
STATUTORY INSTRUMENTS

1992 No. 58

**The Ports Act 1991 (Levy on
Disposals of Land, etc.) Order 1992**

LEASES

Leases at rents — Grant

18.—(1) For the purposes of section 17 of the 1991 Act and this Order—

- (a) on the grant of a lease to which this sub-paragraph applies, the consideration for the disposal constituted by the grant shall in the computation of any gain accruing on the disposal be deemed to be equal to what would be the market value to the lessee of the lease at the time of the grant; and
- (b) on the grant of a lease to which this sub-paragraph applies (referred to in this sub-paragraph as a “sub-lease”)—
 - (i) the provisions of sub-paragraph (a) above and of paragraph (3) of article 26 shall be taken to have applied on the grant of the lease out of which the sub-lease is granted; and
 - (ii) the consideration for the disposal constituted by the grant of the sub-lease shall in the computation of any gain accruing on the disposal be deemed to be equal to what would be the market value to the sub-lessee of the sub-lease at the time of the grant; and paragraph 4(2) (b) of Schedule 3 to the 1979 Act shall not apply in respect of the disposal.

(2) For the purposes of computing the amount of gain which accrues or is regarded as accruing on a disposal to which sub-paragraph (a) or (b) of paragraph (1) above applies, there shall be deducted from the amount which would apart from this paragraph be the amount of the gain accruing or regarded as accruing an amount in respect of corporation tax calculated in accordance with paragraph (3) below.

(3) The amount in respect of corporation tax referred to in paragraph (2) above shall be equal to the product of A and B where—

A is a percentage equal to the highest rate of corporation tax on income for the financial year in which the disposal takes place; and

B is the amount which would, but for paragraph (2) above be the amount of the gain accruing or treated as accruing on the disposal less the amount of any premium actually paid on or in connection with the disposal.

(4) Except in a case mentioned in paragraph (a) or (b) of subsection (1) of section 29A of the 1979 Act (in which case that section shall apply for the purposes of section 17 of the 1991 Act and this Order), the market value of a lease to the lessee or of a sub-lease to the sub-lessee shall for the purposes of sub-paragraph (a) or (b) of paragraph (1) above be the amount of the premium that could reasonably be expected to be required under or in connection with the lease or sub-lease if no rent were payable thereunder:

Provided that, in determining the amount of the premium that could reasonably be expected to be so required, regard shall be had to the rent actually payable and to the amount of any premium actually required under or in connection with the lease or sub-lease.

(5) Sub-paragraph (a) of paragraph (1) above applies to a lease under which a rent is payable of land which is relevant land or is land in which a relevant interest subsists, granted by a chargeable company or another member of that company's group (that company or other member not itself being a tenant of the land), and sub-paragraph (b) of that paragraph applies to a lease under which a rent is payable of land which is relevant land or is land in which a relevant interest subsists, granted by a chargeable company or another member of that company's group (that company or other member being itself a tenant of the land).

Leases at rents — Subsequent disposals of reversions

19. Where, following the grant during the levy period of a lease to which sub-paragraph (a) or (b) of paragraph (1) of article 18 applies, there is a subsequent disposal of the land or an interest in the land subject to that lease, the consideration for that disposal shall, in the computation for the purposes of section 17 of the 1991 Act and this Order of any gain accruing or regarded as accruing on the disposal, be deemed to be equal to what would be the market value of the interest in land disposed of at the disposal date if no rent were payable under the lease.

Leases at rents — Early termination, renewal or extension

20.—(1) Where a lease under which a rent is payable has been granted on terms which confer on the lessor a right to terminate it at a specified date or in specified circumstances, it shall be assumed, in determining the market value of the lease pursuant to article 18, that that right will not be exercised by the lessor:

Provided that, if the lease is terminated pursuant to that right, the market value shall be redetermined, as at the date on which the right is exercised by the lessor by reference to the actual term of the lease.

(2) Where a lease under which a rent is payable has been granted on terms which confer on the lessee a right to renew or extend it at a specified date or in specified circumstances, it shall be assumed, in determining the market value of the lease pursuant to article 18, that that right will be exercised by the lessee:

Provided that, if the lease is not renewed or extended pursuant to that right, the market value shall be redetermined, as at the date on which such right lapses or becomes incapable of being exercised, by reference to the actual term of the lease.

Leases at rents — Holding over and tacit relocation

21.—(1) Subject to paragraph (2) below, where—

- (a) the market value of a lease to which sub-paragraph (a) or (b) of article 18(1) above applies has, in the computation for the purposes of section 17 of the 1991 Act and this Order of any gain accruing or regarded as accruing on the disposal constituted by the grant of the lease, been determined in accordance with article 18, or if the case so required, that article and article 20; and
- (b) following the expiry of the lease the lessee or, if the lessee is a company, another member of the lessee's group, remains in occupation of the land, or, if the lessee is a company, another member of that group enters into such occupation, or in Scotland the lease continues after the stated term by the operation of tacit relocation;

the market value shall, in relation to each disposal period in all or part of which the lessee or, if the lessee is a company, another member of the lessee's group remains in such occupation or, in Scotland, in relation to each disposal period during the continued operation of the lease, be redetermined, by

reference to the stated term of the lease as extended by the actual period of occupation since its expiry or, in Scotland, by reference to the stated term of the lease as extended by tacit relocation.

(2) Where—

- (a) before the beginning of the levy period a lease under which a rent is payable has been granted out of relevant land or a relevant interest in land; and
- (b) following the expiry during the levy period of the stated term of the lease—
 - (i) the lessee or another member of the lessee’s group remains in occupation or enters into occupation of the land the subject of the lease; or
 - (ii) in Scotland, the lease continues by the operation of tacit relocation;

the disposal constituted by the grant of the lease shall be regarded as taking place on the date following the expiry of the stated term, in consideration of a sum equal to what would have been the market value of the lease if it had commenced on the date following the expiry of the stated term; and such market value shall be determined in accordance with article 18, by reference to the actual period of occupation beginning with that date (and shall be redetermined, if necessary, in relation to each disposal period during which the actual period of occupation continues).

(3) In this article “group”, in relation to a lessee, means a group of companies formed by—

- (a) the lessee;
- (b) any company or other person of which the lessee is an effective subsidiary;
- (c) any company which is an effective subsidiary of the lessee;
- (d) any company which is an effective subsidiary of any company or other person of which the lessee is an effective subsidiary;

and the explanation of “effective subsidiary” in the definition of “group” in article 2(1) shall apply for the purposes of the definition in this paragraph as it applies for the purposes of that definition.

Leases — Adjustment of levy

22.—(1) Where the market value of a lease is required to be redetermined pursuant to paragraph (1) or (2) of article 20 or paragraph (1) or (2) of article 21 or a gain is required to be recomputed under paragraph (2) of article 24, details of the redetermination or recomputation shall be furnished by the chargeable company to the appropriate Minister together with the disposal statement for the disposal period in which the event giving rise to the redetermination or recomputation took place.

(2) Where, in consequence of a redetermination pursuant to article 20 or 21, the market value of a lease is reduced or increased, the amount of the levy chargeable on the disposal constituted by the grant of the lease shall be recomputed and reduced or increased accordingly, and a sum equal to the amount of the reduction or increase shall—

- (a) in the case of a reduction, be repaid to the chargeable company by the appropriate Minister (if the levy has already been paid) or deducted from the amount of levy otherwise payable by the company (if the levy is still payable);
- (b) in the case of an increase, be paid by the chargeable company to the appropriate Minister,

in each case in accordance with paragraph (3) below.

- (a) (3) (a) Any sum to be repaid by the appropriate Minister under sub-paragraph (a) of paragraph (2) above shall be payable by him within 20 business days following receipt by him of the disposal statement for the disposal period in which the event which gives rise to the redetermination took place.

- (b) 3 Any sum to be paid to the appropriate Minister undersub-paragraph (b) of paragraph (2) above shall be payable within the period beginning with the date of the event which gives rise to the redetermination and ending with the next following quarter date.

Leases at rents — Levy payable by instalments

23.—(1) Subject to article 24, the levy payable on the grant of a lease under which a rent is payable may, in so far as it exceeds the amount of levy which would but for article 18 have been payable on the grant, be paid by the chargeable company by up to ten equal instalments on each of the company's annual reporting dates or of the anniversaries of those dates, beginning with the annual reporting date relating to the disposal period in which the lease is granted and ending with the earlier of—

- (a) the ninth anniversary of that date; or
- (b) the annual reporting date or anniversary next following the end of the financial year in which the term of the lease expires or (in a case provided for by paragraph (2) of article 20) of the financial year in which it has for the purposes of that paragraph been assumed that the term of the lease will expire:

Provided that if an instalment would, apart from this proviso, exceed the applicable percentage of the aggregate amount payable under the lease by way of rent in the disposal period immediately preceding the annual reporting date on which the instalment is payable—

- (a) the amount of the instalment shall be reduced to an amount equal to the applicable percentage of that aggregate amount; and
- (b) the amount by which the instalment is so reduced shall be payable on the date on which the final instalment (whether or not so reduced) is payable.

(2) For the purposes of paragraph (1) above, the “applicable percentage”, in relation to an instalment, is the percentage figure equal to 100 minus R, where “R” is the rate of corporation tax during the disposal period immediately preceding the annual reporting date on which the instalment is payable or, if there was more than one such rate during that period, the time-weighted average of such rates during that period.

(3) Where an instalment is payable in accordance with paragraph (1) above on a date falling after the annual reporting date relating to the last disposal period of a chargeable company, the company shall furnish to the appropriate Minister on that date a statement which gives in respect of that instalment the information which is required by paragraph 14 of Schedule 3 to this Order to be given in relation to an instalment which is payable on an annual reporting date.

Leases — Early termination

24.—(1) This article applies to a lease in respect of which, and to the extent to which, levy is payable by instalments under article 23, not being a lease granted to a member of the chargeable company's group.

(2) Subject to paragraph (4) below where, before the end of the levy period, a lease to which this article applies is terminated before the expiry of its stated term—

- (a) no further instalments shall become payable under article 23 (but no instalment already paid shall be repayable and no instalment which has become payable but has not been paid shall cease to be payable);
- (b) the gain accruing or regarded as accruing to the chargeable company on the disposal constituted by the grant of the lease shall be recomputed, if it would as a result be less, as if the amount deemed under article 18 to have been the consideration for the disposal had, insofar as it exceeds any premium actually required under or in connection with the

lease, been an amount equal to the total of the sums payable under the lease as rent to the time at which the lease was terminated;

- (c) the amount (if any) by which the levy which would have been payable had the gain been as recomputed under sub-paragraph (b) above exceeds the aggregate amount of the instalments already paid or payable under article 23, shall be payable within the period beginning with the date of the termination which gives rise to the recomputation and ending with the next following quarter date.

(3) Where—

- (a) following a disposal constituted by a grant of a lease, there is a further disposal constituted by the grant of an interest in the land the subject of the lease; and
- (b) there is pursuant to paragraph (2) above a recomputation of the gain accruing or regarded as accruing on the first of those disposals;

there shall be a corresponding reapportionment under section 35 of the 1979 Act, as it applies for the purposes of section 17 of the 1991 Act and this Order, of the sums which, under paragraphs (a) and (b) of subsection (1) of section 32 of the 1979 Act, as it applies for those purposes, are attributable to the relevant land or interest in land out of which the lease was granted.

(4) Paragraph (2) above shall not apply where, following the termination of the lease and after the end of the levy period, a member of the chargeable company's group grants another lease in respect of substantially the same land—

- (a) to the former lessee; or
- (b) where the former lessee is a member of a group, to another member of the former lessee's group;

on terms substantially similar to those of the first-mentioned lease (but disregarding for this purpose the term for which the lease is granted).

(5) In this article "group", in relation to a lessee, has the meaning given by article 21(3).

Operational leases

25.—(1) Subject to paragraph (2) below, where a disposal of relevant land or a relevant interest in land is constituted by the granting of a lease—

- (a) out of relevant land all or part of which is operational land of a member of the chargeable company's group; or
- (b) out of a relevant interest in land and all or part of the land in which the interest subsists is operational land of a member of the chargeable company's group;

then—

- (i) if the relevant land or the land in which the relevant interest subsists consists wholly of operational land, the disposal shall, subject to sub-paragraph (i) of paragraph (2) below, be disregarded for all purposes of this Order except those of paragraph 11 of Schedule 3;
- (ii) if the relevant land or the land in which the relevant interest subsists consists only in part of operational land, then, subject to sub-paragraph (ii) of paragraph (2) below the disposal shall, to the extent that the land in question consists of operational land, be disregarded for all purposes of this Order except those of paragraph 11 of Schedule 3.

(2) If at any time which is both—

- (a) within the levy period; and
- (b) during the term of a lease referred to in paragraph (1) above;

the operational land is used for a purpose other than an operational purpose, the n—

- (i) if the relevant land or the land in which the relevant interest subsists consists wholly of operational land, the disposal shall no longer be disregarded pursuant to sub-paragraph (i) of the said paragraph (1), the disposal shall be regarded as taking place at that time for a term equal to the portion then unexpired of the actual term of the lease, and the amount of any gain accruing on the disposal shall be computed accordingly; and
- (ii) if the relevant land or the land in which the relevant interest subsists consists only in part of operational land, the disposal shall no longer, to the extent mentioned in sub-paragraph (ii) of the said paragraph (1), be disregarded pursuant to that sub-paragraph, the disposal shall to the extent that it relates to the operational land which has been used for a purpose other than an operational purpose be regarded as taking place at that time for a term equal to the portion then unexpired of the actual term of the lease, and the amount of any gain shall be recomputed accordingly.

(3) If by virtue of paragraph (2) above a gain accruing on a disposal falls to be computed or (as the case may be) recomputed, the following amount, that is to say—

- (a) in a case to which sub-paragraph (i) of the said paragraph (2) refers, the levy chargeable on the gain; or
- (b) in a case to which sub-paragraph (ii) of the said paragraph (2) refers, the amount by which the levy chargeable on the gain as recomputed exceeds the amount of any levy already payable or paid on the disposal,

shall be payable within the period beginning with the date on which the operational land is first used for a purpose other than an operational purpose and ending with the next following quarter date.

(4) In this article “operational land” means land which during the period of six months immediately preceding the beginning of the levy period was used wholly (or substantially) and exclusively (or predominantly) for an operational purpose.

(5) Subject to paragraph (6) below land is for the purposes of this Order used for an operational purpose if it is used—

- (a) for the purposes of shipping; or
- (b) in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by any railway forming part of the dock, harbour or pier undertaking which a member of the chargeable company’s group is authorised by enactment to carry on or which, as regards the six months immediately preceding the beginning of the levy period, the relevant port authority whose property, rights, liabilities and functions are under section 2 of the 1991 Act transferred to that company were so authorised to carry on.

(6) Land shall not be regarded as used for an operational purpose if it is used—

- (a) for the construction or erection of a hotel or of a bridge or other building not required in connection with the handling of traffic; or
- (b) for the construction or erection otherwise than wholly within the limits of a dock, pier or harbour of—
 - (i) an educational building; or
 - (ii) a car park, shop, restaurant, garage, petrol filling station or other building provided under transport legislation;

and in paragraph (ii) above “transport legislation” means any statutory provision empowering a member of the chargeable company’s group or, as regards the six months mentioned in paragraph (5) (b) above, the relevant port authority to provide, in places where persons using the services and facilities provided by that member or authority may require them, amenities or facilities for those and other persons.

Leases — Supplementary

26.—(1) References to rent in articles 18, 19, 20, 21, 23, and 24 and in paragraph (3) below do not include anything which, though reserved as or held out to be rent, consists of—

- (a) the reimbursement of insurance premiums;
- (b) service charges which are paid to, or reimburse the recipient for expenses paid or payable to, persons other than members of the chargeable company's group;
- (c) sums representing value added tax on sums payable under or on the grant of the lease; or
- (d) sums referable to matters for which the following are levied, that is to say—
 - (i) ship, passenger or goods dues (within the meaning given by section 57(1) of the Harbours Act 1964⁽¹⁾); or
 - (ii) charges in respect of services rendered for passengers embarking or disembarking at the chargeable company's harbour or in respect of work performed or services rendered in respect of goods brought into, taken out of or carried through the harbour by ship.

(2) Without prejudice to the generality of other provisions of this Order applying for the purposes of this Order statutory provisions relating to corporation tax on chargeable gains, the provisions of Schedule 3 to the 1979 Act shall, subject to the provisions of this Order, apply for the purposes of section 17 of the 1991 Act and this Order as respects a lease the granting of which constitutes a disposal of relevant land or a relevant interest in land.

(3) Sub-paragraph (2) of paragraph 2 of Schedule 3 to the 1979 Act shall apply for the purposes of section 17 of the 1991 Act and this Order as if, where the property there referred to is property out of which is a lease under which a rent is payable is granted, it did not include a right to any rent payable under the lease.

(4) Any amount of levy which becomes chargeable on a gain accruing by reason of the provisions of sub-paragraph (3) of paragraph 3 of Schedule 3 to the 1979 Act as it applies for the purposes of section 17 of the 1991 Act and this Order shall be payable within the period beginning with the date on which the sum referred to in that sub-paragraph becomes payable and ending with the next following quarter date.

(5) Paragraphs 5 and 7 of that Schedule shall not apply for the purposes of section 17 of the 1991 Act and this Order.

(1) 1964 c. 40.