

SCHEDULE 14 Capital Gains Tax: Leases

Section 566.

CGTA75 Sch3; CTA76 s140(2) and Sch2 PtII Par11

Interpretation

1. In this Schedule, “premium” includes any like sum, whether payable to the intermediate or a superior lessor and, for the purposes of this Schedule, any sum (other than rent) paid on or in connection with the granting of a tenancy shall be presumed to have been paid by means of a premium except in so far as other sufficient consideration for the payment is shown to have been given.

Leases of land as wasting assets: restriction of allowable expenditure

2. (1) A lease of land shall not be a wasting asset until its duration does not exceed 50 years.

(2) Where at the beginning of the period of ownership of a lease of land it is subject to a sub-lease not at a rent representing the full value of the land together with any buildings on the land, and the value of the lease at the end of the duration of the sub-lease, estimated as at the beginning of the period of ownership, exceeds the expenditure allowable under section 552 (1) (a) in computing the gain accruing on a disposal of the lease, the lease shall not be a wasting asset until the end of the duration of the sub-lease.

(3) In the case of a wasting asset which is a lease of land, the rate at which expenditure is assumed to be written off shall, instead of being a uniform rate as provided by section 560 (3), be a rate fixed in accordance with the Table to this paragraph.

(4) Accordingly, for the purposes of the computation under Chapter 2 of Part 19 of the gain accruing on a disposal of a lease, and where—

(a) the percentage derived from the Table to this paragraph for the duration of the lease at the beginning of the period of ownership is P (1),

(b) the percentage so derived for the duration of the lease at the time when any item of expenditure attributable to the lease under section 552 (1) (b) is first reflected in the nature of the lease is P (2),
and

(c) the percentage so derived for the duration of the lease at the time of the disposal is P (3),

then—

(i) there shall be excluded from the expenditure attributable to the lease under section 552 (1) (a) a fraction equal to—

P(1) – P(3) _____ P(1)

and

(ii) there shall be excluded from any item of expenditure attributable to the lease under section 552

(1) (b) a fraction equal to—

P(2) – P(3) _____ P(2)

(5) This paragraph shall apply notwithstanding that the period of ownership of the lease is a period exceeding 50 years, and accordingly no expenditure shall be written off under this paragraph in respect of any period earlier than the time when the lease becomes a wasting asset.

(6) Section 561 shall apply in relation to this paragraph as it applies in relation to subsections (3) to (5) of section 560.

(7) Where the duration of the lease is not an exact number of years, the percentage to be derived from the Table to this paragraph shall be the percentage for the whole number of years plus one-twelfth of the difference between that percentage and the percentage for the next higher number of years for each odd month, counting an odd 14 days or more as one month.

TABLE

Years	Percentage	Years	Percentage	50 (or more)	100.0	25	81.1	49	99.7	24	79.6	48	99.3
23	78.1	47	98.9	22	76.4	46	98.5	21	74.6	45	98.1	20	72.8
44	97.6	19	70.8	43	97.1	18	68.7	42	96.6	17	66.5	41	96.0
16	64.1	40	95.5	15	61.6	39	94.8	14	59.0	38	94.2	13	56.2
37	93.5	12	53.2	36	92.8	11	50.0	35	92.0	10	46.7	34	91.2
9	43.2	33	90.3	8	39.4	32	89.4	7	35.4	31	88.4	6	31.2
30	87.3	5	26.7	29	86.2	4	22.0	28	85.1	3	17.0	27	83.8
2	11.6	26	82.5	1	6.0	0	0.0						

Premiums for leases

3. (1) Subject to this Schedule, where the payment of a premium is required under a lease of land or otherwise under the terms subject to which a lease of land is granted, there shall be a part disposal of the freehold or other asset out of which the lease is granted.

(2) In applying section 557 to such a part disposal, the property which remains undisposed of shall include a right to any rent or other payments (other than a premium) payable under the lease, and that right shall be valued as at the time of the part disposal.

Payments during currency of lease treated as premium

4. (1) Where under the terms subject to which a lease of land is granted a sum becomes payable by the lessee in place of the whole or 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 Schedule to have required the payment of a premium

to the lessor (in addition to any other premium) of an amount equal to that sum for the period in relation to which the sum is payable.

(2) Where as consideration for the variation or waiver of any of the terms of a lease of land a sum becomes payable by the lessee otherwise than as rent, the lease shall be deemed for the purposes of this Schedule to have required the payment of a premium to the lessor (in addition to any other premium) of an amount equal to that sum for the period from the time when the variation or waiver takes effect to the time when it ceases to have effect.

(3) Where under subparagraph (1) or (2) a premium is deemed to have been received by the lessor otherwise than as consideration for the surrender of the lease, then—

(a) subject to clause (b), both the lessor and the lessee shall be treated as if that premium were or were part of the consideration for the grant of the lease due at the time when the lease was granted, but

(b) if the lessor is a lessee under a lease the duration of which does not exceed 50 years, this Schedule shall apply as if—

(i) that premium had been given as consideration for the grant of the part of the sub-lease covered by the period in respect of which the premium is deemed to have been paid, and

(ii) that consideration were expenditure incurred by the sub-lessee and attributable to that part of the sublease under section 552 (1) (b).

(4) Where subparagraph (3) (a) applies, the gain accruing to the lessor on the disposal by means of the grant of the lease shall be recomputed and any necessary adjustments of capital gains tax shall be made accordingly, whether by means of assessment for the year in which the premium is deemed to have been received or by means of discharge or repayment of tax.

(5) Where under subparagraph (1) a premium is deemed to have been received as consideration for the surrender of a lease, that premium shall be regarded as consideration for a separate transaction consisting of the disposal by the lessor of the lessor's interest in the lease.

(6) Subparagraph (2) shall apply in relation to a transaction not at arm's length, and in particular in relation to a transaction entered into gratuitously, as if such sum had become payable by the tenant otherwise than as rent as might have been required of the tenant if the transaction had been at arm's length.

(7) Subparagraph (4) shall apply for the purposes of corporation tax as it applies for the purposes of capital gains tax.

Sub-leases out of short leases

5. (1) This paragraph shall apply in relation to a lease which is a wasting asset.

(2) In the computation under Chapter 2 of Part 19 of the gain accruing on the part disposal of a lease

by means of the grant of a sub-lease for a premium (in this paragraph referred to as “the actual premium”), the expenditure attributable to the lease under paragraphs (a) and (b) of section 552 (1) shall be apportioned in accordance with this paragraph, and section 557 shall not apply.

(3) Out of each item of the expenditure attributable to the lease under paragraphs (a) and (b) of section 552 (1) there shall be apportioned to the part disposal—

(a) if the amount of the actual premium is not less than the amount which would be obtainable by means of a premium for the sub-lease if the rent payable under the sub-lease were the same as the rent payable under the lease (in this paragraph referred to as “the full premium”), the amount (in this paragraph referred to as “the allowable amount”) which under paragraph 2(3) is to be written off over the period which is the duration of the sub-lease, and

(b) if the amount of the actual premium is less than the full premium, such proportion of the allowable amount as is equal to the proportion which the actual premium bears to the full premium.

(4) Where the sub-lease is a sub-lease of only part of the land comprised in the lease, this paragraph shall apply only in relation to a proportion of the expenditure attributable to the lease under paragraphs (a) and (b) of section 552 (1) which is the same as the proportion which the value of the land comprised in the sub-lease at the time when the sub-lease is granted bears to the value of that land and the other land comprised in the lease at that time, and the remainder of that expenditure shall be apportioned to the other land.

Exclusion of premiums taxed under Case V of Schedule D

6. (1) Where by reference to any premium income tax has become chargeable under section 98 on any amount, that amount shall be excluded from the consideration taken into account in the computation under Chapter 2 of Part 19 of a gain accruing on a disposal of the interest in respect of which income tax becomes so chargeable, except where in an apportionment under section 557 the value of the consideration is taken into account in the aggregate of that value and the market value of the property which remains undisposed of.

(2) Where by reference to any premium in respect of a sub-lease granted out of a lease, being a lease the duration of which does not at the time of granting the lease exceed 50 years, income tax has become chargeable under section 98 on any amount, that amount shall be deducted from any gain (as computed in accordance with the provisions of the Capital Gains Tax Acts apart from this subparagraph) accruing on the disposal for which the premium is consideration, but not so as to convert the gain into a loss or to increase any loss.

(3) (a) Subject to clause (b), where income tax has become chargeable under section 100 on any amount (in this subparagraph referred to as “the relevant amount”), the relevant amount shall be excluded from the consideration taken into account in the computation under Chapter 2 of Part 19 of a gain accruing on the disposal of the estate or interest in respect of which income tax becomes so chargeable, except where in an apportionment made under section 557 the value of the consideration is taken into account in the aggregate of that value and the market value of the property which remains undisposed of.

(b) If the part or interest disposed of is the remainder of a lease or a sub-lease out of a lease the duration of which does not exceed 50 years, clause (a) shall not apply, but the relevant amount shall be deducted from any gain (as computed in accordance with the provisions of the Capital Gains Tax Acts apart from this subparagraph) accruing on the disposal, but not so as to convert the gain into a loss or to increase any loss.

(4) References in subparagraphs (1) and (2) to a premium include references to a premium deemed to have been received under subsection (3) or (4) of section 98.

(5) Section 551 shall not be taken as authorising the exclusion of any amount from the consideration for a disposal of assets taken into account in the computation of the gain under Chapter 2 of Part 19 by reference to any amount chargeable to tax under section 75 and Chapter 8 of Part 4.

Disallowance of premium treated as rent under superior lease

7. (1) Where under section 103 (2) a person is to be treated as paying additional rent in consequence of having granted a sub-lease, the amount of any loss accruing to such person on the disposal by means of the grant of the sub-lease shall be reduced by the total amount of the rent which such person is thereby treated as paying over the term of the sub-lease (and without regard to whether relief is thereby effectively given over the term of the sub-lease), but not so as to convert the loss into a gain or to increase any gain.

(2) Nothing in section 551 shall be taken as applying in relation to any amount on which tax is paid under section 99.

(3) Where any adjustment is made under paragraph (b) of section 100 (2), on a claim under that paragraph, any necessary adjustment shall be made to give effect to the consequences of the claim on the operation of this paragraph or paragraph 6.

Expenditure by lessee under terms of lease

8. If under section 98 (2) income tax is chargeable on any amount as being a premium the payment of which is deemed to be required by the lease, the person so chargeable shall be treated for the purposes of the computation of any gain accruing to that person on the disposal by means of the grant of the lease, and on any subsequent disposal of the asset out of which the lease was granted, as having incurred at the time the lease was granted expenditure of that amount (in addition to any other expenditure) attributable to the asset under section 552 (1) (b).

Duration of leases

9. (1) In ascertaining for the purposes of the Capital Gains Tax Acts the duration of a lease of land, the following provisions of this paragraph shall apply.

(2) Where the terms of the lease include provision for the determination of the lease by notice given by the lessor, the lease shall not be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice given by the lessor.

(3) 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, the lease shall not be treated as having been granted for a term longer than one ending on that date, and this subparagraph shall apply in particular where the lease provides for the rent to be increased after a given date, or for the lessee's obligations to become in any other respect more onerous after a given date, but includes provision for the determination of the lease on that date by notice given by the lessee, and those provisions render it unlikely that the lease will continue beyond that date.

(4) Where the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the lessee, this paragraph shall apply as if the term of the lease extended for as long as it could be extended by the lessee, but subject to any right of the lessor by notice to determine the lease.

(5) The duration of a lease shall be decided in relation to the grant or any disposal of the lease by reference to the facts which were known or ascertainable at the time when the lease was acquired or created.

Leases of property other than land

10. (1) Paragraphs 3 to 5 and 9 shall, subject to any necessary modifications, apply in relation to leases of property other than land as they apply to leases of land.

(2) In the case of a lease of a wasting asset which is movable property, the lease shall be assumed to terminate not later than the end of the life of the wasting asset.