

Double rent allowance in respect of rent paid for certain business premises. FA90 s33(1) and (2)(a); FA97 s150 333.—(1) (a) In this section—

“lease”, “lessee”, “lessor” and “rent” have the same meanings respectively as in Chapter 8 of Part 4;

“market value”, in relation to a building or structure, means the price which the unencumbered fee simple of the building or structure would fetch if sold in the open market in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the building or structure, less the part of that price which would be attributable to the acquisition of, or of rights in or over, the land on which the building or structure is constructed;

“qualifying lease” means, subject to subsection (4), a lease in respect of a qualifying premises granted in the qualifying period, or within the period of 2 years from the day next after the end of 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 a building or structure in the Temple Bar Area—

(i) (I) which is an industrial building or structure within the meaning of section 268 (1), and in respect of which capital expenditure is incurred in the qualifying period for which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under Chapter 1 of Part 9, or

(II) in respect of which an allowance is to be made, or, as respects rent payable under a qualifying lease entered into on or after the 18th day of April, 1991, 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 332, and

(ii) 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, as respects rent payable under a qualifying lease entered into on or after the 6th day of May, 1993, 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 for the purposes of income tax or corporation tax, as the case may be, under Chapter 1 of Part 9, 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.

(b) For the purposes of this section but subject to paragraph (c), 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—

(i) 10 years, or

(ii) 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—

(A) by that person or any other person, or

(B) as respects rent payable in relation to any qualifying premises under a qualifying lease entered into before the 11th day of April, 1994, by that person or any person connected with that person,

in relation to that premises under a qualifying lease.

(c) As respects rent payable in relation to any qualifying premises under a qualifying lease entered into before the 18th day of April, 1991, “relevant rental period”, in relation to a qualifying premises, means the period of 10 years commencing on the day on which rent in respect of that premises is first payable under any qualifying lease.

(2) Subject to subsection (3), 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—

(a) for a relevant rental period, or

(b) as respects rent payable in relation to any qualifying premises under a qualifying lease entered into before the 18th day of April, 1991, in the 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, as respects a qualifying lease granted on or after the 21st day of April, 1997, 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.

(3) 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 that qualifying premises and in respect of rent payable under the qualifying lease a claim for a further deduction under this section is made, and such person or, as respects rent payable in relation to any qualifying premises under a qualifying lease entered into on or after the 6th day of May, 1993, 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.

(4) (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.

(5) In determining whether a period is a relevant rental period for the purposes of this section, rent payable by any person in relation to a premises in respect of which a further deduction was given under section 45 of the Finance Act, 1986 , as applied by section 55 of the Finance Act, 1991 (or would have been so given but for the operation of paragraph (b) of the proviso to subsection (2) of section 45 of the Finance Act, 1986 ), shall be treated as having been payable by that person in relation to the premises under a qualifying lease.