

Restriction of balancing allowances on sale of industrial building or structure. FA73 s40(1) to (5)

275.—(1) In this section—

“inferior interest” means any interest in or right over the building or structure in question, whether granted by the relevant person or by someone else;

“premium” includes any capital consideration except so much of any sum as corresponds to any amount of rent or profits which is to be computed by reference to that sum under section 98;

“capital consideration” means consideration which consists of a capital sum or would be a capital sum if it had taken the form of a money payment;

“rent” includes any consideration which is not capital consideration;

“commercial rent” means such rent as might reasonably be expected to have been required in respect of the inferior interest in question, having regard to any premium payable for the grant of the interest, if the transaction had been at arm's length.

(2) This section shall apply where—

(a) the relevant interest in a building is sold subject to an inferior interest,

(b) by virtue of the sale a balancing allowance under section 274 would apart from this section be made to or for the benefit of the person (in this section referred to as “the relevant person”) who was entitled to the relevant interest immediately before the sale, and

(c) either—

(i) the relevant person, the person to whom the relevant interest is sold and the grantee of the inferior interest, or any 2 of them, are connected with each other, or

(ii) it appears with respect to the sale or the grant of the inferior interest, or with respect to transactions including the sale or grant, that the sole or main benefit which but for this section might have been expected to accrue to the parties or any of them was the obtaining of an allowance or deduction under this Chapter.

(3) For the purposes of section 274, the net proceeds to the relevant person of the sale—

(a) shall be taken to be increased by an amount equal to any premium receivable by the relevant person for the grant of the inferior interest, and

(b) where no rent or no commercial rent is payable in respect of the inferior interest, shall be taken to be the sum of—

(i) what those proceeds would have been if a commercial rent had been payable and the relevant interest had been sold in the open market, and

(ii) any amount to be added under paragraph (a);

but the net proceeds of the sale shall not by virtue of this subsection be taken to be greater than such amount as will secure that no balancing allowance is to be made.

(4) Where subsection (3) operates in relation to a sale to deny or reduce a balancing allowance in respect of any expenditure, the residue of that expenditure immediately after the sale shall be calculated for the purposes of this Chapter as if that balancing allowance had been made or, as the case may be, had not been reduced.

(5) Where the terms on which the inferior interest is granted are varied before the sale of the relevant interest, any capital consideration for the variation shall be treated for the purposes of this section as a premium for the grant of the interest, and the question whether any and, if so, what rent is payable in respect of the interest shall be determined by reference to the terms as in force immediately before the sale.