



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART XVII

#### TAX AVOIDANCE

### CHAPTER IV

#### MISCELLANEOUS

#### *Other provisions*

#### **487 Sale by individual of income derived from his personal activities**

- (1) Subject to subsection (5) below, this section has effect where—
  - (a) transactions or arrangements are effected or made to exploit the earning capacity of an individual in any occupation by putting some other person in a position to enjoy all or any part of the profits or gains or other income, or of the receipts, derived from the individual's activities in that occupation, or anything derived directly or indirectly from any such income or receipts, and
  - (b) as part of, or in connection with, or in consequence of, the transactions or arrangements any capital amount is obtained by the individual for himself or for any other person, and
  - (c) the main object, or one of the main objects, of the transactions or arrangements was the avoidance or reduction of liability to income tax.
- (2) Any such capital amount shall for all the purposes of the Income Tax Acts be treated as being earned income of the individual which arises when the capital amount is receivable, and which is chargeable to tax under Case VI of Schedule D.
- (3) In this section—
  - (a) references to any occupation are references to any activities of any of the kinds pursued in any profession or vocation, irrespective of whether the individual

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is engaged in a profession or vocation, or is employed by or holds office under some other person, and

- (b) references in subsection (1) above to income or receipts include references to payments for any description of copyright or licence or franchise or other right deriving its value from the activities, including past activities, of the individual.

- (4) This section shall not apply to a capital amount obtained from the disposal—

- (a) of assets (including any goodwill) of a profession or vocation, or of a share in a partnership which is carrying on a profession or vocation, or
- (b) of shares in a company,

so far as the value of what is disposed of, at the time of disposal, is attributable to the value of the profession or vocation as a going concern, or as the case may be to the value of the company's business, as a going concern:

Provided that if the value of the profession, vocation or business as a going concern is derived to a material extent from prospective income or receipts derived directly or indirectly from the individual's activities in the occupation, and for which, when all capital amounts are disregarded, the individual will not have received full consideration, whether as a partner in a partnership or as an employee or otherwise, this subsection shall not exempt the part of the capital amount so derived.

In this subsection references to the company's business include references to the business of any other company in which it holds shares directly or indirectly.

- (5) This subsection has effect where on any occasion an individual obtains a capital amount consisting of any property or right which derives substantially the whole of its value from the activities of the individual, or (as in the case where the individual acquires a stock option and subsequently exercises the stock option) there are two or more occasions on which an individual obtains a capital amount consisting of any such property or right.

Tax under this section shall not be charged on any such occasion, but, without prejudice to the generality of the provisions of this section or section 489 below, tax under this section shall be charged on the occasion when the capital amount, or any such capital amount, is sold or otherwise realised, and shall be so charged by reference to the proceeds of sale or the realised value.

- (6) For the purposes of subsection (1)(b) above the cases where an individual obtains any capital amount for some other person include cases where the individual has put some other person in a position to receive the capital amount by providing that other person with something of value derived, directly or indirectly, from the individual's activities in the occupation.
- (7) This section shall apply to all persons, whether resident in the United Kingdom or not, if the occupation of the individual is carried on wholly or partly in the United Kingdom.
- (8) This section shall not apply as respects a capital amount receivable before 15th April 1969.

#### **488 Artificial transactions in land**

- (1) This section is enacted to prevent the avoidance of tax by persons concerned with land or the development of land.

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- (2) This section applies wherever—
- (a) land, or any property deriving its value from land, is acquired with the sole or main object of realising a gain from disposing of the land, or
  - (b) land is held as trading stock, or
  - (c) land is developed with the sole or main object of realising a gain from disposing of the land when developed,
- and any gain of a capital nature is obtained from the disposal of the land—
- (i) by the person acquiring, holding or developing the land, or by any connected person, or
  - (ii) where any arrangement or scheme is effected as respects the land which enables a gain to be realised by any indirect method, or by any series of transactions, by any person who is a party to, or concerned in, the arrangement or scheme;
- and this subsection applies whether any such person obtains the gain for himself or for any other person.
- (3) Where this section applies, the whole of any such gain shall for all the purposes of the Tax Acts be treated—
- (a) as being income which arises when the gain is realised, and which constitutes profits or gains chargeable to tax under Case VI of Schedule D for the chargeable period in which the gain is realised, and
  - (b) subject to the following provisions of this section, as being income of the person by whom the gain is realised.
- (4) For the purposes of this section land is disposed of if, by any one or more transactions, or by any arrangement or scheme, whether concerning the land or property deriving its value from the land, the property in the land, or control over the land, is effectually disposed of, and references in subsection (2) above to the acquisition or development of property with the sole or main object of realising the gain from disposing of the land shall be construed accordingly.
- (5) For the said purposes—
- (a) where, whether by a premature sale or otherwise, a person directly or indirectly transmits the opportunity of making a gain to another person, that other person's gain is obtained for him by the first-mentioned person, and
  - (b) any number of transactions may be regarded as constituting a single arrangement or scheme if a common purpose can be discerned in them, or if there is other sufficient evidence of a common purpose.
- (6) For the purposes of this section such method of computing a gain shall be adopted as is just and reasonable in the circumstances, taking into account the value of what is obtained for disposing of the land, and allowing only such expenses as are attributable to the land disposed of, and in applying this subsection—
- (a) where a freehold is acquired and the reversion is retained on disposal, account may be taken of the way in which the profits or gains under Case I of Schedule D of a person dealing in land are computed in such a case, and
  - (b) account may be taken of the adjustments to be made in computing such profits or gains under subsections (2), (3) and (4) of section 142 of this Act (allowance for tax on premiums on leases).

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In the application of this subsection to Scotland, " freehold " means the estate or interest of the proprietor of the *dominium utile* or, in the case of property other than feudal property, of the owner, and " reversion " means the interest of the landlord in property subject to a lease.

- (7) Subsection (2)(c) of this section shall not apply to so much of any gain as is fairly attributable to the period, if any, before the intention to develop the land was formed, and which would not fall under paragraph (a) or paragraph (b) of that subsection; and in applying this subsection account shall be taken of the treatment under Case I of Schedule D of a person who appropriates land as trading stock.
- (8) If all or any part of the gain accruing to any person is derived from value, or an opportunity of realising a gain, provided directly or indirectly by some other person, whether or not put at the disposal of the first-mentioned person, subsection (3)(b) of this section shall apply to the gain, or that part of it, with the substitution of that other person for the person by whom the gain was realised.
- (9) This section shall not apply to a gain accruing to an individual which by virtue of section 29 of the Finance Act 1965 (private residences) is exempt from capital gains tax, or which would be so exempt but for the provisions of paragraph 2 of Schedule 12 to the Finance Act 1968 (residence acquired partly with a view to making a gain).
- (10) Where there is a disposal of shares in—
- (a) a company which holds land as trading stock, or
  - (b) a company which owns directly or indirectly 90 per cent. or more of the ordinary share capital of another company which holds land as trading stock,
- and all the land so held is disposed of in the normal course of its trade by the company which held it, and so as to procure that all opportunity of profit in respect of the land arises to that company, then this section shall not by virtue of subsection (2)(i) apply to any gain to the holder of shares as being a gain on property deriving value from that land (but without prejudice to any liability under paragraph (ii) of the said subsection (2)).
- (11) Where a person who considers that paragraph (a) or paragraph (c) of subsection (2) of this section may apply as respects a gain of a capital nature which that person has obtained from the disposal of land, or which he would obtain from a proposed disposal of land, supplies to the inspector to whom he makes his return of income written particulars showing how the gain has arisen or would arise—
- (a) the inspector shall, within thirty days from his receipt of the particulars, notify that person whether or not he is satisfied that, in the circumstances as described in the particulars, the gain will not, or would not, be chargeable to tax on that person under this section, and
  - (b) if the inspector notifies that person that he is so satisfied the gain shall not be chargeable on that person under this section:

Provided that if the particulars given under this section with respect to the gain are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the inspector, any notification given by the inspector under this subsection shall be void.

- (12) In this section—
- (a) references to the land include references to all or any part of the land, and " land " includes buildings, and any estate or interest in land or buildings;

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- (b) references to property deriving its value from land include—
  - (i) any shareholding in a company, or any partnership interest, or any interest in settled property, deriving its value directly or indirectly from land, and
  - (ii) any option, consent or embargo affecting the disposition of land,and for the purposes of this section any question whether a person is connected with another shall be determined in accordance with section 533 of this Act.
- (13) This section shall apply to all persons, whether resident in the United Kingdom or not, if all or any part of the land in question is situated in the United Kingdom.
- (14) This section shall not apply to any gain realised before 15th April 1969.

#### **489 Sale of income and land transactions (sections 487 and 488): supplemental**

- (1) This section has effect to supplement sections 487 and 488 above (in this section called " the principal sections ").
- (2) In applying the principal sections and this section account shall be taken of any method, however indirect, by which—
  - (a) any property or right is transferred or transmitted, or
  - (b) the value of any property or right is enhanced or diminished,and accordingly the occasion of the transfer or transmission of any property or right, however indirect, and the occasion when the value of any property or right is enhanced, may be an occasion when, under the principal sections, tax becomes chargeable.
- (3) Subsection (2) above applies in particular—
  - (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration, and
  - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning share capital or other rights in a company or any partnership or interest in settled property, and
  - (c) to the creation of any option or consent or embargo affecting the disposition of any property or right, and to the consideration given for the option, or for the giving of the consent or the release of the embargo, and
  - (d) to the disposal of any property or right on the winding up, dissolution or termination of any company, partnership or trust.
- (4) In ascertaining for the said purposes the intentions of any person, the objects and powers of any company, partners or trustees, as set out in any memorandum, articles of association or other document, shall not be conclusive.
- (5) In order to ascertain whether and to what extent the value of any property or right is derived from any other property or right, value may be traced through any number of companies, partnerships and trusts, and the property held by any company, partnership or trust shall be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.
- (6) In applying the principal sections and this section—
  - (a) any expenditure or receipt or consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances,
  - (b) all such valuations shall be made as are appropriate to give effect to the principal sections.

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- (7) For the purposes of the principal sections and this section (and in particular for the purpose of the reference in section 487 above to an individual putting some other person in a position to enjoy income or receipts) partners, or the trustees of settled property, or personal representatives, may be regarded as persons distinct from the individuals or other persons who are for the time being partners or trustees or personal representatives
- (8) Where a person is assessed to tax under either of the principal sections, with this section, in respect of consideration receivable by another person—
- (a) he shall be entitled to recover from that other person any part of that tax which he has paid, and
  - (b) if any part of that tax remains unpaid at the expiration of six months from the date when it became due and payable, it shall be recoverable from that other person as though he were the person assessed, but without prejudice to the right to recover it from the person actually assessed,
- and for the purposes of paragraph (a) above the Board or an inspector shall on request furnish a certificate specifying the amount of income in respect of which tax has been paid, and the amount of tax so paid; and the certificate shall be conclusive evidence of any facts stated therein.
- For the purposes of this subsection any income which a person is treated as having by virtue of the principal sections shall, subject to section 529 of this Act, be treated as the highest part of his income.
- (9) If it appears to the Board that any person entitled to any consideration or other amount taxable under the principal sections is not resident in the United Kingdom, the Board may direct that section 53 of this Act (payments not out of profits or gains brought into charge to income tax) shall apply to any payment forming part of that amount as if it were an annual payment charged with tax under Case III of Schedule D, but without prejudice to the final determination of the liability of that person, including any liability under subsection (8)(b) above.
- (10) The principal sections have effect subject to Part XVI of this Act and to any other provision of the Tax Acts deeming income to belong to a particular person.
- (11) Where under section 488(2)(c) above any person is charged to tax on the realisation of a gain, and the computation of the gain proceeded on the footing that the land or some other property was appropriated at any time as trading stock, that land or other property shall be treated on that footing also for the purposes of paragraph 1 of Schedule 7 to the Finance Act 1965 and paragraph 12 of Schedule 14 to the Finance Act 1967 (capital gains: property becoming or ceasing to be stock in trade.)
- (12) Where under section 487(1)(b) or 488(8) above the person charged to tax is a person other than the person for whom the capital amount was obtained or the person by whom the gain was realised, and the tax has been paid, then, for the purposes of paragraphs 2 and 5 of Schedule 6 to the Finance Act 1965 (profits taxable as income to be excluded from tax on capital gains), the person for whom the capital amount was obtained or the person by whom the gain was realised shall be regarded as having been charged to that tax.
- (13) For the purposes of the principal sections and this section—
- " capital amount " means any amount, in money or money's worth, which, apart from the principal sections, does not fall to be included in any

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computation of income for purposes of the Tax Acts, and other expressions including the word "capital" shall be construed accordingly,

"company" includes any body corporate,

"share" includes stock,

and for the said purposes any amount in money or money's worth shall not be regarded as having become receivable by some person until that person can effectively enjoy or dispose of it.

#### **490 Sale of income and land transactions (sections 487 and 488): power to obtain information**

- (1) The Board or an inspector may by notice in writing require any person to furnish them within such time as the Board or the inspector may direct (not being less than thirty days) with such particulars as the Board or the inspector think necessary for the purposes of sections 487 and 488 above.
- (2) The particulars which a person must furnish under this section, if he is required by a notice from the Board or the inspector so to do, include particulars—
  - (a) as to transactions or arrangements with respect to which he is or was acting on behalf of others, and
  - (b) as to transactions or arrangements which in the opinion of the Board or the inspector should properly be investigated for the purposes of the said sections notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under those sections, and
  - (c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions or arrangements of a description specified in the notice.
- (3) Notwithstanding anything in subsection (2) above, a solicitor shall not be deemed for the purposes of subsection (2)(c) above to have taken part in any transaction or arrangements by reason only that he has given professional advice to a client in connection with the transaction or arrangements, and shall not, in relation to anything done by him on behalf of a client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of his client.

#### **491 Land sold and leased back: limitation on tax reliefs**

- (1) If land or any estate or interest in land is transferred from one person to another and—
  - (a) as a result of a lease of the land or any part of the land granted at that time or subsequently by the transferee to the transferor, or
  - (b) as a result of any other transaction or series of transactions affecting the land or any estate or interest in the land,the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to pay any rent under a lease of the land or any part of the land, this section shall apply to all rent due under the lease from the transferor, or from any person who is associated with the transferor.
- (2) If land or any estate or interest in land is transferred from one person to another, and, as a result of any transaction or series of transactions affecting the land or any estate or interest in the land, the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to make any payment (other

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than rent under a lease) for which tax relief of any of the kinds listed in subsection (13) below is available, being a payment by way of rentcharge on the land or any part of the land or a payment in any other way connected with the land, this section shall apply to all such payments under the rentcharge or other transaction due from the transferor, or from any person who is associated with the transferor.

(3) The references in subsections (1) and (2) of this section to the transfer of an estate or interest in land include references to—

- (a) the granting of a lease or any other transaction involving the creation of a new estate or interest in the land,
- (b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease, and
- (c) any transaction or series of transactions affecting land, or an estate or interest in land, such that some person is the owner, or one of the owners, before and after the carrying out of the transaction or transactions, but another person becomes or ceases to become one of the owners,

and in relation to any such transaction or series of transactions any person who is an owner before the carrying out of the transaction or transactions, and is not the sole owner thereafter, shall be regarded for the purposes of this section as a transferor.

(4) A deduction by way of tax relief which is one of the kinds to which this section applies, being a deduction in respect of rent or of any other payment to which this section applies, shall not exceed the commercial rent for the period for which the rent or other payment is made of the land in respect of which that payment is made.

(5) If under subsection (4) of this section part of a payment which would otherwise be allowable as a deduction by way of tax relief of one of the kinds to which this section applies is not so allowable, and one or more subsequent payments are made by the transferor, or a person who is associated with the transferor, under the lease or other transaction, that part of the first-mentioned payment may be carried forward and treated for the purposes of any such deduction by way of tax relief as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.

(6) For the purposes of subsection (4) of this section—

- (a) if more than one payment is made for the same period the payments shall be taken together,
- (b) if payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together,
- (c) the preceding references to payments include references to parts of payments which under subsection (5) of this section are treated as if made at a time subsequent to that at which they were made, and to the extent that a part of a payment so carried forward under subsection (5) of this section is not so allowable as a deduction by way of tax relief, it may again be carried forward under subsection (5) of this section,
- (d) so much of any payment as is in respect of services or the use of assets or rates usually borne by the tenant shall be excluded, and in determining the amount to be so excluded provisions in any lease or agreement fixing the payments or parts of payments which are in respect of services or the use of assets may be overridden.



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- (7) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment was made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).
- (8) For the purpose of making a comparison under subsection (4) of this section between a payment consisting of rent under a lease (in this subsection referred to as " the actual lease "), or such payments taken together, and the commercial rent of the land, " commercial rent" shall mean the rent which might be expected to be paid under a lease of the land negotiated in the open market at the time when the actual lease was created, being a lease which is of the same duration as the actual lease, which is, as respects liability for maintenance and repairs, subject to the terms and conditions of the actual lease and which provides for rent payable at uniform intervals and—
- (a) at a uniform rate, or
  - (b) if the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for any year is never less than the amount payable for any previous year), a rent which progresses by gradations proportionate to those provided by the actual lease. ,
- (9) For the purpose of making a comparison under subsection (4) of this section between a payment which does not consist of rent under a lease (or such a payment taken together with other payments) and the commercial rent of the land, " commercial rent" shall mean the rent which might be expected to be paid under a tenant's repairing lease negotiated in the open market at the time when the transaction was effected under which the payment or payments became due, being—
- (a) where the period over which payments are to be made under that transaction is not less than 200 years, or the obligation to make such payments is perpetual, a lease for 200 years, and
  - (b) where that period is less than 200 years, a lease which is of the same duration as that period.
- (10) In this section references to rent under a lease include references to rent which the person entitled to the lease is under subsection (2) or (3) of section 83, or under section 134, of this Act (allowance to person paying a premium taxed as income) treated, for any purpose, as paying in respect of land comprised in the lease, and such rent shall be (treated for the purposes of this section as having been paid from day to day as it has become due.
- (11) For the purposes of this section the following persons shall be deemed to be associated with one another, that is—
- (a) the transferor in any such transaction as is described in subsection (1) or subsection (2) of this section, and the transferor in another such transaction, if those two persons are acting in concert, or if the two transactions are in any way reciprocal, and any person who is an associate of either of those associated transferors ;
  - (b) any two or more bodies corporate participating in, or incorporated for the purposes of, a scheme for the reconstruction of any body or bodies corporate or for the amalgamation of any two or more bodies corporate;
  - (c) any persons who are associates as defined in section 494(10) below.
- (12) In this section—

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- (a) " asset " means any description of property or rights other than land or an interest in land,
  - (b) " lease " includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined ; and, in relation to such land, expressions in this section relating to interests in land and their disposition shall be construed accordingly,
  - (c) " rent " includes any payment made under a lease as so defined,
  - (d) " tenant's repairing lease " means a lease where the lessee is under an obligation to maintain and repair the whole, or substantially the whole, of the premises comprised in the lease.
- (13) The kinds of deductions by way of tax relief to which this section applies are as follows—
- (a) a deduction in computing profits or gains chargeable under Schedule A allowable by virtue of sections 71 to 77 of, and Schedule 2 to, this Act,
  - (b) a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax,
  - (c) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section 176 or section 179 of this Act (Case VI losses),
  - (d) allowance of a payment under section 304 or 305 of this Act (management expenses),
  - (e) a deduction from emoluments to be assessed under Schedule E made in pursuance of section 189(1) of this Act (necessary expenses), or allowable in computing losses in an employment for tax purposes,
  - (f) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.
- (14) This section shall not apply if the transfer described in subsection (1) or subsection (2) above was on or before 14th April 1964.

#### **492 Assets leased to traders and others**

- (1) Subject to section 493 below, where—
- (a) a deduction by way of tax relief which is of one of the kinds listed in subsection (3) below is allowable in respect of a payment made under a lease of an asset of any description, and
  - (b) before, at or after the time when the payment is made, either—
    - (i) the person who made the payment has obtained or obtains a capital sum in respect of the lessee's interest in the lease, or
    - (ii) the lessor's interest in the lease, or any other interest in the asset, has belonged to an associate of the person who made the payment, and that associate has obtained a capital sum in respect of that interest,
- the person obtaining that sum shall be charged under Case VI of Schedule D for the chargeable period in which the sum is obtained with tax on an amount equal to the amount of the payment in respect of which tax relief is so allowed:

Provided that the total amount on which he is assessed by reference to the capital sum shall not exceed the amount of the capital sum.

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- (2) Subsection (1) above shall not apply to payments under a lease created on or before 14th April 1964.
- (3) The kinds of deductions by way of tax relief to which subsection (1) above applies are as follows—
- (a) a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax,
  - (b) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section 176 or section 179 of this Act (Case VI losses),
  - (c) allowance of a payment under section 304 or 305 of this Act (management expenses),
  - (d) a deduction from emoluments to be assessed under Schedule E made in pursuance of section 189(1) of this Act (necessary expenses), or allowable in computing losses in an employment for tax purposes,
  - (e) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.
- (4) Where the deduction by way of tax relief mentioned in subsection (1)(a) of this section is a deduction in computing, for income tax purposes, profits or gains or losses of a trade, profession or vocation, or arising from woodlands, and any part of the payments made under the lease by the person obtaining the capital sum is a payment in respect of which a deduction is not allowed for the reason that the whole or any part of the period in which the payment would fall to be allowed is not a period on the profits or gains of which income tax falls to be computed in respect of the trade, profession or vocation, for the reference in the proviso to the said subsection (1) to the amount of the capital sum there shall be substituted a reference to that amount after deducting the amount of the payment in respect of which a deduction is not allowed for that reason.
- (5) So far as in respect of a capital sum any part of a payment allowed as a deduction by way of tax relief of a kind to which this section applies is taken into account in making an assessment under subsection (1) of this section, that part of the payment shall be left out of account in determining whether any and if so what amount should be assessed by reference to any other capital sum ; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.
- (6) In this section and sections 493, 494 and 495 below—
- " asset " means any description of property or rights other than land or an interest in land,
  - " capital sum " means any sum of money, or any money's worth, except so far as it or any part of it is to be treated for the purposes of tax as a receipt to be taken into account in computing the profits or gains or losses of a trade, profession or vocation, or profits or gains or losses arising from woodlands, or is, apart from this section, chargeable under Case VI of Schedule D, and
  - " lease ", in relation to an asset, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset, and includes, in particular, any agreement or arrangement all or any of the payments under which represent instalments of, or payments towards, a purchase price.
- (7) There shall be made all such adjustments of tax, whether by way of making assessments or by repayment of tax, as are required after the making of any such

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payment as is described in subsection (1) of this section to give effect to the charge under that subsection in respect of a sum obtained before the making of the payment.

- (8) Notwithstanding anything in the Tax Acts limiting the time within which an assessment may be made or a claim for relief may be admitted any such adjustment may be made, by making an assessment or otherwise, at any time not more than six years from the end of the chargeable period in which the payment was made.

### **493 Leased assets: special cases**

- (1) This section shall apply, and section 492 above shall not apply, to payments—
- (a) which are allowable by way of deductions in computing the profits or gains or losses of a trade, and
  - (b) which are made under a lease of an asset which at any time before the creation of the lease was used for the purposes—
    - (i) of that trade, or
    - (ii) of another trade carried on by the person who at that time or later was carrying on the first mentioned trade,
 and when so used, was owned by the person carrying on the trade in which it was being used.
- (2) Subject to this section, the deduction allowable in computing the profits or gains or losses of the trade for the purposes of tax as respects any such payment shall not exceed the commercial rent of the asset for the period for which the payment was made.
- (3) If under subsection (2) of this section part of a payment which would otherwise be allowable as a deduction is not so allowable, and one or more subsequent payments are made by the same person under the same lease, that part of the first-mentioned payment may be carried forward and treated for the purposes of computing the profits or gains or losses of the trade for the purposes of tax as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.
- (4) For the purposes of subsection (2) of this section—
- (a) if more than one payment is made for the same period the payments shall be taken together,
  - (b) if payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together,
  - (c) the preceding references to payments include references to parts of payments which under subsection (3) of this section are treated as if made at a time subsequent to that at which they were made,
- and to the extent that a part of a payment carried forward under subsection (3) of this section is not allowable as a deduction it may again be carried forward under the said subsection (3).
- (5) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment is made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).

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(6) For the purpose of making a comparison under subsection (2) of this section between a payment, or payments taken together, and the commercial rent of the asset, "commercial rent" shall mean the rent which might at the relevant time be expected to be paid under a lease of the asset for the remainder of the anticipated normal working life of the asset, being a rent payable at uniform intervals and at a uniform rate which would afford a reasonable return for its market value at the relevant time, having regard to the terms and conditions of the lease, and in this subsection—

" anticipated normal working life " has, for any asset, the meaning given, for machinery and plant, by section 20(7) of the Capital Allowances Act 1968, and

" the relevant time " means the time when the lease was created under which the payment was made with which the commercial rent is to be compared:

Provided that if the asset is used at the same time partly for the purposes of the trade and partly for other purposes the commercial rent as denned in this subsection shall be determined by reference to what would be paid for such a partial use of the asset.

(7) This section shall not apply in relation to payments made under a lease created on or before 14th April 1964.

(8) In this section references to the person carrying on a trade are references to the person carrying on the trade for the time being, and where at any time a person succeeds to a trade which until that time was carried on by another person, and by virtue of section 154 or section 251(1) of this Act the trade is to be treated as discontinued, the trade shall, nonetheless, be treated as the same trade for the purposes of this section.

(9) In this section references to a trade include references, to a profession or vocation.

#### **494 Leased assets: supplemental**

(1) References in section 492 above (in this section called " the principal section ") to a sum obtained in respect of the lessee's interest in a lease of an asset, or in respect of any other interest in an asset include—

(a) in the case of a lessee's interest, references to sums representing the consideration in money or money's worth obtained on a surrender of the rights to the lessor, or on an assignment of the lease, or on creating a sublease or any other interest out of the lease, and

(b) references to any insurance moneys payable in respect of the asset, so far as payable to the owner of the interest in the asset.

(2) Such references also include references to sums representing money or money's worth obtained by the person entitled to the interest by a transaction or series of transactions disposing of the asset, or of an interest in the asset, and in particular transactions which comprise arrangements under which the rights of the lessee under a lease of the asset are merged in any way with the rights of the lessor, or with any other rights as respects the asset, so far as the money or money's worth so obtained is attributable to the rights of the lessee under the lease.

(3) References in the principal section to sums obtained in respect of any interest in an asset include references to money or money's worth so obtained in any transaction (including a transaction of the kind described in the preceding provisions of this section) by way of consideration received by a person who is an associate of the person entitled to the interest in the asset.

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- (4) If an interest in the asset is disposed of by any person to a person who is his associate, the person disposing of the interest shall (unless in fact he obtains a greater sum) be treated for the purposes of the principal section as having obtained in respect of the interest—
- (a) the value of the interest in the open market, or
  - (b) the value of the interest to the person to whom it is, in effect, transferred, whichever is the greater.
- (5) For the purposes of subsections (3) and (4) above a disposition may be direct or indirect and may be effected by any such transaction as is described in subsection (2) above.
- (6) For the purposes of the principal section, this section and section 495 below, any sum obtained by persons carrying on a trade, profession or vocation in partnership in respect of an interest in an asset which is and continues to be used for the purposes of the trade, profession or vocation shall be regarded as apportionable between them in the shares in which they are then entitled to the profits of the trade, profession or vocation.
- (7) Subject to subsection (6) above, for those purposes a sum obtained by persons jointly entitled to an interest in an asset shall be apportionable according to their respective interests in the rights.
- (8) For the said purposes, any payment in respect of which a deduction is allowable by way of tax relief which is made by persons carrying on a trade, profession or vocation in partnership shall be apportioned in such manner as may be just.
- (9) Where under this section any sum or payment falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more persons, any question which arises as to the manner in which the sum or payment is to be apportioned shall be determined, for the purposes of the tax of all those persons—
- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners, unless all those persons agree that it shall be determined by the Special Commissioners,
  - (b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct, unless all those persons agree that it shall be determined by the Special Commissioners, and
  - (c) in any other case, by the Special Commissioners,
- and any such Commissioners shall determine the question in like manner as if it were an appeal :
- Provided that all the said persons shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.
- (10) For the purposes of this section and in construing the expressions " associate " and " associated " in the principal section and this section, the following persons shall be deemed to be associated with each other, that is to say.—
- (a) any individual and that individual's husband or wife, and any relative, or husband or wife of a relative, of that individual or of that individual's husband or wife ("relative" meaning for this purpose brother, sister, ancestor or lineal descendant);

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- (b) any person in his capacity of trustee of a settlement and any individual who in relation to the settlement is a settlor, and any person associated with that individual ("settlement" and "settlor" having for this purpose the meanings assigned to them by section 444(2) of this Act);
- (c) any person and a body of persons of which that person, or persons associated with him, or that person and persons associated with him, has or have control;
- (d) any two or more bodies of persons associated with the same person by virtue of paragraph (c) above;
- (e) in relation to a disposal by joint owners, the joint owners and any person associated with any of them.

In this subsection " body of persons " includes a partnership and "control" has the meaning assigned to it by section 534 of this Act.

#### **495 Leased assets subject to hire-purchase agreements**

- (1) In the application of section 492 above (in this section called "the principal section") to a lease which constitutes a hire purchase agreement, for the reference in the proviso to subsection (1) of that section to the amount of the capital sum there shall, where that capital sum was obtained in respect of the lessee's interest in the lease constituting the hire-purchase agreement, be substituted references to the amount of the capital sum (adjusted, if necessary, under subsection (4) of the principal section) after deducting any capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee's interest and which is, for capital allowance purposes, still unallowed at the time when the assignment or other transaction takes place in respect of which the capital sum is obtained.
- (2) In subsection (1) above " capital expenditure incurred by the person obtaining the capital sum in providing the lessee's interest" means—
  - (a) so much of any payment made under the lease by the person obtaining the capital sum (or, where the capital sum was obtained by the personal representatives of a deceased person, so made by that deceased person) as is not a payment in respect of which a deduction is allowable by way of tax relief which is one of the kinds listed in subsection (3) of the principal section, plus
  - (b) where the lessee's interest was assigned to the person obtaining the capital sum, any capital payment made by that person as consideration for the assignment.
- (3) In subsection (1) above the reference to the amount of capital expenditure which is, for capital allowance purposes, still unallowed at the said time shall be construed as a reference to the amount of the capital expenditure after deducting any amount which, under section 41 of the Capital Allowances Act 1968 (definition of "expenditure unallowed " for purposes of capital allowances for machinery and plant), would be deductible in ascertaining as at that time the amount still unallowed of expenditure incurred by the said person in providing the leased asset.
- (4) If the amount to be deducted in pursuance of subsection (1) above exceeds the amount of the capital sum from which it is to be deducted, no charge shall arise under subsection (1) of the principal section in respect of the capital sum.
- (5) If the capital sum represents the consideration for part only of the lessee's interest in the lease which constitutes a hire-purchase agreement, the amount to be deducted under subsection (1) above shall be such proportion of the capital expenditure which is still

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unallowed as is reasonable having regard to the degree to which the capital expenditure has contributed to the value of what is disposed of in return for the capital sum.

- (6) If more than one capital sum is, or is to be regarded as, obtained by the same person in respect of the lessee's interest in the lease which constitutes a hire-purchase agreement, then, so far as in respect of one of those capital sums any deduction is made in respect of capital expenditure in pursuance of subsection (1) above that capital expenditure shall be left out of account in applying subsections (1) and (4) above to any other such capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.
- (7) In this section " hire-purchase agreement" has the meaning given by section 1 of the Hire-Purchase Act 1965.

In Scotland for the preceding definition there shall be substituted the following definition—

“" hire-purchase agreement " means any contract, in whatsoever terms it may be expressed, whereby goods are taken on hire by one person from another person in consideration of periodical payments to be made by the first mentioned person to the other person, with an option to the first mentioned person to become the buyer of the goods.”

#### **496 Transactions associated with loans or credit**

- (1) This section applies as respects any transaction effected with reference to the lending of money or the giving of credit, or the varying of the terms on which money is lent or credit is given, or which is effected with a view to enabling or facilitating any such arrangement concerning the lending of money or the giving of credit.

This subsection has effect whether the transaction is effected between the lender or creditor and the borrower or debtor, or between either of them and a person connected with the other or between a person connected with one and a person connected with the other.

- (2) If the transaction provides for the payment of any annuity or other annual payment, not being interest, being a payment chargeable to tax under Case III of Schedule D, the payment shall be treated for all the purposes of the Tax Acts as if it were a payment of annual interest.
- (3) If the transaction is one by which the owner of any securities or other property carrying a right to income agrees to sell or transfer the property, and by the same or any collateral agreement—
- (a) the purchaser or transferee, or a person connected with him, agrees that at a later date he will sell or transfer the same or any other property to the first-mentioned person, or a person connected with him, or
  - (b) the first-mentioned person, or a person connected with him, acquires an option which he subsequently exercises, to buy or acquire the same or any other property from the said purchaser or transferee or a person connected with him,
- then, without prejudice to the liability of any other person, the first-mentioned person shall be chargeable to tax under Case VI of Schedule D on an amount equal to any income which arises from the first-mentioned property at any time before the repayment of the loan or the termination of the credit.



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- (4) If under the transaction a person assigns, surrenders or otherwise agrees to waive or forgo income arising from any property (without a sale or transfer of the property) then, without prejudice to the liability of any other person, he shall be chargeable to tax under Case VI of Schedule D on a sum equal to the amount of income assigned, surrendered, waived or forgone.
- (5) If credit is given for the purchase price of any property, and the rights attaching to the property are such that, during the subsistence of the debt, the purchaser's rights to income from the property are suspended or restricted, he shall be treated for the purposes of subsection (4) above as if he had surrendered a right to income of an amount equivalent to the income which he has in effect forgone by obtaining the credit.
- (6) The amount of any income payable subject to deduction of income tax at the standard rate shall be taken for the purposes of subsection (4) above as the amount before deduction of that tax.
- (7) References in this section to connected persons shall be construed in accordance with section 533 of this Act.