



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART II

[^{F1}PROVISIONS RELATING TO THE SCHEDULE A CHARGE]

Textual Amendments

- F1** Pt. 2 heading substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), Sch. 5 para. 3 (with Sch. 5 para. 73)

General

[^{F2}21 Persons chargeable and basis of assessment.

^{F3}

Textual Amendments

- F2** Ss. 21-21B substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) for s. 21 by Finance Act 1998 (c. 36), s. 38(1), Sch. 5 para. 4 (with Sch. 5 paras. 73, 76)
- F3** S. 21 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 11, Sch. 3 (with Sch. 2)

[^{F4}21A Computation of amount chargeable.

- (1) Except as otherwise expressly provided, the profits of a Schedule A business are computed in the same way as the profits of a trade are computed for the purposes of Case I of Schedule D.
- (2) The following provisions apply in accordance with subsection (1)—
section 72 (apportionment);

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the provisions of Chapter V of Part IV (computational provisions relating to the Schedule D charge), except as mentioned in subsection (4) below;

section 577 (business entertainment expenses);

section 577A (expenditure involving crime);

sections 579 and 580 (redundancy payments);

[^{F5}section 588] (training courses for employees);

[^{F6}section 589A] (counselling services for employees);

section 73(2) of the ^{M1}Finance Act 1988 (consideration for restrictive undertakings);

section 43 of the ^{M2}Finance Act [^{F7}1989 (Schedule D: computation)];

section 76 of that Act (expenses in connection with non-approved retirement benefit schemes);

^{F8}

sections 42 and 46(1) and (2) of the Finance Act 1998 (provisions as to computation of profits and losses).

(3) Section 74(1)(d) of this Act (disallowance of provisions for future repairs) applies in relation to a Schedule A business as if the reference to premises occupied for the purposes of the trade were to premises held for the purposes of the Schedule A business.

(4) The following provisions in Chapter V of Part IV of this Act do not apply, or are excepted from applying, in accordance with subsection (1)—

^{F9}

section 87 (treatment of premiums taxed as rent),

^{F10}

section 98 (tied premises: receipts and expenses treated as those of trade).

[Part 1 of Schedule 22 to the Finance Act 2001 (deduction for capital expenditure ^{F11}(5) on remediation of contaminated land) applies in accordance with subsection (1), and the other Parts of that Schedule (further provision as to relief for remediation of contaminated land) have effect in relation to a Schedule A business in accordance with their provisions.]]

Textual Amendments

- F4** Ss. 21-21B substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) for s. 21 by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 4** (with Sch. 5 paras. 73, 76)
- F5** Words in s. 21A(2) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 7(a)** (with Sch. 7)
- F6** Words in S. 21A(2) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 7(b)** (with Sch. 7)
- F7** Words in s. 21A(2) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 7(c)** (with Sch. 7)
- F8** Words in s. 21A(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 12(2), **Sch. 3** (with Sch. 2)
- F9** Words in s. 21A(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 12(3)(a), **Sch. 3** (with Sch. 2)
- F10** Words in s. 21A(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 12(3)(b), **Sch. 3** (with Sch. 2)

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F11 S. 21A(5) inserted (with effect in accordance with s. 70(1) of the amending Act) by Finance Act 2001 (c. 9), s. 70(3), Sch. 23 para. 1

Marginal Citations

M1 1988 c. 39.

M2 1989 c. 26.

[^{F4}21B Application of other rules applicable to Case I of Schedule D.

The following provisions apply for the purposes of Schedule A in relation to a Schedule A business as they apply for the purposes of Case I of Schedule D in relation to a trade—

sections 103 to 106 ^{F12}. . . and 110 (post-cessation receipts and expenses, etc.) [^{F13}, with any reference to a trade within the charge to income tax being read as a reference to a UK property business] ;

^{F12}

section 337(1) (effect of company beginning or ceasing to carry on trade);

section 401(1) (pre-trading expenditure);

section 44 of and Schedule 6 to the Finance Act 1998 (change of accounting basis).]

Textual Amendments

F4 Ss. 21-21B substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) for s. 21 by Finance Act 1998 (c. 36), s. 38(1), Sch. 5 para. 4 (with Sch. 5 paras. 73, 76)

F12 Words in s. 21B repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 13(a)(c), Sch. 3 (with Sch. 2)

F13 Words in s. 21B inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 13(b) (with Sch. 2)

[^{F14}21C The Schedule A charge and mutual business.

- (1) The following provisions have effect for the purpose of applying the charge to [^{F15}corporation] tax under Schedule A in relation to mutual business.
- (2) The transactions or relationships involved in mutual business are treated as if they were transactions or relationships between persons between whom no relationship of mutuality existed.
- (3) Any surplus arising from the business is regarded as a profit (and any deficit as a loss) if it would be so regarded if the business were not mutual.
- (4) [^{F16}The company to which the profit arises is the company which would] satisfy that description if the business were not mutual business.
- (5) Nothing in this section affects the operation of section 488 (co-operative housing associations).]

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Textual Amendments

- F14** S. 21C inserted (with effect as mentioned in s. 38(2)(3) of the amending Act) by [Finance Act 1998](#) (c. 36), s. 38(1), **Sch. 5 para. 5** (with [Sch. 5 paras. 73, 76](#))
- F15** Word in s. 21C (1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005](#) (c. 5), **Sch. 1 para. 14(a)** (with [Sch. 2](#))
- F16** Words in s. 21C (4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005](#) (c. 5), **Sch. 1 para. 14(b)** (with [Sch. 2](#))

22 Assessments.

F17

Textual Amendments

- F17** S. 22 repealed (with effect in accordance with s. 39(4)(5) and Sch. 29 Pt. 8(1) Note of the repealing Act) by [Finance Act 1995](#) (c. 4), ss. 39(3), 162, [Sch. 6 para. 3](#), **Sch. 29 Pt. 8(1)**, Note

23 Collection from lessees and agents.

F18

Textual Amendments

- F18** S. 23 repealed (with effect in accordance with s. 39(4)(5) and Sch. 29 Pt. 8(1) Note of the repealing Act) by [Finance Act 1995](#) (c. 4), ss. 39(3), 162, [Sch. 6 para. 3](#), **Sch. 29 Pt. 8(1)**, Note

24 Construction of Part II.

- (1) ^{M3}In this Part, except where the context otherwise requires—
- “lease” includes an agreement for a lease, and any tenancy, but does not include a mortgage or heritable security, and “lessee”, “lessor” and “letting” shall be construed accordingly;
- “lessee” and “lessor” include respectively the successors in title of a lessee or a lessor;
- “premises” includes any land; and
- “premium” includes any like sum, whether payable to the immediate or a superior landlord or to a person connected (within the meaning of section 839) with the immediate or a superior landlord.
- (2) ^{M4}For the purposes of this Part, 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 other sufficient consideration for the payment [^{F19}can be] shown to have been given.
- (3) ^{M5}Where paragraph (c) of section 38(1) applies, the premium, or an appropriate part of the premium, payable for or in connection with either lease mentioned in that paragraph may be treated as having been required under the other.

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- (4) References in this section to a sum shall be construed as including the value of any consideration, and references to a sum paid or payable or to the payment of a sum shall be construed accordingly.
- (5) ^{M6}In the application of this Part to Scotland—
“assignment” means an assignation;
“intermediate landlord” means, where an occupying lessee is a sub-lessee, any person for the time being holding the interest of landlord under a sub-lease which comprises the property of which the occupying lessee is sub-lessee, but does not include the immediate landlord;
“premium” includes in particular a grassum payable to any landlord or intermediate landlord on the creation of a sub-lease; and
“reversion” means the interest of the landlord in the property subject to the lease.
- (6) ^{M7}In Schedule A and in sections 25 to 31—
(a) references to a lease extend only to a lease conferring a right, as against the person whose interest is subject to the lease, to the possession of the premises;
(b) “rent” includes a payment by the tenant to defray the cost of work of maintenance of, or repairs to, the demised premises, not being work required by the lease to be carried out by the tenant; ^{F20} . . .
(c) ^{F20}
- (7) ^{F20}

Textual Amendments

F19 Words in s. 24(2) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), s. 134(1), **Sch. 20 Para. 1**

F20 S. 24(6)(c)(7) and word preceding s. 24(6)(c) repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), s. 165, **Sch. 27 Pt. 3(4)**, Note

Marginal Citations

M3 SOURCE-1970 s. 90(1); 1972 s. 81(3)

M4 SOURCE-1970 s. 90(2)

M5 SOURCE-1970 s. 90(2A), (2B); 1972 s. 81(4)

M6 SOURCE-1970 s. 90(3)

M7 SOURCE-1970 s. 71(2)

Deductions and other allowances

25 Deductions from rent: general rules.

^{F21}

Textual Amendments

F21 S. 25 ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 4(a)**; and s. 25 repealed

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(with effect as mentioned in s. 38(2)(3) of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), ss. 38(1), 165, Sch. 5 para. 6, [Sch. 27 Pt. 3\(4\)](#), Note (with Sch. 5 paras. 65, 68, 73)

26 Deductions from rent: land managed as one estate.

F22

Textual Amendments

F22 S. 26 repealed (with effect as mentioned in s. 39 of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), s. 165, [Sch. 27 Pt. 3\(5\)](#), Note

27 Deductions from rent: maintenance funds for historic buildings.

F23

Textual Amendments

F23 S. 27 repealed (with effect as mentioned in s. 39 of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), s. 165, [Sch. 27 Pt. 3\(5\)](#), Note

28 Deductions from receipts other than rent.

F24

Textual Amendments

F24 S. 28 ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of [Finance Act 1995 \(c. 4\)](#), s. 39(3), [Sch. 6 para. 4\(a\)](#); and s. 28 repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), ss. 38(1), 165, Sch. 5 para. 9, [Sch. 27 Pt. 3\(4\)](#), Note (with Sch. 5 paras. 65, 73)

29 Sporting rights.

F25

Textual Amendments

F25 S. 29 ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of [Finance Act 1995 \(c. 4\)](#), s. 39(3), [Sch. 6 para. 4\(b\)](#); and s. 29 repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), ss. 38(1), 165, Sch. 5 para. 10, [Sch. 27 Pt. 3\(4\)](#), Note (with Sch. 5 paras. 65, 73)

30 Expenditure on making sea walls.

- (1)^{M8} Where in any year of assessment the owner or tenant of any premises incurs any expenditure in the making of any sea wall or other embankment necessary for the preservation or protection of the premises against the encroachment or overflowing

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of the sea or any tidal river, [^{F26}that person shall be] treated [^{F27}for the purpose of computing the profits of any Schedule A business carried on in relation to those premises] as making in that year of assessment and in each of the succeeding 20 years of assessment a payment in relation to the premises preserved or protected by the embankment of an amount equal to a twenty-first part of the expenditure and incurred in respect of dilapidation attributable to the year.

- (2) Where the whole of that person's interest in the premises or any part thereof is transferred (whether by operation of law or otherwise) to some other person—
- (a) the amount of the payment which [^{F28}that person would be] so treated as making for the year of assessment in which the transfer takes place shall be treated as being made partly by the transferor and partly by the transferee, as may be just; and
 - (b) the transferee shall, to the exclusion of the transferor, be treated in any subsequent year—
 - (i) where the interest transferred is in the whole of the premises, as having made the whole of the payment for that year, and
 - (ii) where the interest transferred is in part only of the premises, as having made so much of the payment as is properly referable to that part of the premises.

[^{F29}(2A) If—

- (a) the transferor is a company within the charge to corporation tax and the transferee is a person within the charge to income tax, or
- (b) the transferor is a person within the charge to income tax and the transferee is a company within the charge to corporation tax,

subsection (2) above shall apply only for the purpose of determining the amount of the payment which the company is treated as making in any year of assessment.

For any entitlement of the person within the charge to income tax to a deduction for any of the expenditure, see sections 316 and 318 of ITTOIA 2005 (corresponding income tax provision).]

- (3) For the purposes of subsection (2) above, where an interest in any premises is a lease and that lease comes to an end, that interest shall be deemed to have been transferred—
- (a) if an incoming lessee makes any payment to the outgoing lessee in respect of the embankment in question, to the incoming lessee, and
 - (b) in any other case, to the owner of the interest in immediate reversion on the lease and, in relation to Scotland, the expression “the owner of the interest in immediate reversion on the lease” shall be construed as a reference to the landlord.
- (4) In relation to a company, section 9(1) shall not have effect so as to require references in this section to a year of assessment to be read as references to an accounting period, but any deduction authorised by this section shall be apportioned between the accounting periods (if more than one) comprising the year of assessment, other than any such period ended before the expenditure is incurred, or transfer takes place, by virtue of which the company is entitled to the deduction.
- (5) This section shall not apply in relation to any expenditure in respect of which a capital allowance has been made.

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Textual Amendments

- F26** Words in s. 30(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 15\(2\)](#) (with [Sch. 2](#))
- F27** Words in s. 30(1) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 38(1), [Sch. 5 para. 11](#) (with [Sch. 5 para. 73](#))
- F28** Words in s. 30(2)(a) substituted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 15\(3\)](#) (with [Sch. 2](#))
- F29** [S. 30\(2A\)](#) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 15\(4\)](#) (with [Sch. 2](#))

Modifications etc. (not altering text)

- C1** [S. 30\(1\)](#) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by [Finance Act 1995 \(c. 4\)](#), s. 39(3), [Sch. 6 para. 7](#)
- C2** See 1979(C) s.34(4)(b)—restriction, by reference to capital allowances, of capital losses for purpose of capital gains.

Marginal Citations

- M8** SOURCE-1970 s. 76

31 Provisions supplementary to sections 25 to 30.

F30

Textual Amendments

- F30** [S. 31](#) ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of [Finance Act 1995 \(c. 4\)](#), s. 39(3), [Sch. 6 para. 4\(c\)](#); and s. 31 repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), ss. 38(1), 165, [Sch. 5 para. 12](#), [Sch. 27 Pt. 3\(4\)](#), Note (with [Sch. 5 paras. 65, 68, 73](#))

VALID FROM 19/07/2007

[^{F31}31ZA] Deduction for expenditure on energy-saving items

- (1) This section applies if—
- (a) a company carries on a Schedule A business in relation to land which consists of or includes a dwelling-house,
 - (b) the company incurs expenditure in acquiring and installing an energy-saving item in the dwelling-house or in a building containing the dwelling-house (see subsections (5) to (7)),
 - (c) the expenditure is incurred before 1st April 2015,
 - (d) a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital prohibition rule (see subsection (8)), and
 - (e) no allowance under the Capital Allowances Act may be claimed in respect of the expenditure.

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- (2) In calculating the profits of the Schedule A business, a deduction for the expenditure is allowed.
- (3) But any deduction is subject to—
 - (a) section 31ZB (restrictions on the relief), and
 - (b) any provision made by regulations under section 31ZC.
- (4) If, on a just and reasonable apportionment of any expenditure, part of the expenditure would qualify for the relief (but the remainder would not), a deduction is allowed for that part.
- (5) “Energy-saving item” means an item of an energy-saving nature of such description as is for the time being specified in regulations made by the Treasury.
- (6) The Treasury may by regulations provide for an item to be an energy-saving item only if it satisfies such conditions as may be—
 - (a) specified in, or
 - (b) determined in accordance with, the regulations.
- (7) The conditions may include conditions imposed by reference to information or documents issued by any body, person or organisation.
- (8) In this section—
 - “the capital prohibition rule” means the rule in section 74(1)(f) or (g) (capital expenditure), as applied by section 21A, and
 - “the wholly and exclusively rule” means the rule in section 74(1)(a) or (e) (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 21A.]

Textual Amendments

F31 Ss. 31ZA-31ZC inserted (with effect in accordance with s. 17(2) of the amending Act) by Finance Act 2007 (c. 11), s. 17(1); S.I. 2008/1521, art. 2

VALID FROM 19/07/2007

[^{F31}31ZB] Restrictions on relief

- (1) This section restricts deductions that would otherwise be allowable under section 31ZA.
- (2) No deduction is allowed if, when the energy-saving item is installed, the dwelling-house—
 - (a) is in the course of construction, or
 - (b) is comprised in land in which the company does not have an interest or is in the course of acquiring an interest or further interest.
- (3) No deduction is allowed in respect of expenditure in an accounting period if—

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- (a) the Schedule A business consists of or includes the commercial letting of furnished holiday accommodation for the purposes of section 503, and
 - (b) the dwelling-house constitutes some or all of that accommodation for the accounting period.
- (4) No deduction is allowed in respect of expenditure treated by section 401 (as applied by section 21B) as incurred on the date on which the company starts to carry on the Schedule A business unless the expenditure was incurred not more than 6 months before that date.
- (5) No deduction is allowed in respect of expenditure incurred in acquiring and installing the energy-saving item in a building containing the dwelling-house in so far as the expenditure is not for the benefit of the dwelling-house.]

Textual Amendments

F31 Ss. 31ZA-31ZC inserted (with effect in accordance with s. 17(2) of the amending Act) by Finance Act 2007 (c. 11), s. 17(1); S.I. 2008/1521, art. 2

VALID FROM 19/07/2007

[^{F31}31ZC Regulations

- (1) In relation to any deduction under section 31ZA, the Treasury may make regulations for—
- (a) restricting or reducing the amount of expenditure for which the deduction is allowable,
 - (b) excluding entitlement to the deduction in such cases as may be specified in, or determined in accordance with, the regulations,
 - (c) determining who is (and is not) entitled to the deduction if different persons have different interests in land that consists of or includes the whole or part of a building containing one or more dwelling-houses,
 - (d) making apportionments if the Schedule A business is carried on by persons in partnership or an interest in land is beneficially owned by persons jointly or in common.
- (2) The apportionments that may be made include apportionments to persons within the charge to income tax.
- (3) Regulations under this section may—
- (a) make different provision for different cases, and
 - (b) contain incidental, supplemental, consequential and transitional provision and savings (including provision as to appeals in relation to apportionments mentioned in subsection (1)(d)).]

Textual Amendments

F31 Ss. 31ZA-31ZC inserted (with effect in accordance with s. 17(2) of the amending Act) by Finance Act 2007 (c. 11), s. 17(1); S.I. 2008/1521, art. 2

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[^{F32} **31A Deductions for expenditure by landlords on energy-saving items**

^{F33}

Textual Amendments

F32 Ss. 31A, 31B inserted (with effect in accordance with s. 143(2) of the amending Act) by Finance Act 2004 (c. 12), s. 143(1)

F33 S. 31A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 16, Sch. 3 (with Sch. 2)

31B Provisions supplementary to section 31A

^{F34}

Textual Amendments

F32 Ss. 31A, 31B inserted (with effect in accordance with s. 143(2) of the amending Act) by Finance Act 2004 (c. 12), s. 143(1)

F34 S. 31B repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 16, Sch. 3 (with Sch. 2)

32 Capital allowances for machinery and plant used in estate management.

^{F35}

Textual Amendments

F35 S. 32 repealed (with effect as mentioned in Sch. 15 para. 9(1) of the repealing Act) by Finance Act 1997 (c. 16), ss. 85, 113, Sch. 15 para. 1, Sch. 18 Pt. 06(11), Note

33 Agricultural land: allowance for excess expenditure on maintenance.

^{F36}

Textual Amendments

F36 S. 33 ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), Sch. 6 para. 4(d); and s. 33 repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 13, Sch. 27 Pt. 3(4), Note (with Sch. 5 paras. 65, 73)

[^{F37} *Connected persons*

Textual Amendments

F37 Ss. 33A, 33B inserted (16.7.1992 with effect in relation to rents or receipts accruing on or after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), s. 57(1)(2).

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F38 33A Rents or receipts payable by a connected person.

F39

Textual Amendments

F38 S. 33A inserted (16.7.1992 with effect in relation to rents or receipts accruing on or after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), s. 57(1)(2).

F39 S. 33A ceased to have effect except for specified purposes (with effect in accordance with s. 39(4) (5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), Sch. 6 para. 4(e); and s. 33A repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 14, Sch. 27 Pt. 3(4), Note (with Sch. 5 paras. 65, 73)

F40 33B Rents or receipts relating to land in respect of which a connected person makes payments to a third party.

F41]

Textual Amendments

F40 S. 33B inserted (16.7.1992 with effect in relation to rents or receipts accruing on or after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), s. 57(1)(2).

F41 S. 33B ceased to have effect except for specified purposes (with effect in accordance with s. 39(4) (5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), Sch. 6 para. 4(e); and s. 33B repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 14, Sch. 27 Pt. 3(4), Note (with Sch. 5 paras. 65, 73)

Premiums, leases at undervalue etc

34 [F42 Treatment of premiums, etc. as rent.]

- (1) ^{M9}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 50 years, the landlord shall be treated for [^{F43} corporation tax purposes] as [^{F44}receiving when the lease is granted] an amount by way of rent (in addition to any actual rent) equal to—

$$P - \frac{(PyY)}{50}$$

where P is the premium and Y is the number of complete periods of 12 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

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what its then value would have been if those terms did not impose that obligation on the tenant.

- (3)^{M10} Subsection (2) above shall not apply in so far as the obligation requires the carrying out of work the payment for which would, if the landlord and not the tenant were obliged to carry it out, be deductible [^{F45}as an expense of any Schedule A business carried on by the landlord].
- (4)^{M11} 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—
 - (a) [^{F46}in computing the profits of the Schedule A business of which the sum payable in lieu of rent is by virtue of this subsection to be treated as a receipt], 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 [^{F47}deemed to be received] when the sum in question becomes payable by the tenant.
- (5) 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 [^{F48}the profits of the Schedule A business of which that sum is by virtue of this subsection to be treated as a receipt], 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 [^{F49}deemed to be received] when the contract providing for the variation or waiver is entered into.
- (6)^{M12} Where a payment falling within subsection (1), (4) or (5) above is due to a person other than the landlord, [^{F50}no amount shall fall under that subsection to be treated as a receipt of any Schedule A business carried on by the landlord; but [^{F51}if that other person is a company, the company] shall be taken to have received as income an amount equal to the amount which would otherwise fall to be treated as rent and to be chargeable to [^{F52}corporation tax] as if [^{F53}the company] had received it in consequence of having, on [^{F54}its] own account, entered into a transaction falling to be treated as mentioned in paragraph 1(2) of Schedule A.].
- (7) Subsection (6) above shall not apply in relation to any payment falling within subsection (5) above unless it is due to a person who is, within the meaning of section 839, connected with the landlord.
- ^{F55}(7A) An amount treated under this section as rent shall be taken into account in computing the profits of the Schedule A business in question for the [^{F56}accounting] period in which it is treated as received.]
- (8)^{M13} Where an amount by reference to which a [^{F57}company] is chargeable to [^{F58}corporation tax] by virtue of this section is payable by instalments (“the [^{F58}corporation tax] instalments”), the [^{F58}corporation tax] chargeable by reference to

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that amount [^{F59}may, at [^{F60}the company's] option, be paid] by such instalments as the Board may allow over a period not exceeding eight years and ending not later than the time at which the last of the [^{F58}corporation tax] instalments is payable.

(9) ^{F61}

Textual Amendments

- F42** S. 34 sidenote substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 15(2)**, (with Sch. 5 para. 73)
- F43** Words in s. 34 (1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(2)** (with Sch. 2)
- F44** Words in s. 34(1) substituted (with effect as mentioned in s. 40(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 40(2)**
- F45** Words in s. 34(3) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 15(3)**, (with Sch. 5 para. 73)
- F46** Words in s. 34(4)(a) substituted (with effect as mentioned in s. 40(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 40(3)(a)**
- F47** Words in s. 34(4)(b) substituted (with effect as mentioned in s. 40(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 40(3)(b)**
- F48** Words in s. 34(5)(a) substituted (with effect as mentioned in s. 40(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 40(4)(a)**
- F49** Words in s. 34(5)(b) substituted (with effect as mentioned in s. 40(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 40(4)(b)**
- F50** Words in s. 34(6) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 15(4)**, (with Sch. 5 para. 73)
- F51** Words in s. 34(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(3)(a)** (with Sch. 2)
- F52** Words in s. 34(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(3)(b)** (with Sch. 2)
- F53** Words in s. 34(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(3)(c)** (with Sch. 2)
- F54** Word in s. 34(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(3)(d)** (with Sch. 2)
- F55** S. 34(7A) inserted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 15(5)**, (with Sch. 5 para. 73)
- F56** Word in s. 34(7A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(4)** (with Sch. 2)
- F57** Word in s. 34(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(5)(a)** (with Sch. 2)
- F58** Words in s. 34(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(5)(b)** (with Sch. 2)
- F59** Words in s. 34(8) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 15(6)**, (with Sch. 5 para. 73)
- F60** Words in s. 34(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(5)(c)** (with Sch. 2)
- F61** S. 34(9) repealed (with effect in accordance with s. 39(4)(5) of the repealing Act) by Finance Act 1995 (c. 4), s. 162, **Sch. 29 Pt. 08(01)**, Note

Modifications etc. (not altering text)

- C3** S. 34 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 9**

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C4 See 1976(D) s.34 and Sch.6 para.4. 1976(D) repealed by 1985 ss.93, 98(6) and Sch.27 Part. X with effect from 19 March 1985.

C5 See 1979(C) s.106 and Sch.3 paras.5 and 7—exclusion of amounts taxed under this section in computing capital gains.

Marginal Citations

M9 SOURCE-1970 s. 80(1), (2)

M10 SOURCE-1970 s. 80(2); 1987 Sch. 15 para. 13

M11 SOURCE-1970 s. 80(3), (4)

M12 SOURCE-1970 s. 80(5)

M13 SOURCE-1970 s. 80(6), (7); 1972 s. 81(1)

35 [F62 Charge] on assignment of lease granted at an undervalue.

(1) ^{M14}This section applies to any lease of a duration not exceeding 50 years where the terms subject to which it 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 by way of premium, or additional premium, for the grant of the lease; and in this section any such additional sum is referred to as the "amount foregone".

(2) On any assignment of a lease to which this section applies for a consideration—

- (a) where the lease has not previously been assigned, exceeding the premium, if any, for which it was granted, or
- (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 34(1), have fallen to be treated as rent if it had been a premium under the lease, be ^{F63}deemed to have been received as income by the assignor and to have been received by ^{F64}the assignor in consequence of the assignor's] having entered into a transaction falling to be treated as mentioned in paragraph 1(2) of Schedule A.]

^{F65}(2A) An amount deemed under this section to have been received as income by the assignor—

- (a) is treated as received when the consideration mentioned in subsection (2) becomes payable, and
- (b) shall be taken into account in computing the profits of the Schedule A business in question for the ^{F66}accounting] period in which it is treated as received.]

(3) ^{M15}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 ^{F67}corporation 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.

Textual Amendments

F62 S. 35: word in sidenote substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), Sch. 5 para. 16(2) (with Sch. 5 para. 73)

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- F63** Words in s. 35(2) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 16(3)**, (with Sch. 5 para. 73)
- F64** Words in s. 35(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 18(2)** (with Sch. 2)
- F65** S. 35(2A) inserted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 16(4)**, (with Sch. 5 para. 73)
- F66** Words in s. 35(2A)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 18(3)** (with Sch. 2)
- F67** Words in s. 35(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 18(4)** (with Sch. 2)

Modifications etc. (not altering text)

- C6** See 1979(C) s.106 and Sch.3 para.6(2)—1979(C) s.31 (*exclusion from capital gains computation of sums charged to income tax or corporation tax*) not to apply to amounts on which tax paid under s.35.
- C7** S. 35 excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), ss. 21, 68(4), **Sch. 4 para. 15(1)** (with s. 40(7)); S.I. 1994/2189, **art. 2**, Sch.
 S. 35 excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), s. 8, **Sch. 3 para. 9(1)**
 S. 35 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), ss. 135, 149(1)(f), **Sch. 7 para. 21(1)**
- C8** S. 35(2) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 10**

Marginal Citations

- M14** SOURCE-1970 s. 81(1)
M15 SOURCE-1970 s. 81(2)

36 [^{F68}Charge] on sale of land with right to reconveyance.

- (1) ^{M16}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 connected with [^{F69}the vendor], [^{F70}the following amount shall be deemed to have been received as income by the vendor and to have been received by [^{F69}the vendor] in consequence of [^{F71}the vendor's] having entered into a transaction falling to be treated as mentioned in paragraph 1(2) of Schedule A, that is to say] 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, [^{F72}the amount of the 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 reconveyance takes place, any amount by which [^{F73}corporation tax] assessed on [^{F74}the vendor] 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) ^{M17}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 connected with [^{F75}the vendor], this section shall, subject to subsection (4) below, apply as if the grant of the lease were

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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.

(4) Subsection (3) above shall not apply in any case where the lease is granted and begins to run within one month after the sale.

[^{F76}(4A) An amount deemed under this section to have been received as income by the vendor—

- (a) is treated as received when the estate or interest is sold, and
- (b) shall be taken into account in computing the profits of the Schedule A business in question for the [^{F77}accounting] period in which it is treated as received.

(4B) For the purposes of subsection (4A)(a) an estate or interest in land is treated as sold when any of the following occurs—

- (a) an unconditional contract for its sale is entered into,
- (b) a conditional contract for its sale becomes unconditional, or
- (c) an option or right of pre-emption is exercised requiring the vendor to enter into an unconditional contract for its sale.]

(5) ^{M18}In this section references to a person connected with another shall be construed in accordance with section 839.

Textual Amendments

- F68** S. 36: word in sidenote substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 38(1), **Sch. 5 para. 17(2)** (with [Sch. 5 para. 73](#))
- F69** Words in s. 36(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 19(2)(a)** (with [Sch. 2](#))
- F70** Words in s. 36(1) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 38(1), **Sch. 5 para. 17(3)(a)** (with [Sch. 5 para. 73](#))
- F71** Words in s. 36(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 19(2)(b)** (with [Sch. 2](#))
- F72** Words in s. 36(1) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 38(1), **Sch. 5 para. 17(3)(b)** (with [Sch. 5 para. 73](#))
- F73** Words in s. 36(2)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 19(3)(a)** (with [Sch. 2](#))
- F74** Words in s. 36(2)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 19(3)(b)** (with [Sch. 2](#))
- F75** Words in s. 36(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 19(4)** (with [Sch. 2](#))
- F76** S. 36(4A)(4B) inserted (with effect as mentioned in s. 38(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 38(1), **Sch. 5 para. 17(4)** (with [Sch. 5 para. 73](#))
- F77** Words in s. 36(4A)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 19(5)** (with [Sch. 2](#))

Modifications etc. (not altering text)

- C9** S. 36 excluded (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), ss. 252(1)(3), **Sch. 24 para. 24**
- C10** See 1976(D) Sch.6 para.4. 1976(D) repealed by 1985 ss.93, 98(6) and Sch.27 Part X with effect from 19 March 1985.
- C11** S. 36(1) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by [Finance Act 1995 \(c. 4\)](#), s. 39(3), **Sch. 6 para. 11**
- C12** See 1979(C) s.106 and Sch.3 para.6(3)—effect of claim under s.36(2)(b) on computation of capital gains.

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C13 See 1979(C) s.106 and Sch.3 para.5(3)—deduction of amounts chargeable under s.36 in computing capital gains.

Marginal Citations

M16 SOURCE-1970 s. 82(1), (2)

M17 SOURCE-1970 S. 82(3)

M18 SOURCE-1970 s. 82(1), (3)

37 Premiums paid etc: deductions from premiums and rent received.

- (1) ^{M19}This section applies in any case where in respect of a lease of any premises—
- ^{F78}(a) any amount falls to be treated as a receipt of a Schedule A business by virtue of section 34 or 35, ^{F79} . . .
 - (b) any amount would fall to be so treated but for the operation of subsection (2) or (3) below,
 - ^{F80}(c) any amount falls to be treated as a receipt of a UK property business by virtue of any of sections 277 to 282 of ITTOIA 2005 (receipts in respect of lease premiums, sums payable instead of rent, for surrender of lease and for variation or waiver of term of lease and assignments), or
 - (d) any amount would fall to be so treated but for the operation of the rule in section 288 of that Act (the additional calculation rule),]
- and ^{F81}that amount] is in this section ^{F82}and section 37A] referred to as “the amount chargeable on the superior interest” and any such lease is referred to as “the head lease”.
- (2) Where—
- (a) a lease is granted out of, or there is a disposition of, the head lease, and
 - (b) in respect of that grant or disposition a ^{F83}company] would, apart from this subsection, ^{F84}be treated by virtue of section 34 or 35 as receiving any amount as income in the course of carrying on a Schedule A business] (“the later chargeable amount”),
- then the amount ^{F85}which ^{F86}the company] shall be treated as having so received] shall, subject to subsection (3) below, be the excess (if any) of the later chargeable amount over the appropriate fraction of the amount chargeable on the superior interest.
- (3) Where a ^{F87}company] would, apart from subsection (2) above, be ^{F88}treated by virtue of section 34 or 35 as having received any amount as income in the course of carrying on a Schedule A business and falls to be so treated] in respect of a lease or disposition which extends to a part only of the premises subject to the head lease, the amount ^{F89}which ^{F90}the company] shall be treated as having so received] shall be the excess (if any) of the later chargeable amount over the appropriate fraction of the amount chargeable on the superior interest as, on a just apportionment, is attributable to that part of the premises.
- (4) ^{M20}Subject to subsection (5) below, ^{F91}a company which is] for the time being entitled to the head lease shall be treated for the ^{F92}purpose, in computing the profits of a Schedule A business, of making deductions in respect of the disbursements and expenses of that business] 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 ^{F93}the company] was entitled to the head lease, and, in all, bearing to that amount the same proportion as that part of the period bears to the whole.

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- (5) ^{M21}Where subsection (2) above applies, subsection (4) 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 that excess bears to that appropriate fraction.
- (6) Where subsection (3) above applies, subsections (4) and (5) above shall be applied separately to the part of the premises referred to in subsection (3) above 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.
- (7) ^{M22}For the purposes of this section—
- (a) the appropriate fraction of the amount chargeable on the superior interest is the fraction—

$$\frac{A}{B}$$

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—
- (i) where it arose under section 34, shall be the period treated in computing the amount as being the duration of the lease;
- (ii) where it arose under section 35, shall be the period treated in computing the amount as being the duration of the lease remaining at the date of the assignment;
- ^{F94}(iii) where it arose under Chapter 4 of Part 3 of ITTOIA 2005 (profits of property businesses: lease premiums etc.), shall be its receipt period (within the meaning of that Chapter (see section 288(6)).]
- (8) ^{M23}Where the amount chargeable on the superior interest arose under section 34(2) [^{F95}or under section 277 of ITTOIA 2005 by virtue of section 278 of that Act (amount treated as lease premium where work required)] 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 (6) above shall apply as if the obligation had not included the carrying out of that work and that amount had been calculated accordingly.
- (9) ^{M24}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 so deducted if it has been otherwise allowed as a deduction in computing the income of any person for [^{F96}income tax or corporation tax] purposes [^{F97}or if it has been deducted under the rule in section 288 of ITTOIA 2005 (the additional calculation rule) in calculating the amount of a receipt of a property business (within the meaning of that Act) under Chapter 4 of Part 3 of that Act.].

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[^{F98}(10) In the application of this section to Scotland the reference to a lease being granted out of the head lease is to the grant of a sublease of land subject to the head lease.]

Textual Amendments

- F78** S. 37(1)(a)(b) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 18(2)**, (with Sch. 5 para. 73)
- F79** Word in s. 37(1)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 20(2)(a), **Sch. 3** (with Sch. 2)
- F80** S. 37(1)(c)(d) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(2)(b)** (with Sch. 2)
- F81** 1990 s.89 and Sch.14 para.2 (*correction of errors*)—*deemed always to have had effect. Previously* “subsection (2) below”, “this subsection”
and
“the amount of that tax”
respectively.
- F82** Words in s. 37(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(2)(c)** (with Sch. 2)
- F83** Word in s. 37(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(3)(a)** (with Sch. 2)
- F84** Words in s. 37(2)(b) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 18(3)(a)**, (with Sch. 5 para. 73)
- F85** Words in s. 37(2) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 18(3)(b)**, (with Sch. 5 para. 73)
- F86** Words in s. 37(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(3)(b)** (with Sch. 2)
- F87** Word in S. 37(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(4)(a)** (with Sch. 2)
- F88** Words in s. 37(3) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 18(4)(a)**, (with Sch. 5 para. 73)
- F89** Words in s. 37(3) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 18(4)(b)**, (with Sch. 5 para. 73)
- F90** Words in s. 37(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(4)(b)** (with Sch. 2)
- F91** Words in s. 37(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(5)(a)** (with Sch. 2)
- F92** Words in s. 37(4) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 18(5)**, (with Sch. 5 para. 73)
- F93** Words in s. 37(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(5)(b)** (with Sch. 2)
- F94** S. 37(7)(b)(iii) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(6)** (with Sch. 2)
- F95** Words in s. 37(8) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(7)** (with Sch. 2)
- F96** Words in s. 37(9) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(8)(a)** (with Sch. 2)
- F97** Words in s. 37(9) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(8)(b)** (with Sch. 2)
- F98** S. 37(10) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(9)** (with Sch. 2)

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Modifications etc. (not altering text)

- C14** S. 37 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by [Finance Act 1995](#) (c. 4), s. 39(3), [Sch. 6 para. 12](#)
- C15** See 1979(C) s.106 and Sch.3 para.6(1)—allowance under this subsection to be deducted from any loss on disposal of lease.
- C16** See 1976(D) Sch.6 para.4(4)—no account to be taken of any deduction of realised development value. 1976(D) repealed by 1985 ss.93, 98(6) and Sch.27 Part X with effect from 19 March 1985.

Marginal Citations

- M19** SOURCE-1970 s. 83(1); 1978 s. 32(2)
- M20** SOURCE-1970 s. 83(2)
- M21** SOURCE-1970 s. 83(3)
- M22** SOURCE-1970 s. 83(4)
- M23** SOURCE-1970 s. 83(5)
- M24** SOURCE-1970 s. 83(7)

[^{F99}37A Section 37(4) and reductions in receipts under ITTOIA 2005

- (1) This section applies if—
- in calculating the amount that falls to be treated as a receipt of a UK property business under Chapter 4 of Part 3 of ITTOIA 2005 (“the ITTOIA receipt”), there is a reduction under section 288 of that Act by reference to a taxed receipt, and
 - the taxed receipt is the amount chargeable on the superior interest for the purposes of section 37.
- (2) Section 37(4) shall apply for the period in respect of which the ITTOIA receipt arose only if the appropriate fraction of the amount chargeable on the superior interest exceeds the amount of the ITTOIA receipt given by the formula in section 277, 279, 280, 281 or 282 of ITTOIA 2005, as the case may be.
- (3) Section 37(4) shall then apply as if the amount chargeable on the superior interest were reduced in the proportion which that excess bears to that appropriate fraction.
- (4) Subsection (5) applies if—
- the ITTOIA receipt is in respect of a lease granted out of the taxed lease,
 - the taxed lease is the head lease for the purposes of section 37, and
 - the lease granted as mentioned in paragraph (a) does not extend to the whole of the premises subject to the head lease.
- (5) Section 37(4) and subsections (2) and (3) above shall be applied separately to the part of the premises subject to the lease and to the remainder of the premises, but as if for any reference to the amount chargeable on the superior interest there were a reference to that amount proportionately adjusted.
- (6) For the purposes of this section the appropriate fraction of the amount chargeable on the superior interest is the fraction—

$$\frac{A}{B}$$

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where—

A is the period in respect of which the ITTOIA receipt arose, and

B is the period in respect of which the amount chargeable on the superior interest arose for the purposes of section 37.

- (7) For the purposes of this section the period in respect of which an ITTOIA receipt arose is its receipt period (within the meaning of Chapter 4 of Part 3 of ITTOIA 2005 (see section 288(6))).
- (8) In this section the following expressions have the same meaning as in Chapter 4 of Part 3 of ITTOIA 2005—
- “reduction under section 288 by reference to a taxed receipt” (see section 290(6) of that Act),
 - “taxed lease” (see section 287(4) of that Act), and
 - “taxed receipt” (see section 287(4) of that Act).
- (9) In the application of this section to Scotland, references to a lease granted out of a taxed lease are to be construed as references to a sublease of land subject to the taxed lease.]

Textual Amendments

F99 S. 37A inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 21](#) (with [Sch. 2](#))

38 Rules for ascertaining duration of leases.

- (1) ^{M25}In ascertaining the duration of a lease for the purposes of sections 34 to 36—
- (a) in any case where—
 - (i) any of the terms of the lease (whether relating to forfeiture or 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, and
 - (ii) the premium was not substantially greater than it would have been, on the assumptions required by subsections (3) and (4) below, had the term been one expiring on that date,
 the lease shall not be treated as having been granted for a term longer than one ending on that date;
 - (b) 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; and
 - (c) where the tenant or a person connected with him (within the meaning of section 839) is or may become entitled to a further lease or the grant of a further lease (whenever commencing) of the same premises or of premises including the whole or part of the same premises, the term of the lease may be treated as not expiring before the term of the further lease.
- (2) ^{M26}Subsection (1) 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 ^{F100}corporation tax] under section 34(5), at a time when the contract providing for the variation or waiver is entered into.

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- (3) It shall be assumed in applying subsection (1) above that all parties concerned, whatever their relationship, act as they would act if they were at arm's length.
- (4) In any case where—
- (a) by the lease or in connection with the granting of it benefits were conferred other than—
 - (i) vacant possession and beneficial occupation of the premises, or
 - (ii) the right to receive rent at a reasonable commercial rate in respect of the premises, or
 - (b) payments were made which would not be expected to be made by parties acting at arm's length if no other benefits had been so conferred,
- it shall also be assumed, unless it [^{F101}can be] shown that the benefits were not conferred or the payments made for the purpose of securing a [^{F102}corporation tax advantage in the application of this Part or an income tax advantage in the application of Chapter 4 of Part 3 of ITTOIA 2005], that the benefits would not have been conferred nor the payments made had the lease been for a term ending on the date mentioned in subsection (1)(a) above.
- (5) ^{M27}Where an inspector has reason to believe that a person has information relevant to the ascertainment of the duration of a lease in accordance with subsections (1) to (4) above, the inspector may by notice require him to give, within a time specified in the notice, such information on the matters so specified as is in his possession; but a solicitor shall not be so required to do more, in relation to anything done by him on behalf of a client, than state that he is or was so acting and give the name and address of his client.
- (6) ^{M28}In this section in relation to Scotland, the expression “term”, where referring to the duration of a lease, means period.
- (7) ^{M29}This section has effect subject to paragraphs 2 and 3 of Schedule 30.

Textual Amendments

- F100** Words in s. 38(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5)*, **Sch. 1 para. 22(2)** (with Sch. 2)
- F101** Words in s. 38(4) substituted (with effect as mentioned in s. 134(2) of the amending Act) by *Finance Act 1996 (c. 8)*, s. 134(1), **Sch. 20 para. 2**
- F102** Words in s. 38(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5)*, **Sch. 1 para. 22(3)** (with Sch. 2)

Modifications etc. (not altering text)

- C17** S. 38(1)-(4)(6) applied (with effect in accordance with s. 579 of the affecting Act) by *Capital Allowances Act 2001 (c. 2)*, s. 291(3)
- C18** S. 38(1)(a)(4) excluded (16.7.1992) by *Finance (No. 2) Act 1992 (c. 48)*, s. 77, Sch. 17 paras. 5(4)(6), 6(1), 7.
- C19** See 1990(C) s.11(4)—*rules applied in connection with leases for industrial buildings and structures.*

Marginal Citations

- M25** SOURCE-1970 S. 84(1)(b)-(d); 1972 s. 81(2)(a), (b)
- M26** SOURCE-1970 s. 84(2); 1972 s. 81(2)(c)
- M27** SOURCE-1970 s. 84(3A); 1972 s. 81(5)
- M28** SOURCE-1970 s. 84(3); 1972 s. 81(2)(d)

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M29 SOURCE-1970 s. 84(4)

39 Saving for pre-1963 leases, and special relief for individuals.

- (1) ^{M30}Subject to subsection (2) below, sections 34 to 36 shall not 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.
- (2) Section 34(5) 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.
- (3) *Schedule 2 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 34, 35 or 36 as receipts for a single year of assessment rather than as receipts for the period in relation to which they are chargeable*^{F103}.

Textual Amendments

F103 *Repealed by 1988(F) ss. 75, 148 and Sch. 14 Part IV for 1988-89 and subsequent years.*

Marginal Citations

M30 SOURCE-1970 s. 85(1)

[^{F104} Supplementary provisions]

Textual Amendments

F104 Cross-heading before s. 40 substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 38(1), [Sch. 5 para. 19](#), (with Sch. 5 para. 73)

40 Tax treatment of receipts and outgoings on sale of land.

- (1) ^{M31}Where—
 - (a) by virtue of a contract for the sale of an estate or interest in land there falls to be apportioned between the parties a receipt or outgoing in respect of the estate or interest which becomes due after the making of the contract but before the time to which the apportionment falls to be made, and
 - (b) a part of the receipt is therefore receivable by the vendor in trust for the purchaser or, as the case may be, a part of the outgoing is paid by the vendor as trustee for the purchaser,

the purchaser shall be treated for the purposes of [^{F105}corporation] tax under Schedule A as if that part had [^{F106}been received or paid by [^{F107}the purchaser]] immediately after the time to which the apportionment falls to be made.
- (2) Where by virtue of such a contract there falls to be apportioned between the parties a receipt or outgoing in respect of the estate or interest which became due before the making of the contract, the parties shall be treated for the purposes of [^{F108}corporation]

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tax under Schedule A as if the contract had been entered into before the receipt or outgoing became due, and subsection (1) above shall apply accordingly.

(3) Where on the sale of an estate or interest in land there is apportioned to the vendor a part of a receipt or outgoing in respect of the estate or interest which is to become receivable or be paid by the purchaser after the making of the apportionment, then for the purposes of [^{F109}corporation] tax under Schedule A—

(a) when the receipt becomes due or, as the case may be, the outgoing is paid, the amount of it shall be treated as reduced by so much thereof as was apportioned to the vendor, and

(b) the part apportioned to the vendor shall be treated as if it were of the same nature as the receipt or outgoing and [^{F110}had been received or paid directly by [^{F111}the vendor] immediately before the time to which the apportionment is made].

(4) Any reference in subsection (1) or (2) above to a party to a contract shall include a person to whom the rights and obligations of that party under the contract have passed by assignment or otherwise.

[^{F112}(4A) An amount deemed under this section to have been received or paid shall be taken into account in computing the profits of the Schedule A business in question for the period in which it is treated as received or paid.]

(5) ^{F113}.....

Textual Amendments

- F105** Word in s. 40(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 23\(a\)\(i\)](#) (with Sch. 2)
- F106** Words in s. 40(1) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 38\(1\), Sch. 5 para. 20\(2\)](#), (with Sch. 5 para. 73)
- F107** Words in s. 40(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 23\(a\)\(ii\)](#) (with Sch. 2)
- F108** Word in s. 40(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 23\(b\)](#) (with Sch. 2)
- F109** Word in s. 40(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 23\(c\)\(i\)](#) (with Sch. 2)
- F110** Words in s. 40(3)(b) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 38\(1\), Sch. 5 para. 20\(3\)](#), (with Sch. 5 para. 73)
- F111** Words in s. 40(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 23\(c\)\(ii\)](#) (with Sch. 2)
- F112** S. 40(4A) inserted (with effect as mentioned in s. 38(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 38\(1\), Sch. 5 para. 20\(4\)](#), (with Sch. 5 para. 73)
- F113** S. 40(5) ceased to have effect except for specified purposes (with effect in accordance with s. 39(4) (5) of the amending Act) by virtue of [Finance Act 1995 \(c. 4\), s. 39\(3\), Sch. 6 para. 4\(f\)](#); and s. 40(5) repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by [Finance Act 1998 \(c. 36\), ss. 38\(1\), 165, Sch. 5 para. 20\(5\), Sch. 27 Pt. 3\(4\)](#), Note (with Sch. 5 paras. 65, 73)

Marginal Citations

M31 SOURCE-1970 s. 86

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41 Relief for rent etc. not paid.

F114

Textual Amendments

F114 S. 41 ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), Sch. 6 para. 4(g); and s. 41 repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 21, Sch. 27 Pt. 3(4), Note (with Sch. 5 paras. 65, 73)

42 Appeals against determinations under sections 34 to 36 ^{F115} or Chapter 4 of Part 3 of ITTOIA 2005].

- (1) ^{M32}Where it appears to the inspector that the determination of ^{F116}—
- (a) any amount on which a person may be chargeable ^{F117}to corporation tax] by virtue of section 34, 35 or 36 ^{F118}, or
 - (b) any amount that under Chapter 4 of Part 3 of ITTOIA 2005 (profits of property businesses: lease premiums etc.) is brought into account as a receipt in calculating the profits of a property business (within the meaning of that Act),]
- may affect the liability to income tax, corporation tax or capital gains tax of other persons he may give notice to those persons as well as to the first-mentioned person of the determination he proposes to make and of the rights conferred on them by this section.
- (2) Any person to whom such a notice is given may, within 30 days after the date on which it is given, object to the proposed determination by notice given to the inspector.
 - (3) Where notices have been given under subsection (1) above and no notice of objection is duly given under subsection (2) above the inspector shall make the determination as proposed in his notices and the determination shall not be called in question in any proceedings.
 - (4) Where a notice of objection is duly given the amount mentioned in subsection (1) above shall be determined in like manner as an appeal and shall be so determined by the Special Commissioners or such body of General Commissioners as may be agreed on by the person to be charged and all persons who have given notice of objection.
 - (5) All persons to whom notices have been given under subsection (1) above may take part in any proceedings under subsection (4) above and in any appeal arising out of those proceedings and shall be bound by the determination made in the proceedings or on appeal, whether or not they have taken part in the proceedings; and their successors in title shall also be so bound.
 - (6) A notice under subsection (1) above may, notwithstanding any obligation as to secrecy or other restriction on the disclosure of information, include a statement of the grounds on which the inspector proposes to make the determination.
 - (7) An inspector may by notice require any person to give within the time specified in the notice such information as appears to the inspector to be required for deciding whether to give a notice under subsection (1) above to any person.

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Textual Amendments

- F115** S. 42: words in sidenote inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 24\(3\)](#) (with [Sch. 2](#))
- F116** Words in s. 42(1) renumbered as s. 42(1)(a) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by virtue of [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 24\(2\)\(a\)](#) (with [Sch. 2](#))
- F117** Words in s. 42(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 24\(2\)\(b\)](#) (with [Sch. 2](#))
- F118** S. 42(1)(b) and preceding word inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 24\(2\)\(c\)](#) (with [Sch. 2](#))

Modifications etc. (not altering text)

- C20** S. 42 applied (3.11.2004 with effect in accordance with reg. 1(1) of the affecting S.I.) by The [Energy-Saving Items \(Deductions for Expenditure etc.\) Regulations 2004 \(S.I. 2004/2664\)](#), [reg. 4](#)
- C21** S. 42 applied (6.12.2007 with effect in accordance with reg. 1(1) of the affecting S.I.) by The [Energy-Saving Items \(Income Tax\) Regulations 2007 \(S.I. 2007/3278\)](#), [reg. 7](#)

Marginal Citations

- M32** SOURCE- 1972 s. 82

[^{F119}42A Non-residents and their representatives.

- (1) The Board may by regulations make provision for the charging, assessment, collection and recovery on or from prescribed persons falling within subsection (2) below of prescribed amounts in respect of the tax which is or may become chargeable [^{F120}—
- (a) under Schedule A, or
 - (b) as the profits of a UK property business, under Chapter 3 of Part 3 of ITTOIA 2005,
- on the income of any person] who has his usual place of abode outside the United Kingdom (“the non-resident”).
- (2) A person falls within this subsection if he is—
- (a) a person by whom any such sums are payable to the non-resident as fall, or would fall, to be treated as receipts of a Schedule A business [^{F121}, or a UK property business,] carried on by the non-resident; or
 - (b) a person who acts on behalf of the non-resident in connection with the management or administration of any such business.
- (3) A person on whom any obligation to make payments to the Board is imposed by regulations under this section shall be entitled—
- (a) to be indemnified by the non-resident for all such payments; and
 - (b) to retain, out of any sums otherwise due from him to the non-resident, or received by him on behalf of the non-resident, amounts sufficient for meeting any liabilities under the regulations to make payments to the Board which have been discharged by that person or to which he is subject.
- (4) Without prejudice to the generality of the preceding provisions of this section, regulations under this section may include any or all of the following provisions, that is to say—

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- (a) provision for the amount of any payment to be made to the Board in respect of the tax on any income to be calculated by reference to such factors as may be prescribed;
 - (b) provision for the determination in accordance with any such regulations of the period for which, the circumstances in which and the times at which any payments are to be made to the Board;
 - (c) provision for requiring the payment of interest on amounts which are not paid to the Board at the times required under any such regulations;
 - (d) provision as to the certificates to be given in prescribed circumstances to the non-resident by a person falling within subsection (2) above, and as to the particulars to be included in any such certificate;
 - (e) provision for the making of repayments of tax to the non-resident and for such repayments to be made in prescribed cases to persons falling within subsection (2) above;
 - (f) provision for the payment of interest by the Board on sums repaid under any such regulations;
 - (g) provision for the rights and obligations arising under any such regulations to depend on the giving of such notices and the making of such claims and determinations as may be prescribed;
 - (h) provision for the making and determination of applications for requirements of any such regulations not to apply in certain cases, and for the variation or revocation, in prescribed cases, of the determinations made on such applications;
 - (i) provision for appeals with respect to questions arising under any such regulations;
 - (j) provision requiring prescribed persons falling within subsection (2)(b) above to register with the Board;
 - (k) provision requiring persons registered with the Board and other prescribed persons falling within subsection (2) above to make returns and supply prescribed information to the Board and to make available prescribed books, documents and other records for inspection on behalf of the Board;
 - (l) provision for the partnership, as such, to be treated as the person falling within subsection (2) above in a case where a liability to make any payment under the regulations arises from amounts payable or things done in the course of a business carried on by any persons in partnership;
 - (m) provision which, in relation to payments to be made by virtue of this section in respect of any tax or to any sums retained in respect of such payments, applies (with or without modifications) any enactment or subordinate legislation having effect apart from this section with respect to cases in which tax is or is treated as deducted from any income.
- (5) Interest required to be paid by any regulations under this section shall be paid without deduction of tax and shall not be taken into account in computing any income, profits or losses for any tax purposes.
- (6) Regulations under this section may—
- (a) make different provision for different cases; and
 - (b) contain such supplementary, incidental, consequential and transitional provision as appears to the Board to be appropriate;
- and the provision that may be made by virtue of paragraph (b) above may include provision which, in connection with any other provision made by any such regulations,

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modifies the operation in any case of section 59A of the Management Act or Schedule 21 to the Finance Act 1995 (payments on account of income tax).

(7) In this section—

“prescribed” means prescribed by, or determined by an officer of the Board in accordance with, regulations made by the Board under this section; and

“subordinate legislation” has the same meaning as in the ^{M33}Interpretation Act 1978.

(8) ^{F122}]

Textual Amendments

F119 S. 42A inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 40(1)

F120 Words in s. 42A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 25(2) (with Sch. 2)

F121 Words in s. 42A(2)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 25(3) (with Sch. 2)

F122 S. 42A(8) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para 22, Sch. 27 Pt. 3(4), Note (with Sch. 5 para. 73)

Marginal Citations

M33 1978 c. 30.

43 Non-residents.

^{F123}

Textual Amendments

F123 S. 43 repealed (with effect in accordance with s. 40(3) of the repealing Act) by Finance Act 1995 (c. 4), s. 40(3), Sch. 29 Pt. 8(16), Note 1

^{F124} Rent factoring

Textual Amendments

F124 Ss. 43A-43G and cross-heading inserted (with effect in accordance with s. 110(2) of the amending Act) by Finance Act 2000 (c. 17), s.110(1)

43A Finance agreement: interpretation.

(1) A transaction is a finance agreement for the purposes of sections 43B to 43F if in accordance with [^{F125}generally accepted accounting practice] the accounts of a company which receives money under the transaction would record a financial obligation (whether in respect of a lease creditor or otherwise) in relation to that receipt.

(2) ^{F126}

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- (3) The reference to a company's accounts in subsection (1) shall be taken to include a reference to the consolidated group accounts of a group of companies of which it is a member; and—
- (a) “group of companies” means a set of companies which, if each were incorporated in Great Britain, would form a group within the meaning given by section 262(1) of the ^{M34}Companies Act 1985, and
 - (b) “consolidated group accounts” means accounts of a kind which would satisfy the requirements of section 227 of the Companies Act 1985.
- (4) For the purposes of subsection (1) a company shall be treated as receiving any money which—
- (a) falls to be taken into account as a receipt for the purpose of calculating the company's liability to corporation tax, or
 - (b) would fall to be taken into account as a receipt for that purpose if the company were resident in the United Kingdom.

Textual Amendments

F125 Words in s. 43A(1) substituted (24.7.2002) by [Finance Act 2002 \(c. 23\), s. 103\(4\)\(a\)](#)

F126 S. 43A(2) repealed (24.7.2002) by [Finance Act 2002 \(c. 23\), s. 141, Sch. 40 Pt. 3\(16\)](#)

Marginal Citations

M34 1985 c. 6.

43B Transfer of rent.

- (1) This section applies to a finance agreement if it transfers a right to receive rent in respect of land in the United Kingdom from one person to another, otherwise than by means of the grant of a lease of land in the United Kingdom.
- (2) A person who receives a finance amount shall be treated for the purposes of the Tax Acts as receiving it—
- (a) by way of rent,
 - (b) in the course of a business falling within paragraph 1(1) of Schedule A [^{F127}or in the course of a UK property business], and
 - (c) in the chargeable period in which the agreement is made;
- and the finance amount shall be taken into account in computing the profits of the Schedule A business [^{F128}or the UK property business] for the chargeable period in which the agreement is made.
- (3) In subsection (2) “finance amount” means a receipt in respect of which section 43A(1) is satisfied.

Textual Amendments

F127 Words in s. 43B(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 26\(a\)](#) (with [Sch. 2](#))

F128 Words in s. 43B(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 26\(b\)](#) (with [Sch. 2](#))

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43C Transfer of rent: exceptions, &c.

- (1) Section 43B shall not apply to a finance agreement if the term over which the financial obligation is to be reduced exceeds 15 years.
- (2) Section 43B shall not apply to a finance agreement if—
 - (a) the arrangements for the reduction of the financial obligation substantially depend on a person's entitlement to an allowance under ^{F129}the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act)], and
 - (b) that person is not connected to the person from whom the right to receive rent is transferred.
- (3) Section 43B shall not apply to a finance agreement if—
 - (a) section 36(1) applies (without reference to section 36(3)), ^{F130}. . .
 - (b) section 36(1) would apply (without reference to section 36(3)) if the price at which an estate or interest is sold were to exceed the price at which it is to be reconveyed,
 - ^{F131}(c) section 284 of ITTOIA 2005 applies, or
 - (d) that section would apply if the price at which an estate or interest is sold were to exceed the price at which it is to be reconveyed.]
- (4) If—
 - (a) section 36(1) would apply in relation to a finance agreement by virtue only of section 36(3), and
 - (b) section 43B applies in relation to the agreement,section 36(1) shall not apply.
- ^{F132}(4A) If—
 - (a) section 285 of ITTOIA 2005 would apply in relation to a finance agreement, and
 - (b) section 43B applies in relation to the agreement,section 285 of ITTOIA 2005 shall not apply.]
- (5) Section 43B shall not apply to a finance agreement if section 780 applies.
- (6) Section 43B(2) shall not apply to a finance amount which is brought into account—
 - ^{F133}(a) in computing the profits of a trade for the purposes of Case I of Schedule D (otherwise than by virtue of section 83 of the ^{M35}Finance Act 1989 (life assurance)),^{F134} or
 - (b) in computing under Chapter 2 of Part 2 of ITTOIA 2005 the profits of a trade carried on wholly or partly in the United Kingdom.]

Textual Amendments

- F129** Words in s. 43C(2)(a) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), s. 578, **Sch. 2 para. 11**
- F130** Word at the end of s. 43C(3)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 27(2)(a), **Sch. 3** (with Sch. 2)
- F131** S. 43C(3)(c)(d) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 27(2)(b)** (with Sch. 2)

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- F132** S. 43C(4A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 27(3)** (with Sch. 2)
- F133** Words in s. 43C(6) renumbered as s. 43C(6)(a) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by virtue of Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 27(4)(a)** (with Sch. 2)
- F134** S. 43C(6)(b) and preceding word inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 27(4)(b)** (with Sch. 2)

Marginal Citations

M35 1989 c. 26.

43D Interposed lease.

- (1) This section applies to a finance agreement under which—
 - (a) a lease is granted in respect of land in the United Kingdom,
 - (b) a premium is payable in respect of the lease, and
 - (c) section 43A(1) is satisfied by reference to the receipt of the premium.
- (2) Where this section applies, the person to whom the premium is payable shall be treated for the purposes of the Tax Acts as receiving it—
 - (a) by way of rent,
 - (b) in the course of a business falling within paragraph 1(1) of Schedule A [^{F135}or in the course of a UK property business], and
 - (c) in the chargeable period in which the agreement is made;
 and the premium shall be taken into account in computing the profits of the Schedule A business [^{F136}or the UK property business] for the chargeable period in which the agreement is made.

Textual Amendments

- F135** Words in s. 43D(2)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 28(a)** (with Sch. 2)
- F136** Words in s. 43D(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 28(b)** (with Sch. 2)

43E Interposed lease: exceptions, &c.

- (1) Section 43D shall not apply to a finance agreement if—
 - (a) the term over which the financial obligation is to be reduced exceeds 15 years, or
 - (b) the length of the lease does not exceed 15 years, or
 - (c) the length of the lease is not significantly different from the term over which the financial obligation is to be reduced.
- (2) For the purpose of subsection (1) the length of a lease shall be calculated in accordance with section 38.
- (3) Section 43D shall not apply to a finance agreement if—

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- (a) the arrangements for the reduction of the financial obligation substantially depend on a person's entitlement to an allowance under [^{F137}the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act)], and
 - (b) that person is not connected to the person who grants the lease in respect of which the premium is payable.
- (4) Section 43D(2) shall not apply where all or part of the premium is brought into account [^{F138}—
- (a)] in computing the profits of a trade for the purposes of Case I of Schedule D (otherwise than by virtue of section 83 of the ^{M36}Finance Act 1989 (life assurance)), [^{F139} or
 - (b) in computing under Chapter 2 of Part 2 of ITTOIA 2005 the profits of a trade carried on wholly or partly in the United Kingdom.]
- (5) Section 34 [^{F140}and sections 277 to 281 of ITTOIA 2005] shall not apply in relation to a premium to which section 43D(2) applies.

Textual Amendments

- F137** Words in s. 43E(3)(a) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), s. 578, **Sch. 2 para. 12**
- F138** Words in s. 43E(4) renumbered as s. 43E(4)(a) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by virtue of Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 29(2)(a)** (with Sch. 2)
- F139** S. 43E(4)(b) and preceding word inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 29(2)(b)** (with Sch. 2)
- F140** Words in s. 43E(5) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 29(3)** (with Sch. 2)

Marginal Citations

- M36** 1989 c. 26.

43F Insurance business.

- (1) In the application of sections 43A to 43E to companies carrying on insurance business a reference to accounts does not include a reference to accounts required to be prepared under [^{F141}Chapter 9 of the Prudential Sourcebook (Insurers)].
- (2) Neither section 43B(2) nor section 43D(2) shall require any amount to be brought into account in a computation of profits of life assurance business, or any category of life assurance business, carried on by a company where the computation is made in accordance with the provisions of this Act applicable to Case I of Schedule D.
- (3) Section 432A shall have effect in relation to any sum which is or would be treated as received by virtue of section 43B(2) or 43D(2) of this Act.
- (4) Expressions used in this section and in Chapter I of Part XII have the same meaning in this section as in that Chapter.

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Textual Amendments

F141 Words in s. 43F(1) substituted (1.12.2001 with effect in accordance with art. 15(2) of the amending S.I.) by [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\)](#), **arts. 1(2)(a)**, 15(1)

Modifications etc. (not altering text)

C22 S. 43F(1) modified (with effect in accordance with reg. 4A(3) of the 1997 modifying S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 1997 \(S.I. 1997/473\)](#), **reg. 4A(1)(2)** (as inserted (25.10.2000) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2000 \(S.I. 2000/2710\)](#), **regs. 1, 3**, and as amended by: S.I. 2003/23, **regs. 1, 3**; S.I. 2005/2005, **regs. 1, 4**)

C23 S. 43F(1) modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), **regs. 1(1)**, 4 (which modifying reg. 4 is omitted (14.8.2007 with effect in accordance with reg. 1(3) of the revoking S.I.) by virtue of [S.I. 2007/2134](#), **regs. 1(1)**, 4)

43G Interpretation.

(1) This section applies for the purposes of sections 43A to 43F.

(2) In those sections—

“connected” in relation to persons has the meaning given by section 839,

“rent” includes any sum which is chargeable to tax under Schedule A [^{F142}or, as the profits of a UK property business, under Chapter 3 of Part 3 of ITTOIA 2005],

“lease” includes an underlease, sublease, tenancy or licence and an agreement for any of those things, but does not include a mortgage or heritable security,

“premium” [^{F143}—

(a) for the purposes of corporation tax] has the meaning given by section 24(1) (and, in relation to Scotland, section 24(5)), and subsections (4) and (5) of section 34 shall have effect in relation to sections 43A to 43F as they have effect in relation to section 34, and

(b) [^{F144}for the purposes of income tax has the meaning given by section 307(1) of ITTOIA 2005 (and, in relation to Scotland, section 307(3) of that Act), and includes—

(i) a sum payable by the tenant under the terms subject to which a lease is granted instead of the whole or a part of the rent for a period,

(ii) a sum payable by the tenant under those terms as consideration for the surrender (in Scotland, the renunciation) of the lease, and

(iii) a sum payable by the tenant (otherwise than by way of rent) as consideration for the variation or waiver of a term of a lease, and]

“sum” has the meaning given by section 24(4).

(3) A reference to a transfer of a right to receive rent from one person to another includes a reference to any arrangement under which rent ceases to form part of the receipts

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taken into account for the purposes of calculating a company's liability to corporation tax or income tax.

- (4) In calculating the term over which a financial obligation is to be reduced no account shall be taken of any period during which the arrangements for reduction differ from the arrangements which apply in a previous period if—
- (a) the period begins after the financial obligation has been substantially reduced, and
 - (b) the different arrangements for reduction are not the result of a provision for periodic review, on commercial terms, of rent under a lease.]

Textual Amendments

- F142** S. 43G(2): words in definition of "rent" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 30(2)** (with [Sch. 2](#))
- F143** S. 43G(2): words in definition of "premium" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 30(3)(a)** (with [Sch. 2](#))
- F144** S. 43G(2): in definition of "premium", para. (b) inserted (6.4.2005 with effect in accordance with S. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 30(3)(b)** (with [Sch. 2](#))

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