

SCHEDULES

SCHEDULE 8

Section 240.

LEASES

Leases of land as wasting assets: curved line restriction of allowable expenditure

- 1 (1) A lease of land shall not be a wasting asset until the time when its duration does not exceed 50 years.
- (2) If at the beginning of the period of ownership of a lease of land it is subject to a sublease not at a rackrent and the value of the lease at the end of the duration of the sublease, estimated as at the beginning of the period of ownership, exceeds the expenditure allowable under section 38(1)(a) in computing the gain accruing on a disposal of the lease, the lease shall not be a wasting asset until the end of the duration of the sublease.
- (3) In the case of a wasting asset which is a lease of land the rate at which expenditure is assumed to be written off shall, instead of being a uniform rate as provided by section 46, be a rate fixed in accordance with the Table below.
- (4) Accordingly, for the purposes of the computation of the gain accruing on a disposal of a lease, and given that—
- (a) the percentage derived from the Table for the duration of the lease at the beginning of the period of ownership is P(1),
 - (b) the percentage so derived for the duration of the lease at the time when any item of expenditure attributable to the lease under section 38(1)(b) is first reflected in the nature of the lease is P(2), and
 - (c) the percentage so derived for the duration of the lease at the time of the disposal is P(3),

then—

- (i) there shall be excluded from the expenditure attributable to the lease under section 38(1)(a) a fraction equal to—

$$\frac{P(1) - P(3)}{P(1)},$$

, and

- (ii) there shall be excluded from any item of expenditure attributable to the lease under section 38(1)(b) a fraction equal to—

$$\frac{P(2) - P(3)}{P(2)}.$$

- (5) This paragraph applies notwithstanding that the period of ownership of the lease is a period exceeding 50 years and, accordingly, no expenditure shall be written off

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under this paragraph in respect of any period earlier than the time when the lease becomes a wasting asset.

- (6) Section 47 shall apply in relation to this paragraph as it applies in relation to section 46.

TABLE

50 (or more)	100
49	99.657
48	99.289
47	98.902
46	98.490
45	98.059
44	97.595
43	97.107
42	96.593
41	96.041
40	95.457
39	94.842
38	94.189
37	93.497
36	92.761
35	91.981
34	91.156
33	90.280
32	89.354
31	88.371
30	87.330
29	86.226
28	85.053
27	83.816
26	82.496
25	81.100
24	79.622
23	78.055
22	76.399
21	74.635

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20	72.770
19	70.791
18	68.697
17	66.470
16	64.116
15	61.617
14	58.971
13	56.167
12	53.191
11	50.038
10	46.695
9	43.154
8	39.399
7	35.414
6	31.195
5	26.722
4	21.983
3	16.959
2	11.629
1	5.983
0	0

If the duration of the lease is not an exact number of years the percentage to be derived from the Table above shall be the percentage for the whole number of years plus one-twelfth of the difference between that and the percentage for the next higher number of years for each odd month counting an odd 14 days or more as one month.

Premiums for leases

- 2 (1) Subject to this Schedule where the payment of a premium is required under a lease of land, or otherwise under the terms subject to which a lease of land is granted, there is a part disposal of the freehold or other asset out of which the lease is granted.
- (2) In applying section 42 to such a part disposal, the property which remains undisposed of includes a right to any rent or other payments, other than a premium, payable under the lease, and that right shall be valued as at the time of the part disposal.
- 3 (1) This paragraph applies in relation to a lease of land.
- (2) Where under the terms subject to which a lease is granted, a sum becomes payable by the tenant in lieu of the whole or 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 Schedule to have required the payment of a premium to the landlord (in addition to any other

premium) of the amount of that sum for the period in relation to which the sum is payable.

- (3) 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 Schedule to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum for the period from the time when the variation or waiver takes effect to the time when it ceases to have effect.
- (4) If under sub-paragraph (2) or (3) above a premium is deemed to have been received by the landlord, otherwise than as consideration for the surrender of the lease, then subject to sub-paragraph (5) below, both the landlord and the tenant shall be treated as if that premium were, or were part of, the consideration for the grant of the lease due at the time when the lease was granted, and the gain accruing to the landlord on the disposal by way of grant of the lease shall be recomputed and any necessary adjustments of tax, whether by way of assessment for the year in which the premium is deemed to have been received, or by way of discharge or repayment of tax, made accordingly.
- (5) If under sub-paragraph (2) or (3) above a premium is deemed to have been received by the landlord, otherwise than as consideration for the surrender of the lease, and the landlord is a tenant under a lease the duration of which does not exceed 50 years, this Schedule shall apply as if an amount equal to the amount of that premium deemed to have been received had been given by way of consideration for the grant of the part of the sublease covered by the period in respect of which the premium is deemed to have been paid as if that consideration were expenditure incurred by the sublessee and attributable to that part of the sublease under section 38(1)(b).
- (6) Where under sub-paragraph (2) above a premium is deemed to have been received as consideration for the surrender of a lease the surrender of the lease shall not be the occasion of any recomputation of the gain accruing on the receipt of any other premium, and the premium which is consideration for the surrender of the lease shall be regarded as consideration for a separate transaction consisting of the disposal by the landlord of his interest in the lease.
- (7) Sub-paragraph (3) above shall apply in relation to a transaction not at arm's length, and in particular in relation to a transaction entered into gratuitously, as if such sum had become payable by the tenant otherwise than by way of rent as might have been required of him if the transaction had been at arm's length.

Subleases out of short leases

- 4 (1) In the computation of the gain accruing on the part disposal of a lease which is a wasting asset by way of the grant of a sublease for a premium the expenditure attributable to the lease under paragraphs (a) and (b) of section 38(1) shall be apportioned in accordance with this paragraph, and section 42 shall not apply.
- (2) Out of each item of the expenditure attributable to the lease under paragraphs (a) and (b) of section 38(1) there shall be apportioned to what is disposed of—
 - (a) if the amount of the premium is not less than what would be obtainable by way of premium for the said sublease if the rent payable under that sublease were the same as the rent payable under the lease, the fraction which, under paragraph 1(3) of this Schedule, is to be written off over the period which is the duration of the sublease, and

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- (b) if the amount of the premium is less than the said amount so obtainable, the said fraction multiplied by a fraction equal to the amount of the said premium divided by the said amount so obtainable.
- (3) If the sublease is a sublease of part only of the land comprised in the lease this paragraph shall apply only in relation to a proportion of the expenditure attributable to the lease under paragraphs (a) and (b) of section 38(1) which is the same as the proportion which the value of the land comprised in the sublease bears to the value of that and the other land comprised in the lease; and the remainder of that expenditure shall be apportioned to what remains undisposed of.

Exclusion of premiums taxed under Schedule A etc.

- 5
- (1) Where by reference to any premium income tax has become chargeable under section 34 of the Taxes Act on any amount, that amount out of the premium shall be excluded from the consideration brought into account in the computation of the gain accruing on the disposal for which the premium is consideration except where the consideration is taken into account in the denominator of the fraction by reference to which an apportionment is made under section 42.
 - (2) Where by reference to any premium in respect of a sublease granted out of a lease the duration of which (that is of the lease) does not, at the time of granting the lease, exceed 50 years, income tax has become chargeable under section 34 of the Taxes Act on any amount that amount shall be deducted from any gain accruing on the disposal for which the premium is consideration as computed in accordance with the provisions of this Act apart from this sub-paragraph, but not so as to convert the gain into a loss, or to increase any loss.
 - (3) Subject to subsection (4) below, where income tax has become chargeable under section 36 of the Taxes Act (sale of land with right of re-conveyance) on any amount a sum of that amount shall be excluded from the consideration brought into account in the computation of the gain accruing on the disposal of the estate or interest in respect of which income tax becomes so chargeable, except where the consideration is taken into account in the denominator of the fraction by reference to which an apportionment is made under section 42.
 - (4) If what is disposed of is the remainder of a lease or a sublease out of a lease the duration of which does not exceed 50 years, sub-paragraph (3) shall not apply but the amount there referred to shall be deducted from any gain accruing on the disposal as computed in accordance with the provisions of this Act apart from this sub-paragraph and sub-paragraph (3), but not so as to convert the gain into a loss, or to increase any loss.
 - (5) References in sub-paragraphs (1) and (2) above to a premium include references to a premium deemed to have been received under subsection (4) or (5) of section 34 of the Taxes Act (which correspond to paragraph 3(2) and (3) of this Schedule).
 - (6) Section 37 shall not be taken as authorising the exclusion of any amount from the consideration for a disposal of assets taken into account in the computation of the gain by reference to any amount chargeable to tax under section 348 or 349 of the Taxes Act.
- 6
- (1) If under section 37(4) of the Taxes Act (allowance where, by the grant of a sublease, a lessee has converted a capital amount into a right to income) a person is to be treated as paying additional rent in consequence of having granted a sublease, the amount

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of any loss accruing to him on the disposal by way of the grant of the sublease shall be reduced by the total amount of rent which he is thereby treated as paying over the term of the sublease (and without regard to whether relief is thereby effectively given over the term of the sublease), but not so as to convert the loss into a gain, or to increase any gain.

- (2) Nothing in section 37 of this Act shall be taken as applying in relation to any amount on which tax is paid under section 35 of the Taxes Act (charge on assignment of lease granted at undervalue).
- (3) If any adjustment is made under section 36(2)(b) of the Taxes Act on a claim under that paragraph, any necessary adjustment shall be made to give effect to the consequences of the claim on the operation of this paragraph or paragraph 5 above.
- 7 If under section 34(2) and (3) of the Taxes Act income tax is chargeable on any amount, as being a premium the payment of which is deemed to be required by the lease, the person so chargeable shall be treated for the purposes of the computation of any gain accruing to him as having incurred at the time the lease was granted expenditure of that amount (in addition to any other expenditure) attributable to the asset under section 38(1)(b).

Duration of leases

- 8 (1) In ascertaining for the purposes of this Act the duration of a lease of land the following provisions shall have effect.
- (2) 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 given by the landlord.
- (3) 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 expiration 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.
- (4) Sub-paragraph (3) applies in particular where the lease provides for the rent to go up after a given date, or for the tenant's obligations to become in any other respect more onerous after a given date, but includes provision for the determination of the lease on that date, by notice given by the tenant, and those provisions render it unlikely that the lease will continue beyond that date.
- (5) Where the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the tenant this paragraph shall apply as if the term of the lease extended for as long as it could be extended by the tenant, but subject to any right of the landlord by notice to determine the lease.
- (6) It is hereby declared that the question what is the duration of a lease is to be decided, in relation to the grant or any disposal of the lease, by reference to the facts which were known or ascertainable at the time when the lease was acquired or created.

Leases of property other than land

- 9 (1) Paragraphs 2, 3, 4 and 8 of this Schedule shall apply in relation to leases of property other than land as they apply to leases of land, but subject to any necessary modifications.

- (2) Where by reference to any capital sum within the meaning of section 785 of the Taxes Act (leases of assets other than land) any person has been charged to income tax on any amount, that amount out of the capital sum shall be deducted from any gain accruing on the disposal for which that capital sum is consideration, as computed in accordance with the provisions of this Act apart from this sub-paragraph, but not so as to convert the gain into a loss, or increase any loss.
- (3) In the case of a lease of a wasting asset which is movable property the lease shall be assumed to terminate not later than the end of the life of the wasting asset.

Interpretation

- 10 (1) In this Act, unless the context otherwise requires “lease”—
 - (a) in relation to land, includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined,
 - (b) in relation to any description of property other than land, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, property,and “lessor”, “lessee” and “rent” shall be construed accordingly.
- (2) In this Schedule “premium” includes any like sum, whether payable to the intermediate or a superior landlord, and for the purposes of this Schedule 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 the other sufficient consideration for the payment is shown to have been given.
- (3) In the application of this Schedule to Scotland “premium” includes in particular a grassum payable to any landlord or intermediate landlord on the creation of a sublease.