

SCHEDULES

SCHEDULE 2

ASSETS HELD ON 6TH APRIL 1965

PART II

LAND REFLECTING DEVELOPMENT VALUE

- 9 (1) Subject to paragraph 17(2) of Schedule 11, this Part of this Schedule shall apply in relation to a disposal of an asset which is an interest in land situated in the United Kingdom—
- (a) if, but for this paragraph, the expenditure allowable as a deduction in computing the gain accruing on the disposal would include any expenditure incurred before 6th April 1965, and
 - (b) if the consideration for the asset acquired on the disposal exceeds the current use value of the asset at the time of the disposal, or if any material development of the land has been carried out after 17th December 1973 since the person making the disposal acquired the asset.
- (2) For the purposes of this Act, it shall be assumed that, in relation to the disposal and, if it is a part disposal, in relation to any subsequent disposal of the asset which is an interest in land situated in the United Kingdom, that asset was sold by the person making the disposal, and immediately reacquired by him, at its market value on 6th April 1965.
- (3) Sub-paragraph (2) above shall apply also in relation to any prior part disposal of the asset and, if tax has been charged, or relief allowed, by reference to that part disposal on a different footing, all such adjustments shall be made, whether by way of assessment or discharge or repayment of tax, as are required to give effect to the provisions of this sub-paragraph.
- (4) Sub-paragraph (2) above shall not apply in relation to a disposal of assets—
- (a) on the assumption in that sub-paragraph a gain would accrue on that disposal to the person making the disposal and either a smaller gain or a loss would so accrue (computed in accordance with the provisions of this Act) if it did not apply, or
 - (b) if on the assumption in sub-paragraph (2) a loss would so accrue and either a smaller loss or a gain would accrue if that sub-paragraph did not apply,
- and accordingly the amount of the gain or loss accruing on the disposal shall be computed without regard to the provisions of this Schedule except that in a case where this sub-paragraph would otherwise substitute a loss for a gain or a gain for a loss it shall be assumed, in relation to the disposal, that the relevant assets were sold by the owner, and immediately reacquired by him, for a consideration such that, on the disposal, neither a gain nor a loss accrued to the person making the disposal.
- (5) For the purposes of this Part of this Schedule—

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- (a) “interest in land” means any estate or interest in land, any right in or over land or affecting the use or disposition of land, and any right to obtain such an estate, interest or right from another which is conditional on that other’s ability to grant the estate, interest or right in question, except that it does not include the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of a mortgage, an agreement for a mortgage or a charge of any kind over land, or, in Scotland, the interest of a creditor in a charge or security of any kind over land; and
 - (b) “land” includes buildings.
- 10 (1) For the purposes of this Part of this Schedule, the current use value of an interest in land shall be ascertained in accordance with the following provisions of this Part, and in this Part the time as at which current use value is to be ascertained is referred to as “the relevant time”.
- (2) Subject to the following provisions of this Part of this Schedule, the current use value of an interest in land at the relevant time is the market value of that interest at that time calculated on the assumption that it was at that time, and would continue to be, unlawful to carry out any material development of the land other than any material development thereof which, being authorised by planning permission in force at that time, was begun before that time.
- In relation to any material development which was begun before 18th December 1973 this sub-paragraph shall have effect with the omission of the words from “other than” to “before that time”.
- (3) In this paragraph “planning permission” has the same meaning as in the Town and Country Planning Act 1990, or, in Scotland, the Town and Country Planning (Scotland) Act 1972, or, in Northern Ireland, the Planning (Northern Ireland) Order 1991, and in determining for the purposes of this paragraph what material development of any land was authorised by planning permission at a time when there was in force in respect of the land planning permission granted on an outline application (that is to say, an application for planning permission subject to subsequent approval on any matters), any such development of the land which at that time—
- (a) was authorised by that permission without any requirement as to subsequent approval; or
 - (b) not being so authorised, had been approved in the manner applicable to that planning permission,
- but no other material development, shall for those purposes be taken to have been authorised by that permission at that time.
- (4) Where the value to be ascertained is the current use value of an interest in land which has been disposed of by way of a part disposal of an asset (“the relevant asset”) consisting of an interest in land, the current use value at the relevant time of the interest disposed of shall be the relevant fraction of the current use value of the relevant asset at that time, calculated on the same assumptions as to the lawfulness or otherwise of any material development as fall to be made under this Part in calculating the current use value at that time of the interest disposed of.
- (5) For the purposes of sub-paragraph (4) above “the relevant fraction” means that fraction of the sums mentioned in paragraph (6) below which under subsection (2) of section 42 is, or would but for subsection (4) of that section be, allowable as a deduction in computing the amount of the gain accruing on the part disposal.

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- (6) The sums referred to in sub-paragraph (5) above are the sums which, if the entire relevant asset had been disposed of at the time of the part disposal, would be allowable by virtue of section 38(1)(a) and (b) as a deduction in computing the gain accruing on that disposal of the relevant asset.
- (7) Sub-paragraphs (4) to (6) above shall not apply—
- (a) in the case of a disposal of an interest in land by way of a part disposal if, on making the disposal, the person doing so no longer has any interest in the land which is subject to that interest; or
 - (b) in a case to which the following provisions of this paragraph apply.
- (8) In computing any gain accruing to a person on a part disposal of an interest in land resulting under subsection (1) of section 22 from the receipt as mentioned in paragraph (a), (c) or (d) of that subsection of a capital sum, the current use value at the relevant time of the interest out of which the part disposal was made shall be taken to be what it would have been at that time if the circumstances which caused the capital sum to be received had not arisen.
- 11 (1) The current use value of an interest in land which is either—
- (a) a freehold interest which is subject to a lease or an agreement for a lease, or
 - (b) an interest under a lease or agreement for a lease,
- shall be ascertained without regard to any premium required under the lease or agreement for a lease or any sublease, or otherwise under the terms subject to which the lease or sublease was or is to be granted, but with regard to all other rights under the lease or prospective lease (and, for the current use value of an interest under a lease subject to a sublease, under the sublease).
- (2) If under sub-paragraph (1) above an interest under a lease or agreement for a lease would have a negative value, the current use value of the interest shall be nil.
- (3) If a lease is granted out of any interest in land after 17th December 1973, then, in computing any gain accruing on any disposal of the reversion on the lease made while the lease subsists, the current use value of the reversion at any time after the grant of the lease shall not exceed what would have been at that time the current use value of the interest in the land of the person then owning the reversion if that interest had not been subject to the lease.
- (4) In the application of this paragraph to Scotland, “freehold” means the estate or interest of the proprietor of the dominium utile or, in the case of property other than feudal property, of the owner, and “reversion” means the interest of the landlord in property subject to a lease.
- 12 In computing any gain accruing to a person on a disposal of a lease which is a wasting asset, the current use value of the lease at the time of its acquisition by the person making the disposal shall be the fraction—
- $$\frac{A}{B}$$
- of what its current use value at that time would be apart from this paragraph, where—
- A is equal to so much of the expenditure attributable to the lease under section 38(1)(a) and (b) as is not under paragraph 1 of Schedule 8 excluded therefrom for the purposes of the computation of the gain accruing on the disposal, and

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B is equal to the whole of the expenditure which would be so attributable to the lease for those purposes apart from the said paragraph 1.

13 (1) In this Part of this Schedule, “material development”, in relation to any land, means the making of any change in the state, nature or use of the land, but the doing of any of the following things in the case of any land shall not be taken to involve material development of the land, that is to say—

- (a) the carrying out of works for the maintenance, improvement, enlargement or other alteration of any building, so long as the cubic content of the original building is not exceeded by more than one-tenth;
- (b) the carrying out of works for the rebuilding, as often as occasion may require, of any building which was in existence at the relevant time, or of any building which was in existence in the period of 10 years immediately preceding the day on which that time falls but was destroyed or demolished before the relevant time, so long as (in either case) the cubic content of the original building is not exceeded by more than one-tenth;
- (c) the use of any land for the purposes of agriculture or forestry, the use for any of those purposes of any building occupied together with land so used, and the carrying out on any land so used of any building or other operations required for the purposes of that use;
- (d) the carrying out of operations on land for, or the use of land for, the display of an advertisement, announcement or direction of any kind;
- (e) the carrying out of operations for, or the use of the land for, car parking, provided that such use shall not exceed 3 years;
- (f) in the case of a building or other land which at the relevant time was used for a purpose falling within any class specified in sub-paragraph (4) below or which, being unoccupied at that time, was last used for any such purpose, the use of that building or land for any other purpose falling within the same class;
- (g) in the case of a building or other land which at the relevant time was in the occupation of a person by whom it was used as to part only for a particular purpose, the use for that purpose of any additional part of the building or land not exceeding one-tenth of the cubic content of the part of the building used for that purpose at the relevant time or, as the case may be, one-tenth of the area of the land so used at that time;
- (h) in the case of land which at the relevant time was being temporarily used for a purpose other than the purpose for which it was normally used, the resumption of the use of the land for the last-mentioned purpose;
- (i) in the case of land which was unoccupied at the relevant time, the use of the land for the purpose for which it was last used before that time.

References in this paragraph to the cubic content of a building are references to that content as ascertained by external measurement.

(2) For the purposes of sub-paragraph (1)(a) and (b)—

- (a) where 2 or more buildings are included in a single development the whole of that development may be regarded as a single building, and where 2 or more buildings result from the redevelopment of a single building the new buildings may together be regarded as a single building, but 2 or more buildings shall not be treated as included in a single development unless they are or were comprised in the same curtilage; and

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- (b) in determining whether or not the cubic content of the original building has been exceeded by more than one-tenth, the cubic content of the building after the carrying out of the works in question shall be treated as reduced by the amount (if any) by which so much of that cubic content as is attributable to one or more of the matters mentioned in sub-paragraph (3) below exceeds so much of the cubic content of the original building as was attributable to one or more of the matters so mentioned.
 - (3) The matters referred to in sub-paragraph (2)(b) are the following, that is to say—
 - (a) means of escape in case of fire;
 - (b) car-parking or garage space;
 - (c) accommodation for plant providing heating, air-conditioning or similar facilities.
 - (4) The classes of purposes mentioned in sub-paragraph (1)(f) are the following—
 - Class A—Use as a dwelling-house or for the purpose of any activities which are wholly or mainly carried on otherwise than for profit, except use for a purpose falling within Class B, C or E.
 - Class B—Use as an office or retail shop.
 - Class C—Use as a hotel, boarding-house or guest-house, or as premises licensed for the sale of intoxicating liquors for consumption on the premises.
 - Class D—Use for the purpose of any activities wholly or mainly carried on for profit, except—
 - (a) use as a dwelling-house or for the purposes of agriculture or forestry; and
 - (b) use for a purpose falling within Class B, C or E.
 - Class E—Use for any of the following purposes, namely—
 - (a) the carrying on of any process for or incidental to any of the following purposes, namely—
 - (i) the making of any article or of any part of any article, or the production of any substance;
 - (ii) the altering, repairing, ornamenting, finishing, cleaning, washing, packing or canning, or adapting for sale, or breaking up or demolishing of any article; or
 - (iii) without prejudice to (i) or (ii) above, the getting, dressing or treatment of minerals,being a process carried on in the course of a trade or business other than agriculture or forestry, but excluding any process carried on at a dwelling-house or retail shop;
 - (b) storage purposes (whether or not involving use as a warehouse or repository) other than storage purposes ancillary to a purpose falling within Class B or C.
- 14 (1) For the purposes of this Part, material development shall be taken to be begun on the earliest date on which any specified operation comprised in the material development is begun.
- (2) In this paragraph “specified operation” means any of the following, that is to say—
 - (a) any work of construction in the course of the erection of a building;
 - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

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- (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in (b) above;
- (d) any operation in the course of laying out or constructing a road or part of a road;
- (e) any change in the use of any land.

(3) Subject to sub-paragraph (4) below, material development shall for the purposes of this Part of this Schedule not be treated as carried out after a particular date if it was begun on or before that date.

(4) If, in the case of any land—

- (a) material development thereof was begun on or before 17th December 1973 but was not completed on or before that date, and
- (b) the development was on that date to any extent not authorised by planning permission (within the meaning of paragraph 10(3) above) then in force,

then, for the purposes of this Part of this Schedule, so much of the development carried out after that date as was not so authorised on that date shall be treated as begun on the earliest date after 17th December 1973 on which any specified operation comprised therein is begun, and shall accordingly be treated as material development of the land carried out after 17th December 1973.

15 In this Part of this Schedule, unless the context otherwise requires—

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the keeping and breeding of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly;

“article” means an article of any description;

“building” includes part of a building and references to a building may include references to land occupied therewith and used for the same purposes;

“forestry” includes afforestation;

“minerals” includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working;

“retail shop” includes any premises of a similar character where retail trade or business (including repair work) is carried on;

“substance” means any natural or artificial substance or material, whether in solid or liquid form or in the form of a gas or vapour.