



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART II

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

Premiums, leases at undervalue etc

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

- (1) 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—

$$P - \frac{(P \times Y)}{50}$$

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) 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) 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 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) 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) 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.

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

- (1) 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) 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.

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

- (1) 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.
- (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) 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) In this section references to a person connected with another shall be construed in accordance with section 839.

37 Premiums paid etc: deductions from premiums and rent received

- (1) 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 subsection (2) below); or
- (b) tax would have become so chargeable on that amount but for the operation of this subsection, or but for any exemption from tax;

and the amount of that tax 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”.

(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) 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) 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) 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;
 - (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) 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) 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.

38 Rules for ascertaining duration of leases

- (1) 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) 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) 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) In this section in relation to Scotland, the expression “term”, where referring to the duration of a lease, means period.
- (7) This section has effect subject to paragraphs 2 and 3 of Schedule 30.

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

- (1) 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.