



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 19

#### SALE AND LEASE-BACK ETC

### CHAPTER 1

#### PAYMENTS CONNECTED WITH TRANSFERRED LAND

#### *Introduction*

#### **834 Overview of Chapter**

This Chapter provides that in certain circumstances where a transfer is made regarding land, and the transferor or an associate becomes liable to make a payment connected with the land, corporation tax relief for the payment is restricted.

#### *Application of the Chapter*

#### **835 Transferor or associate becomes liable for payment of rent**

- (1) Section 838 has effect if—
  - (a) land, or an estate or interest in land, is transferred,
  - (b) the transferor, or a company associated with the transferor, becomes liable to make a payment of rent under a lease of the land or part of it, and
  - (c) a deduction by way of relevant corporation tax relief (see section 837) is allowed for the payment.
- (2) Section 839 has effect if—
  - (a) land, or an estate or interest in land, is transferred,

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- (b) the transferor, or a company associated with the transferor, becomes liable to make a payment of rent under a lease of the land or part of it, and
  - [<sup>F1</sup>(c) a deduction is allowed for the payment by taking it into account in the calculation at step 1 of section 76 of FA 2012 (management expenses of insurance companies carrying on basic life assurance and general annuity business).]
- (3) The reference in subsection (1)(a) or (2)(a) to a transfer of an estate or interest in land includes a reference to any of the following—
- (a) the granting of a lease or another transaction involving the creation of a new estate or interest in the land,
  - (b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease, and
  - (c) a transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner or one of the owners before and after the transaction or transactions but another person becomes or ceases to be one of the owners.
- (4) In relation to a transaction or series of transactions mentioned in subsection (3)(c), a person is to be regarded as a transferor for the purposes of this Chapter if the person—
- (a) is an owner before the transaction or transactions, and
  - (b) is not the sole owner afterwards.
- (5) The liability mentioned in subsection (1)(b) or (2)(b) is one resulting from—
- (a) a lease, of the land or part of it, granted (at the time of the transfer or later) by the transferee to the transferor, or
  - (b) another transaction or series of transactions affecting the land or an estate or interest in it.
- (6) The liability mentioned in subsection (1)(b) or (2)(b) is one arising at the time of the transfer or later.
- (7) The reference in subsection (1)(a) or (2)(a) to a transfer does not include a transfer on or before 14 April 1964.

#### Textual Amendments

**F1** S. 835(2)(c) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 224](#)

### **836 Transferor or associate becomes liable for payment other than rent**

- (1) Section 838 has effect if—
- (a) land, or an estate or interest in land, is transferred,
  - (b) the transferor, or a company associated with the transferor, becomes liable to make a payment which is not rent under a lease but is otherwise connected with the land or part of it (whether it is a payment under a rentcharge or under some other transaction), and
  - (c) a deduction by way of relevant corporation tax relief (see section 837) is allowed for the payment.
- (2) Section 839 has effect if—
- (a) land, or an estate or interest in land, is transferred,

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- (b) the transferor, or a company associated with the transferor, becomes liable to make a payment which is not rent under a lease but is otherwise connected with the land or part of it (whether it is a payment under a rentcharge or under some other transaction), and
  - [<sup>F2</sup>(c) a deduction is allowed for the payment by taking it into account in the calculation at step 1 of section 76 of FA 2012 (management expenses of insurance companies carrying on basic life assurance and general annuity business).]
- (3) The reference in subsection (1)(a) or (2)(a) to a transfer of an estate or interest in land includes a reference to any of the following—
- (a) the granting of a lease or another transaction involving the creation of a new estate or interest in the land,
  - (b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease, and
  - (c) a transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner or one of the owners before and after the transaction or transactions but another person becomes or ceases to be one of the owners.
- (4) In relation to a transaction or series of transactions mentioned in subsection (3)(c), a person is to be regarded as a transferor for the purposes of this Chapter if the person—
- (a) is an owner before the transaction or transactions, and
  - (b) is not the sole owner afterwards.
- (5) The liability mentioned in subsection (1)(b) or (2)(b) is one resulting from a transaction or series of transactions affecting the land or an estate or interest in it.
- (6) The liability mentioned in subsection (1)(b) or (2)(b) is one arising at the time of the transfer or later.
- (7) The reference in subsection (1)(a) or (2)(a) to a transfer does not include a transfer on or before 14 April 1964.

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**Textual Amendments**

**F2** S. 836(2)(c) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 225](#)

### **837 Relevant corporation tax relief**

For the purposes of this Chapter each of the following is a deduction by way of relevant corporation tax relief—

- (a) a deduction in calculating profits or losses of a trade for corporation tax purposes,
- (b) a deduction in calculating the profits of a UK property business for corporation tax purposes,
- (c) a deduction in calculating any loss for which relief is given under section 91 (losses from miscellaneous transactions), or in calculating profits or gains chargeable to corporation tax under or by virtue of any provision to which section 1173 (miscellaneous charges) applies, and
- (d) a deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business).

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*Relief (other than for certain insurance company expenses): restriction and carrying forward*

### **838 Relevant corporation tax relief: deduction not to exceed commercial rent**

- (1) The rules in subsection (3) apply to the calculation of the deduction by way of relevant corporation tax relief allowed in an accounting period—
- (a) for the non-excluded element of the payment within section 835(1) or 836(1), or
  - (b) if there are two or more such payments, for the non-excluded elements of those payments.

- (2) For the purposes of this section the non-excluded element of a payment is the element of the payment not excluded under section 843 (service charges etc).

- (3) The rules are—

*Rule 1 — meaning of amount E* For any accounting period, amount E (which may be nil) is the expense or total expenses to be brought, in accordance with generally accepted accounting practice, into account in the period in respect of—

- (a) the non-excluded element of the payment, or
- (b) the non-excluded elements of the payments.

*Rule 2 — calculations* For every accounting period—

- (a) calculate the total of amount E for the period and amount E for every previous accounting period ending on or after the date of the transfer mentioned in section 835(1)(a) or 836(1)(a),
- (b) calculate the total of the deductions by way of relevant corporation tax relief for every previous accounting period ending on or after the date of that transfer, and
- (c) subtract the total at (b) from the total at (a) to give the cumulative unrelieved expenses for the period.

*Rule 3 — meaning of post-spread period* An accounting period is a post-spread period if for that accounting period, and every later accounting period, there are no payments within section 835(1) or 836(1).

*Rule 4 — the deduction allowed in an accounting period* If an accounting period is not a post-spread period, the deduction allowed for the period is equal to the cumulative unrelieved expenses for the period, but is equal to the commercial rent for the period if that is less (see section 844 or 845).

*Rule 5 — accounting periods in which no deduction allowed* If an accounting period is a post-spread period, no deduction is allowed for the period.

*Insurance company expenses: restriction and carrying forward of relief*

### **839 Deduction<sup>F3</sup> ... not to exceed commercial rent**

- (1) Subsection (3) applies to the calculation of [<sup>F4</sup>the amount to be taken into account as mentioned in section 835(2)(c) or 836(2)(c) in respect of] the non-excluded element of the payment within section 835(2) or 836(2).
- (2) For the purposes of this section the non-excluded element of a payment is the element of the payment not excluded under section 843 (service charges etc).

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- (3) [<sup>F5</sup>The amount of the payment to be taken into account] must not exceed the commercial rent for the period for which the payment is made (see section 844 or 845).

#### Textual Amendments

- F3** Words in s. 839 heading omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 226\(4\)](#)
- F4** Words in s. 839(1) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 226\(2\)](#)
- F5** Words in s. 839(3) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 226\(3\)](#)

### 840 Carrying forward parts of payments

- (1) This section applies if—
- section 839 has effect, and
  - conditions A and B are met.
- (2) Condition A is that under section 839 part of a payment which would otherwise be [<sup>F6</sup>taken into account as mentioned in section 835(2)(c) or 836(2)(c) is not taken into account].
- (3) Condition B is that one or more later payments are made, by the transferor or a person associated with the transferor, under—
- the lease (if section 839 has effect because of section 835(2)), or
  - the rentcharge or other transaction mentioned in section 836(2)(b) (if section 839 has effect because of section 836(2)).
- (4) The part of the payment mentioned in subsection (2) may be carried forward and treated for the purposes of [<sup>F7</sup>the calculation at step 1 of section 76 of FA 2012] as if it were made—
- when the next of the later payments is made, and
  - for the period for which that later payment is made.
- (5) So far as a part of a payment carried forward under this section is not [<sup>F8</sup>taken into account in the calculation at step 1 of section 76 of FA 2012], it may be carried forward again under this section.

#### Textual Amendments

- F6** Words in s. 840(2) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 227\(2\)](#)
- F7** Words in s. 840(4) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 227\(3\)](#)
- F8** Words in s. 840(5) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 227\(4\)](#)

### 841 Aggregation and apportionment of payments

- (1) This section applies for the purposes of section 839.
- (2) If more than one payment is made for the same period the payments must be taken together.
- (3) If payments are made for periods which overlap—
- the payments must be apportioned, and

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- (b) the apportioned payments which belong to the common part of the overlapping periods must be taken together.
- (4) References in subsections (2) and (3) to payments include references to parts of payments which under section 840 are treated as if made later than they were made.

#### **842 Payments made for later periods**

- (1) This section applies for the purposes of sections 839 to 841.
- (2) For the purposes of this section the relevant year, in relation to a payment, is the year which begins with the date it is made.
- (3) If a payment is made for a period all of which is after the relevant year, it must be treated as made for the relevant year.
- (4) If a payment is made for a period part of which is after the relevant year, it must be treated as if a corresponding part of it was made for the relevant year (and no part for a later period).

#### *Interpretation etc*

#### **843 Exclusion of service charges etc**

- (1) This section applies for the purposes of sections 838 and 839.
- (2) A payment must be excluded so far as it is in respect of any of the following—
  - (a) services,
  - (b) the use of relevant assets, and
  - (c) rates usually borne by the tenant.
- (3) The amount excluded must be just and reasonable.
- (4) If a lease or agreement contains provisions fixing the payments or parts of payments which are in respect of services or the use of assets, those provisions are not conclusive.
- (5) A relevant asset is any description of property or rights other than land or an interest in land.

#### **844 Commercial rent: comparison with rent under a lease**

- (1) Subsection (3) applies—
  - (a) for the purpose of making a comparison under rule 4 of section 838(3) if section 838 has effect because of section 835(1), and
  - (b) for the purpose of making a comparison under section 839(3) if section 839 has effect because of section 835(2).
- (2) In this section “the actual lease” means the lease mentioned in section 835(1)(b) or (2)(b).
- (3) The commercial rent is the rent which might be expected to be paid under a lease, of the land in respect of which the payment mentioned in section 835(1)(b) or (2)(b) is made, which—
  - (a) was negotiated in the open market when the actual lease was created,

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- (b) is of the same duration as the actual lease,
  - (c) is subject to the terms and conditions of the actual lease as respects liability for maintenance and repairs, and
  - (d) provides for rent payable at uniform intervals and at an appropriate rate.
- (4) Rent is payable at an appropriate rate if—
- (a) it is payable at a uniform rate, or
  - (b) in a case where the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for a year is never less than the amount payable for a previous year), it progresses by gradations proportionate to those provided by the actual lease.

#### **845 Commercial rent: comparison with payments other than rent**

- (1) Subsection (2) applies—
- (a) for the purpose of making a comparison under rule 4 of section 838(3) if section 838 has effect because of section 836(1), and
  - (b) for the purpose of making a comparison under section 839(3) if section 839 has effect because of section 836(2).
- (2) The commercial rent is the rent which might be expected to be paid under a lease, of the land in respect of which the payment mentioned in section 836(1)(b) or (2)(b) is made, which—
- (a) was negotiated in the open market when the rentcharge or other transaction mentioned in section 836(1)(b) or (2)(b) was effected,
  - (b) is a tenant's repairing lease, and
  - (c) is of an appropriate duration.
- (3) A tenant's repairing lease is a lease where the lessee is under an obligation to maintain and repair the whole (or substantially the whole) of the premises comprised in the lease.
- (4) To see whether a lease is of an appropriate duration, take the period over which payments are to be made under the rentcharge or other transaction, and—
- (a) if that period is 200 years or more (or the obligation to make the payments is perpetual) an appropriate duration is 200 years, or
  - (b) if that period is less than 200 years, an appropriate duration is the same duration as that period.

#### **846 Lease and rent**

- (1) This section applies for the purposes of this Chapter.
- (2) A reference to a lease includes a reference to any of the following—
- (a) an underlease, sublease, tenancy or licence, and
  - (b) an agreement for a lease, underlease, sublease, tenancy or licence, and
  - (c) in the case of land outside the United Kingdom, an interest corresponding to a lease (as defined here).
- (3) A reference to rent includes a reference to any payment under a lease.

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- (4) A reference to rent under a lease includes a reference to expenses which the tenant under the lease is treated as incurring in respect of the land subject to the lease under any of—
  - (a) sections 63 to 67 of CTA 2009 (land occupied for trade purposes), and
  - (b) sections 232 to 234 of that Act (taxed leases).
- (5) Expenses within subsection (4) must be treated as having been paid as soon as they were incurred.

#### **847 Associated persons**

- (1) This section applies for the purposes of this Chapter.
- (2) The following persons are associated with one another—
  - (a) the transferor in an affected transaction and the transferor in another affected transaction, if the two persons are acting in concert or if the two transactions are in any way reciprocal, and
  - (b) any person who is an associate of either of those associated transferors.
- (3) Two or more bodies corporate are associated with one another if they participate in, or are incorporated for the purposes of, a scheme—
  - (a) for the reconstruction of any body or bodies corporate, or
  - (b) for the amalgamation of any two or more bodies corporate.
- (4) Persons are associated with one another if they are associates as defined in section 882 (relatives, settlements, persons controlling bodies, joint owners etc).
- (5) In subsection (2) “affected transaction” means a transaction within—
  - (a) section 835(1) or (2) or 836(1) or (2), or
  - (b) section 681AA(1) or (2) or 681AB(1) or (2) of ITA 2007.

#### **848 Land outside the UK**

In the case of land outside the United Kingdom, expressions in this Chapter relating to interests in land and their disposition must be taken to relate to corresponding interests and dispositions.



**Changes to legislation:**

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