherwise) in relation to that receipt.
- (2) In subsection (1) “normal accounting practice” in relation to a company means normal accounting practice for a company incorporated in a part of the United Kingdom (irrespective of where the company is in fact incorporated).
- (3) The reference to a company’s accounts in subsection (1) shall be taken to include a reference to the consolidated group accounts of a group of companies of which it is a member; and—
 - (a) “group of companies” means a set of companies which, if each were incorporated in Great Britain, would form a group within the meaning given by section 262(1) of the ^{M75}Companies Act 1985, and
 - (b) “consolidated group accounts” means accounts of a kind which would satisfy the requirements of section 227 of the Companies Act 1985.
- (4) For the purposes of subsection (1) a company shall be treated as receiving any money which—
 - (a) falls to be taken into account as a receipt for the purpose of calculating the company’s liability to corporation tax, or
 - (b) would fall to be taken into account as a receipt for that purpose if the company were resident in the United Kingdom.

Marginal Citations

M75 1985 c. 6.

43B Transfer of rent.

- (1) This section applies to a finance agreement if it transfers a right to receive rent in respect of land in the United Kingdom from one person to another, otherwise than by means of the grant of a lease of land in the United Kingdom.
- (2) A person who receives a finance amount shall be treated for the purposes of the Tax Acts as receiving it—
 - (a) by way of rent,
 - (b) in the course of a business falling within paragraph 1(1) of Schedule A, and

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(c) in the chargeable period in which the agreement is made;
and the finance amount shall be taken into account in computing the profits of the Schedule A business for the chargeable period in which the agreement is made.

(3) In subsection (2) “finance amount” means a receipt in respect of which section 43A(1) is satisfied.

43C Transfer of rent: exceptions, &c.

(1) Section 43B shall not apply to a finance agreement if the term over which the financial obligation is to be reduced exceeds 15 years.

(2) Section 43B shall not apply to a finance agreement if—

- (a) the arrangements for the reduction of the financial obligation substantially depend on a person’s entitlement to an allowance under the Capital Allowances Acts, and
- (b) that person is not connected to the person from whom the right to receive rent is transferred.

(3) Section 43B shall not apply to a finance agreement if—

- (a) section 36(1) applies (without reference to section 36(3)), or
- (b) section 36(1) would apply (without reference to section 36(3)) if the price at which an estate or interest is sold were to exceed the price at which it is to be reconveyed.

(4) If—

- (a) section 36(1) would apply in relation to a finance agreement by virtue only of section 36(3), and
- (b) section 43B applies in relation to the agreement,
section 36(1) shall not apply.

(5) Section 43B shall not apply to a finance agreement if section 780 applies.

(6) Section 43B(2) shall not apply to a finance amount which is brought into account in computing the profits of a trade for the purposes of Case I of Schedule D (otherwise than by virtue of section 83 of the ^{M76}Finance Act 1989 (life assurance)).

Marginal Citations

M76 1989 c. 26.

43D Interposed lease.

(1) This section applies to a finance agreement under which—

- (a) a lease is granted in respect of land in the United Kingdom,
- (b) a premium is payable in respect of the lease, and
- (c) section 43A(1) is satisfied by reference to the receipt of the premium.

(2) Where this section applies, the person to whom the premium is payable shall be treated for the purposes of the Tax Acts as receiving it—

- (a) by way of rent,

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- (b) in the course of a business falling within paragraph 1(1) of Schedule A, and
 - (c) in the chargeable period in which the agreement is made;
- and the premium shall be taken into account in computing the profits of the Schedule A business for the chargeable period in which the agreement is made.

43E Interposed lease: exceptions, &c.

- (1) Section 43D shall not apply to a finance agreement if—
 - (a) the term over which the financial obligation is to be reduced exceeds 15 years, or
 - (b) the length of the lease does not exceed 15 years, or
 - (c) the length of the lease is not significantly different from the term over which the financial obligation is to be reduced.
- (2) For the purpose of subsection (1) the length of a lease shall be calculated in accordance with section 38.
- (3) Section 43D shall not apply to a finance agreement if—
 - (a) the arrangements for the reduction of the financial obligation substantially depend on a person's entitlement to an allowance under the Capital Allowances Acts, and
 - (b) that person is not connected to the person who grants the lease in respect of which the premium is payable.
- (4) Section 43D(2) shall not apply where all or part of the premium is brought into account in computing the profits of a trade for the purposes of Case I of Schedule D (otherwise than by virtue of section 83 of the ^{M77}Finance Act 1989 (life assurance)).
- (5) Section 34 shall not apply in relation to a premium to which section 43D(2) applies.

Marginal Citations

M77 1989 c. 26.

43F Insurance business.

- (1) In the application of sections 43A to 43E to companies carrying on insurance business a reference to accounts does not include a reference to accounts required to be prepared under Part II of the ^{M78}Insurance Companies Act 1982.
- (2) Neither section 43B(2) nor section 43D(2) shall require any amount to be brought into account in a computation of profits of life assurance business, or any category of life assurance business, carried on by a company where the computation is made in accordance with the provisions of this Act applicable to Case I of Schedule D.
- (3) Section 432A shall have effect in relation to any sum which is or would be treated as received by virtue of section 43B(2) or 43D(2) of this Act.
- (4) Expressions used in this section and in Chapter I of Part XII have the same meaning in this section as in that Chapter.

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Modifications etc. (not altering text)

- C25** S. 43F(1) modified (with effect in accordance with reg. 4A(3) of the 1997 modifying S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 1997 \(S.I. 1997/473\)](#), [reg. 4A\(1\)\(2\)](#) (as inserted (25.10.2000) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2000 \(S.I. 2000/2710\)](#), [regs. 1, 3](#), and as amended by: [S.I. 2003/23](#), [regs. 1, 3](#); [S.I. 2005/2005](#), [regs. 1, 4](#))

Marginal Citations

- M78** 1982 c. 50.

43G Interpretation.

- (1) This section applies for the purposes of sections 43A to 43F.
- (2) In those sections—
 - “connected” in relation to persons has the meaning given by section 839,
 - “rent” includes any sum which is chargeable to tax under Schedule A,
 - “lease” includes an underlease, sublease, tenancy or licence and an agreement for any of those things, but does not include a mortgage or heritable security,
 - “premium” has the meaning given by section 24(1) (and, in relation to Scotland, section 24(5)), and subsections (4) and (5) of section 34 shall have effect in relation to sections 43A to 43F as they have effect in relation to section 34, and
 - “sum” has the meaning given by section 24(4).
- (3) A reference to a transfer of a right to receive rent from one person to another includes a reference to any arrangement under which rent ceases to form part of the receipts taken into account for the purposes of calculating a company’s liability to corporation tax or income tax.
- (4) In calculating the term over which a financial obligation is to be reduced no account shall be taken of any period during which the arrangements for reduction differ from the arrangements which apply in a previous period if—
 - (a) the period begins after the financial obligation has been substantially reduced, and
 - (b) the different arrangements for reduction are not the result of a provision for periodic review, on commercial terms, of rent under a lease.]

Status:

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