

CHAPTER 8 Taxation of rents and certain other payments

Interpretation). ITA67 s80(1), (2), (4) and (5) and s81(1) (definition of “the person chargeable”); FA69 s27; FA75 s19 and Sch2 Ptl par1 and 2 96.—(1) In this Chapter, except where the context otherwise requires—

“easement” includes any right, privilege or benefit in, over or derived from premises;

“lease” includes an agreement for a lease and any tenancy, but does not include a mortgage, and “lessee” and “lessor” shall be construed accordingly, and “lessee” and “lessor” include respectively the successors in title of a lessee or a lessor;

“the person chargeable” means the person entitled to the profits or gains arising from—

(a) any rent in respect of any premises, and

(b) any receipts in respect of any easement;

“premises” means any lands, tenements or hereditaments in the State;

“premium” includes any like sum, whether payable to the immediate or a superior lessor or to a person connected with the immediate or superior lessor;

“rent” includes—

(a) any rentcharge, fee farm rent and any payment in the nature of rent, notwithstanding that the payment may relate partly to premises and partly to goods or services, and

(b) any payment made by the lessee to defray the cost of work of maintenance of or repairs to the premises, not being work required by the lease to be carried out by the lessee.

(2) (a) In ascertaining for the purposes of this Chapter the duration of a lease, the following provisions shall apply:

(i) where any of the terms of the lease (whether relating to forfeiture or to any other matter) or any other circumstances render it unlikely that the lease will continue beyond a date falling before the expiration of the term of the lease and the premium was not substantially greater than it would have been (on the assumptions required by paragraph (b)) if the term had 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;

(ii) where the terms of the lease include provision for the extension of the lease beyond a particular date by notice given by the lessee, account may be taken of any circumstances making it likely that the lease will be so extended;

(iii) where the lessee or a person connected with the lessee 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.

(b) Paragraph (a) shall be applied by reference to the facts which were known or ascertainable at the time of the grant of the lease or, in relation to tax under section 98 (4), at the time when the contract providing for a variation or waiver of a kind referred to in section 98 (4) is entered into, and in applying paragraph (a)—

(i) it shall be assumed that all parties concerned, whatever their relationship, act as they would act if they were at arm's length, and

(ii) if by the lease or in connection with the granting of it—

(I) benefits were conferred other than vacant possession and beneficial occupation of the premises or the right to receive rent at a reasonable commercial rate in respect of the premises, or

(II) payments were made which would not be expected to be made by parties so acting if no other benefits had been so conferred,

it shall be further assumed, unless it is shown that the benefits were not conferred or the payments were not made for the purpose of securing a tax advantage in the application of this Chapter, 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 paragraph (a).

(3) Where the estate or interest of any lessor of any premises is the subject of a mortgage and either the mortgagee is in possession or the rents and profits are being received by a receiver appointed by or on the application of the mortgagee, that estate or interest shall be deemed for the purposes of this Chapter to be vested in the mortgagee, and references to a lessor shall be construed accordingly; but the amount of the liability to tax of any such mortgagee shall be computed as if the mortgagor was still in possession or, as the case may be, no receiver had been appointed and as if it were the amount of the liability of the mortgagor that was being computed.

(4) 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 subsection (2), the inspector may by notice in writing require such person to give, within 21 days after the date of the notice or such longer period as the inspector may allow, such information relevant to the ascertainment of the duration of the lease on the matters specified in the notice as is in such person's possession.