



# Finance Act 2009

## 2009 CHAPTER 10

### PART 2

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

##### *Miscellaneous anti-avoidance provisions*

#### **71 Taxable benefit of living accommodation: lease premiums**

- (1) Chapter 5 of Part 3 of ITEPA 2003 (taxable benefits: living accommodation) is amended as follows.
- (2) In section 105 (cash equivalent: cost of accommodation not over £75,000)—
  - (a) in subsection (3), after “is” insert “(subject to subsections (4) and (4A))”, and
  - (b) for subsection (4) substitute—
    - “(4) Subsection (4A) applies where—
      - (a) a rental amount is payable by the person (“P”) at whose cost the accommodation is provided in respect of the whole or part of the taxable period (“the relevant period”), and
      - (b) the amount so payable is payable at an annual rate greater than the annual value.
    - (4A) Where this subsection applies—
      - (a) subsection (3) does not apply to the relevant period, and
      - (b) instead the “rental value of the accommodation” for the relevant period is the rental amount payable by P in respect of the relevant period.
    - (4B) A reference in subsection (4) or (4A) to a rental amount payable by P in respect of the relevant period is to the sum of—
      - (a) any rent for the period payable by P, and
      - (b) any amount attributed to the period in respect of a lease premium (see sections 105A and 105B).”

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(3) After that section insert—

**“105A Lease premiums**

- (1) For the purposes of section 105(4B)(b) an amount is attributed to the relevant period “in respect of a lease premium” if—
- (a) the property consists of premises, or a part of premises, that are subject to a lease,
  - (b) the premises are not mainly used by P for a purpose other than the provision of living accommodation to which this Chapter applies,
  - (c) the lease is for a term of 10 years or less, and
  - (d) the net amount payable by P in relation to the lease by way of lease premium is greater than zero.
- (2) The amount so attributed is—

$$\frac{A}{B} \times C$$

where—

A is the relevant period (in days),

B is the term of the lease (in days), and

C is the net amount payable by P in relation to the lease by way of lease premium.

- (3) For provision about the application of this section in relation to certain leases with break clauses, see section 105B.
- (4) For the purposes of this section the net amount payable by P in relation to a lease by way of lease premium is—
- (a) the total amount (if any) that has been paid, or is or will become payable, by P in relation to the lease by way of lease premium, less
  - (b) any amount within paragraph (a) that has been repaid or is or will become repayable.
- (5) In this section and section 105B “lease premium” means any premium payable—
- (a) under a lease, or
  - (b) otherwise under the terms on which a lease is granted.
- (6) In the application of this section to Scotland “premium” includes a grassum.

**105B Lease premiums in the case of leases with break clauses**

- (1) This section applies to a lease (“the original lease”) that contains one or more relevant break clauses.
- (2) For the purposes of this section—
- (a) “break clause” means a provision of a lease that gives a person a right to terminate it so that its term is shorter than it otherwise would be, and

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- (b) a break clause contained in the original lease is “relevant” if the right to terminate the lease that it confers is capable of being exercised in such a way that the term of the original lease is 10 years or less.
- (3) For the purposes of section 105A—
- (a) the term of the original lease, and
- (b) the net amount payable by P in relation to the lease by way of lease premium,
- are to be determined on the assumption that any relevant break clause is exercised in such a way that the term of the lease is as short as possible.
- (4) If a relevant break clause is not in fact exercised in such a way that the term of the original lease is as short as possible, the parties to the lease are treated for the purposes of section 105A as if they were parties to another lease (a “notional lease”) the term of which—
- (a) begins immediately after the time at which the term of the original lease would have ended, if that break clause had been so exercised, and
- (b) ends at the time mentioned in subsection (5).
- (5) The term of a notional lease ends—
- (a) at the time the term of the original lease would end, on the assumption that any relevant break clause that is exercisable only after the beginning of the term of the notional lease is exercised in such a way that the term of the original lease is as short as possible, or
- (b) if earlier, the tenth anniversary of the beginning of the term of the original lease.
- (6) For the purposes of section 105A the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (a) of subsection (5)—
- (a) the net amount that would be payable by P in relation to the original lease by way of lease premium on the assumption mentioned in that paragraph, less
- (b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).
- (7) For the purposes of section 105A the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (b) of subsection (5), the relevant proportion of—
- (a) the net amount that would be payable by P in relation to the original lease by way of lease premium, on the assumption that no break clause is exercised, less
- (b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).
- (8) In subsection (7) “the relevant proportion” means—

$$\frac{D}{E}$$

where—

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D is the term of the notional lease (in days), and  
E is the sum of—

- (a) the term of the notional lease (in days), and
- (b) the number of days by which the term of the original lease would exceed 10 years, on the assumption that no break clause is exercised.”

- (4) The amendments made by this section have effect in relation to—
  - (a) any lease entered into on or after 22 April 2009, and
  - (b) subject to subsection (5), any lease entered into before that date the term of which is extended on or after that date.
- (5) In relation to a lease of the kind mentioned in subsection (4)(b) the amendments made by this section have effect—
  - (a) as if the additional term of the lease created by the extension were the whole of the term of the lease, and
  - (b) ignoring any lease premium payable in respect of the unextended term of the lease.
- (6) In this section “lease premium” has the same meaning as in sections 105A and 105B of ITEPA 2003.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 102(4)(za) inserted by [2010 c. 33 Sch. 9 para. 3\(3\)](#)
- Sch. 53 para. 2A-2D and cross-heading inserted by [2010 c. 33 Sch. 9 para. 7](#)
- Sch. 53 para. 6A and cross-heading inserted by [2010 c. 33 Sch. 9 para. 8](#)
- Sch. 53 para. 11A11B and cross-heading inserted by [2010 c. 33 Sch. 9 para. 17](#)
- Sch. 53 para. 14A and cross-heading inserted by [2010 c. 33 Sch. 9 para. 18](#)
- Sch. 54 para. 9B9C and cross-heading inserted by [2010 c. 33 Sch. 9 para. 11](#) (Sch. 54 para. 9B is amended before it comes into force by [2016 c. 24, Sch. 1 para. 66\(5\)](#))
- Sch. 54 para. 12A12B and cross-heading inserted by [2010 c. 33 Sch. 9 para. 19](#)
- Sch. 54 Pt. A1 inserted by [2010 c. 33 Sch. 9 para. 10](#) (Sch. 9 para. 10 is amended before it comes into force by [2017 c. 32, Sch. 4 para. 182](#))
- Sch. 55 para. 6(3A)(za) inserted by [2015 c. 11 Sch. 20 para. 15\(2\)\(a\)](#)
- Sch. 55 para. 6(4A)(za) inserted by [2015 c. 11 Sch. 20 para. 15\(3\)\(a\)](#)
- Sch. 55 para. 17(4)(ba) inserted by [2015 c. 11 Sch. 20 para. 19](#)
- Sch. 56 para. 3(1)(d) omitted by [2021 c. 26 Sch. 27 para. 40\(4\)\(c\)](#)