



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART III

SCHEDULE A, AND ASSOCIATED CHARGES UNDER SCHEDULE D

Premiums, leases at undervalue etc. (Schedules A and D)

80 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 fifty 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 the amount of the premium reduced by one-fiftieth of that amount for each complete period of twelve 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 the said terms did not impose that obligation on the tenant:

Provided that this subsection shall not apply in so far as the obligation requires the carrying out of work payment for which would, if the landlord and not the tenant were obliged to carry it out, be deductible from the rent under sections 72 to 76 above.

- (3) 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—

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- (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.
- (4) 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.
- (5) Where a payment falling within subsection (1), (3) or (4) 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:
- Provided that where the amount relates to a payment falling within subsection (4) above, it shall not be so treated unless the payment is due to a person who is, within the terms of section 533 of this Act, connected with the landlord.
- (6) Where an amount by reference to which a person is chargeable to tax by virtue of this section is payable by instalments, the tax chargeable by reference to that amount shall, if he makes a claim in that behalf by notice in writing not later than one year after the chargeable period in which he becomes entitled to the first such instalment, instead of being computed in accordance with the preceding provisions of this section, be computed as if each instalment were rent payable under the lease, or, in the case of instalments payable to a person other than the landlord or to a person after he has ceased to be the landlord, were profits or gains chargeable to tax under Case VI of Schedule D; and where a claim is so made, all such assessments, alterations of assessments and repayments of tax shall be made as may be necessary.
- (7) Section 69(2) above 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.

81 Schedule D charge on assignment of lease granted at undervalue

- (1) Where the terms subject to which a lease of a duration not exceeding fifty years 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 (hereinafter referred to as " the amount foregone ") by way of premium, or additional premium, for the grant of the lease, then, on any assignment of the lease for a consideration—
- (a) where the lease has not previously been assigned, exceeding the premium (if any) for which it was granted, or

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- (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 80(1) above 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.
- (2) 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.

82 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 who is, within the terms of section 533 of this Act, 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 date on which 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 who is, within the terms of section 533 of this Act, connected with him, this section shall 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:

Provided that this subsection shall not apply if the lease is granted, and begins to run, within one month after the sale.

83 Premiums paid etc.: deduction from premiums and rents received

- (1) Where in relation to any premises—
- (a) tax has become chargeable under the provisions of section 80 (except subsection (6)), 81 or 82 above on any amount (disregarding any reduction in that amount under this subsection), or

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(b) tax would have become so chargeable on that amount but for the operation of the said section 80(6) or this subsection, or but for any exemption from tax, and, in respect of a lease granted out of, or a disposition of, the lease, estate or interest in respect of which tax so became or would have become chargeable on the said amount (hereinafter referred to as "the amount chargeable on the superior interest"), a person would apart from this subsection be chargeable under the said provisions on any amount (hereinafter referred to as "the later chargeable amount"), the amount on which he is so chargeable shall, where no claim is or can be made by him under the said section 80(6), be the excess (if any) of the later chargeable amount over the appropriate fraction of the amount chargeable on the superior interest.

Provided that where a person would, apart from this subsection, be so chargeable in respect of a lease or disposition which extends to a part only of the said premises, the amount on which he is so chargeable shall, where no claim is or can be made by him under the said section 80(6), be the excess (if any) of the later chargeable amount over so much of the appropriate fraction of the amount chargeable on the superior interest as, on a just apportionment, is attributable to that part of the premises.

- (2) Where in relation to any premises tax has or would have become chargeable as mentioned in subsection (1)(a) or (b) above in respect of a lease, estate or interest, then, subject to subsection (3) below, the person for the time being entitled to the lease, estate or interest shall be treated for the purpose of deductions under sections 72 and 73 above 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 lease, estate or interest, and in all bearing to that amount the same proportion as that part of the period bears to the whole.
- (3) Where subsection (1) above has effect in relation to a lease granted out of, or a disposition of, the lease, estate or interest in respect of which tax has or would have become so chargeable, subsection (2) 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 the said excess bears to the said appropriate fraction:

Provided that where the lease so granted, or the said disposition, extends to a part only of the premises, the said subsection (2) and this subsection shall be applied separately in relation to that part 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.

- (4) For the purposes of this section—
- (a) the appropriate fraction of the amount chargeable on the superior interest is the fraction
- $$\frac{A}{B}$$
- of that amount, 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—

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- (i) where it arose under section 80 above, shall be the period treated in computing the amount as being the duration of the lease ;
 - (ii) where it arose under section 81 above, shall be the period treated in computing the amount as being the duration of the lease remaining at the date of the assignment;
 - (iii) where it arose under section 82 above, shall be the period beginning with the sale and ending on the date fixed under the terms of the sale as the date of the reconveyance or grant, or, if that date is not fixed, ending with the earliest date at which the reconveyance or grant could take place in accordance with the terms of the sale.
- (5) Where the amount chargeable on the superior interest arose under section 80(2) above 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 (3) above shall apply as if the obligation had not included the carrying out of that work and the said amount had been calculated accordingly.
- (6) Where an amount relevant for the purposes of subsection (1), (2) or (3) above arose under section 82 above, and the reconveyance or grant in question takes place at a price different from that taken in calculating the amount, or on a date different from that taken in determining the period in respect of which the amount arose, that subsection shall be deemed to have had effect (for all relevant chargeable periods) as it would have had effect if the actual price or date had been so taken, and such adjustment of liability to tax shall be made, by means of an assessment or otherwise, as may be necessary, and may be so made at any time at which it could be made if it related only to tax for the chargeable period in which the reconveyance or grant takes place.
- (7) 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 deducted thereunder if it has been otherwise allowed as a deduction in computing the income of any person for tax purposes.

84 Rules for ascertaining duration of leases

- (1) The following provisions shall have effect in ascertaining the duration of a lease for the purposes of sections 80 to 82 above—
- (a) where the terms of the lease include provision for the determination of the lease by notice given by the landlord, the lease shall not be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice so given,
 - (b) where any of the terms of the lease (whether relating to forfeiture or to 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, the lease shall not be treated as having been granted for a term longer than one ending on that date, and
 - (c) where the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the tenant, account may be taken of any circumstances making it likely that the lease will be so extended.
- (2) Subsection (1)(b) 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 80(4) above, at the time when the contract providing for the variation or waiver is entered into; and it shall be assumed in applying the said subsection (1)(b) that all

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parties concerned, whatever their relationship, act as they would act if they were at arm's length.

- (3) In relation to Scotland, the expression " term " in subsection (1) above, where referring to the duration of a lease, means " period " .
- (4) The above provisions have effect subject to paragraph 3 of Schedule 14 to this Act (which confines them, except for certain specified purposes, to leases granted after 12th June 1969 and, in relation to section 80(4) above, variations or waivers under contracts entered into after that date); and where the above provisions do not have effect, the rules to be applied for the purpose mentioned in subsection (1) above are those set out in paragraph 4 of the said Schedule 14.

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

- (1) Nothing in sections 80 to 82 above shall 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:

Provided that section 80(4) above 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.

- (2) Schedule 3 to this Act 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 80 (except subsection (6)), 81 or 82 above as receipts for a single year of assessment rather than as receipts for the period in relation to which they are chargeable.