

Double rent allowance in respect of rent paid for certain business premises. FA90 s33(1) and (2)(a); FA97 s56 370.—(1) In this section—

“qualifying lease” means, subject to subsection (8), a lease in respect of a qualifying premises granted in the qualifying period on bona fide commercial terms by a lessor to a lessee not connected with the lessor, or with any other person entitled to a rent in respect of the qualifying premises, whether under that lease or any other lease;

“qualifying premises” means, subject to subsection (5)(a), a building or structure the site of which is wholly within a qualifying area and—

(a) (i) which is a building or structure in use for a purpose specified in section 268 (1)(a), and in respect of which capital expenditure is incurred in the qualifying period for which an allowance is to be made, or will by virtue of section 279 be made, for the purposes of income tax or corporation tax, as the case may be, under section 271 or 273, as applied by section 368,

(ii) in respect of which an allowance is to be made, or will by virtue of section 279 be made, for the purposes of income tax or corporation tax, as the case may be, under Chapter 1 of Part 9 by virtue of section 369, or

(iii) which is a building or structure in use for the purposes specified in section 268 (1)(d), and in respect of the construction or refurbishment of which capital expenditure is incurred in the qualifying period for which an allowance would but for subsection (6) be made for the purposes of income tax or corporation tax, as the case may be, under Chapter 1 of Part 9,

and

(b) which is let on bona fide commercial terms for such consideration as might be expected to be paid in a letting of the building or structure negotiated on an arm's length basis,

but, where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure in respect of which an allowance is to be made, or will by virtue of section 279 be made, or in respect of which an allowance would but for subsection (6) be made, for the purposes of income tax or corporation tax, as the case may be, under any of the provisions referred to in paragraph (a), the building or structure shall not be regarded as a qualifying premises unless the total amount of the expenditure so incurred is not less than an amount equal to 10 per cent of the market value of the building or structure immediately before that expenditure is incurred.

(2) For the purposes of this section, so much of a period, being a period when rent is payable by a person in relation to a qualifying premises under a qualifying lease, shall be a relevant rental period as does not exceed—

(a) 10 years, or

(b) the period by which 10 years exceeds—

(i) any preceding period, or

(ii) if there is more than one preceding period, the aggregate of those periods,

for which rent was payable by that person or any other person in relation to that premises under a qualifying lease.

(3) Subject to subsection (4), where in the computation of the amount of the profits or gains of a trade or profession a person is apart from this section entitled to any deduction (in this subsection referred to as “the first-mentioned deduction”) on account of rent in respect of a qualifying premises occupied by such person for the purposes of that trade or profession which is payable by such person for a relevant rental period in relation to that qualifying premises under a qualifying lease, such person shall be entitled in that computation to a further deduction (in this subsection referred to as “the second-mentioned deduction”) equal to the amount of the first-mentioned deduction but, where the first-mentioned deduction is on account of rent payable by such person to a connected person, such person shall not be entitled in that computation to the second-mentioned deduction.

(4) Where a person holds an interest in a qualifying premises out of which interest a qualifying lease is created directly or indirectly in respect of the qualifying premises and in respect of rent payable under the qualifying lease a claim for a further deduction under this section is made, and either such person or another person connected with such person—

(a) takes under a qualifying lease a qualifying premises (in this subsection referred to as “the second-mentioned premises”) occupied by such person or such other person, as the case may be, for the purposes of a trade or profession, and

(b) is apart from this section entitled, in the computation of the amount of the profits or gains of that trade or profession, to a deduction on account of rent in respect of the second-mentioned premises,

then, unless such person or such other person, as the case may be, shows that the taking on lease of the second-mentioned premises was not undertaken for the sole or main benefit of obtaining a further deduction on account of rent under this section, such person or such other person, as the case may be, shall not be entitled in the computation of the amount of the profits or gains of that trade or profession to any further deduction on account of rent in respect of the second-mentioned premises.

(5) (a) A building or structure in use for the purposes specified in section 268 (1)(d) shall not be a qualifying premises for the purposes of this section unless the person to whom an allowance under Chapter 1 of Part 9 would but for subsection (6) be made for the purposes of income tax or corporation tax, as the case may be, in respect of the capital expenditure incurred in the qualifying period on the construction or refurbishment of the building or structure elects by notice in writing to the appropriate inspector ) to disclaim all allowances under that Chapter in respect of that capital expenditure.

(b) An election under paragraph (a) shall be included in the return required to be made by the person

concerned under section 951 for the first year of assessment or the first accounting period, as the case may be, for which an allowance would but for subsection (6) have been made to that person under Chapter 1 of Part 9 in respect of that capital expenditure.

(c) An election under paragraph (a) shall be irrevocable.

(d) A person who has made an election under paragraph (a) shall furnish a copy of that election to any person (in this paragraph referred to as “the second-mentioned person”) to whom the person grants a qualifying lease in respect of the qualifying premises, and the second-mentioned person shall include the copy in the return required to be made by the second-mentioned person under section 951 for the year of assessment or accounting period, as the case may be, in which rent is first payable by the second-mentioned person under the qualifying lease in respect of the qualifying premises.

(6) Where a person who has incurred capital expenditure in the qualifying period on the construction or refurbishment of a building or structure in use for the purposes specified in section 268 (1)(d) makes an election under subsection (5)(a), then, notwithstanding any other provision of the Tax Acts—

(a) no allowance under Chapter 1 of Part 9 shall be made to the person in respect of that capital expenditure,

(b) on the occurrence, in relation to the building or structure, of any of the events referred to in section 274 (1), the residue of expenditure ) in relation to that capital expenditure shall be deemed to be nil, and

(c) section 279 shall not apply in the case of any person who buys the relevant interest ) in the building or structure.

(7) For the purposes of determining, in relation to paragraph (a)(iii) of the definition of “qualifying premises” and subsections (5) and (6), whether and to what extent capital expenditure incurred on the construction or refurbishment of a building or structure is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the building or structure actually carried out in the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

(8) (a) In this subsection—

“current value”, in relation to minimum lease payments, means the value of those payments discounted to their present value at a rate which, when applied at the inception of the lease to—

(i) those payments, including any initial payment but excluding any payment or part of any payment for which the lessor will be accountable to the lessee, and

(ii) any unguaranteed residual value of the qualifying premises, excluding any part of such value for which the lessor will be accountable to the lessee,

produces discounted present values the aggregate amount of which equals the amount of the fair value of the qualifying premises;

“fair value”, in relation to a qualifying premises, means an amount equal to such consideration as might be expected to be paid for the premises on a sale negotiated on an arm's length basis less any grants receivable towards the purchase of the qualifying premises;

“inception of the lease” means the earlier of the time the qualifying premises is brought into use or the date from which rentals under the lease first accrue;

“minimum lease payments” means the minimum payments over the remaining part of the term of the lease to be paid to the lessor, and includes any residual amount to be paid to the lessor at the end of the term of the lease and guaranteed by the lessee or by a person connected with the lessee;

“unguaranteed residual value”, in relation to a qualifying premises, means that part of the residual value of that premises at the end of a term of a lease, as estimated at the inception of the lease, the realisation of which by the lessor is not assured or is guaranteed solely by a person connected with the lessor.

(b) A finance lease, that is—

(i) a lease in respect of a qualifying premises where, at the inception of the lease, the aggregate of the current value of the minimum lease payments (including any initial payment but excluding any payment or part of any payment for which the lessor will be accountable to the lessee) payable by the lessee in relation to the lease amounts to 90 per cent or more of the fair value of the qualifying premises, or

(ii) a lease which in all the circumstances is considered to provide in substance for the lessee the risks and benefits associated with ownership of the qualifying premises other than legal title to that premises,

shall not be a qualifying lease for the purposes of this section.