

# Leases

## Part 19-02-21

This document should be read in conjunction with section 566 and Schedule 14 of the Taxes Consolidation Act 1997

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## Executive summary

A lease is a particular form of wasting asset which is subject to special rules. For capital gains tax purposes, a lease is treated as a wasting asset only when it has 50 years or less to run.

The allowable expenditure on the grant of a lease is deemed to "waste" not on the straight line basis but by reference to a table which may be represented by a curve which falls more steeply as the lease approaches its termination. This reflects the movement of lease values in practice.

The grant of a lease at a premium is a part disposal of the asset (i.e. a part disposal of the freehold or the head lease). The basic principle of apportionment is applicable, but because of the prior charge under Schedule D, the effect of capital allowances and the many and various terms on which leases may be granted and their terms varied, detailed rules relating to the computation of capital gains tax are provided.

### 21.1 Schedule 14 and land

**Schedule 14** provides rules for the computation of capital gains and losses accruing on the granting or assignment of leases. The rules are expressed generally in relation to leases of land but **Paragraph 1** adapts certain of them to leases of property other than land. They apply to property outside the State as well as within it.

The word "land" includes "tenements, hereditaments, houses and buildings, land covered by water and any estate, right or interest in or over land" (**Part 1 of the Schedule to the Interpretation Act 2005.**)

### 21.2 Meaning of a lease

A lease (sometimes known as a "demise") is a document creating an interest in land for a fixed period of certain duration, usually in consideration of a rent and sometimes also of a premium. In general, it cannot create a legal estate unless it is made by deed.

For the purposes of Capital Gains Tax the term "lease" is given an extended definition by **section 5(1)**. For the purposes of **Schedule 14** "premium" includes any like sum, whether payable to the immediate or a superior landlord, and any sum (other than rent) paid on or in connection with the granting of a tenancy is presumed to have been paid by way of premium except in so far as other sufficient consideration for the payment is shown to have been given.

Unless the lease contains a covenant to the contrary, a lessee may assign it (i.e., he may transfer his whole interest in the land) or grant an underlease (for a term not exceeding the term of his lease) of the whole or part of the land.

A lease ceases to exist and is merged into the freehold (or head lease) if it expires or is surrendered or if the lessee acquires the freehold (or the head lease) subject to the lease, i.e., the reversion to the freehold or the head lease. As regards -

- (a) mergers of leases into freeholds or head leases, see **Par. 22 and 24**;
- (b) surrenders of leases, see **Par. 23** (payment by landlord) and **Par. 28** (payment by tenant);
- (c) extensions of leases, see **Par. 25**;
- (d) statutorily protected tenancies, see **Par. 41** et seq.

### 21.3 Lease premium

A capital gain or loss may accrue where a freeholder or lessee takes a premium on the grant of a lease or sub-lease or where a lessee assigns his lease. The grant of a lease at a rent which represents the full occupational value of the land without a premium (that is, at a rack-rent) does not amount to a disposal. As regards liability to Income Tax under Schedule D in respect of premiums and amounts deemed to be premiums, see **sections 98, 99** and **100**.

### 21.4 Lease premium and part disposal

Where a premium is taken for a lease of land, the granting of that lease should be treated as a part disposal of the larger interest (i.e., the freehold or the head lease) out of which the lease was granted.

In the application of the part disposal formula the part of the asset which remains undisposed of includes the right to any rents or other payments. Consequently, the denominator of the apportionment formula is the sum of

- (a) the consideration received (i.e., the premium),
- (b) the capital value of the right to receive the rent for the duration of the lease, and
- (c) the capital value (as at the date of disposal) of the reversion of the property at the end of the lease.

## 21.5 The grant of beneficial occupation

The grant of beneficial occupation, for example, where a person permits (without a formal agreement) a relative to reside rent free in a house, should not be regarded as a part disposal of the asset notwithstanding that the occupier may thereby acquire some statutory right.

## 21.6 Leases of land as wasting assets

The value of a lease declines as the term of years for which it is granted runs out. In practice, however a lease of land does not decline significantly in value until it has only about fifty years to run. **Paragraph 2 of Schedule 14**, therefore, states that a lease of land shall not be a wasting asset until its duration does not exceed fifty years.

Further, during the early part of the last fifty years the rate of decline in value is still slow but it accelerates until it becomes rapid in the last few years. For this reason the straight-line method of writing-down which is prescribed for wasting assets in general (see [Tax and Duty Manual Part 19.02.16](#)) is not appropriate to such leases. The paragraph, therefore, provides a formula which results in a curvilinear method of writing-down, the slope of the curve increasing as the lease approaches its termination (**Par. 12**).

## 21.7 Assigned leases and allowable expenditure

Where a lease is assigned, therefore, the allowable expenditure to be deducted from the sum received by the assignor (see **Par. 3**) depends upon the period which the lease still has to run. Where that period is fifty years or more, the whole of the expenditure is allowable with no "wasting asset" exclusion. Where, however, the period is less than fifty years (whether or not the lease was originally granted for a period of fifty years or more), the exclusion is to be calculated by the use of the Table at the end of **Paragraph 2, Schedule 14**. The graph in **Par. 12** is derived from this Table.

## 21.8 Calculation of allowable expenditure

The Table provides the means for calculating the appropriate exclusion and thus the reduced amount of the allowable expenditure. In a case where the only allowable expenditure was that incurred on the grant or acquisition of the lease and the residual value at the end of the lease is estimated at nil the computation of the exclusion on the assignment of the lease may be expressed by the following formula:

$$E = \frac{P(1) - P(3)}{P(1)} \times A(1)$$

In this formula:

P(1) = the percentage derived from the Table in **Paragraph 2 of Schedule 14** for the duration of the lease at the beginning of the period of ownership.

P(3) = the percentage derived from the Table for the duration of the lease at the time of the assignment.

A(1) = the full allowable expenditure incurred on the grant or acquisition of the lease.

E = the "wasting asset" exclusion to be made from A(1).

### Example 1

On 1 July 1980, X is granted a 25 year lease of a shop for a premium of €13,900. The incidental costs of acquisition are €100, giving a total expenditure of €14,000. On 1 July 1995 (i.e., when the lease still has 10 years to run), he assigns the lease for €1,000.

The percentage in the Table appropriate to twenty-five years is 81.1; the percentage appropriate to ten years is 46.7. (These are the points P(1) and (3) on the graph in **Par. 12.**)

Then, by using the formula -

$$E = \frac{81.1 - 46.7}{81.1} \times €14,000 = €5,939$$

If X incurs no expenditure in connection with the disposal, his capital gain is computed as follows:

	€
Amount received on assignment	25,000
Less 14,000 - 5,939 = 8,061 x 2.539 (indexation)	20,467
Chargeable gain	4,533

If the duration of the lease is not an exact number of years, the percentage to be derived from the Table is the percentage for the whole number of years plus one-twelfth of the difference between that and the percentage for the next higher number of years for each odd month, counting an odd fourteen days as one month.

#### Example 2

The facts are the same as in Example 1 except that X assigns the lease on 11 September 1995 (when the lease has nine years, nine months and twenty days to run to 1 July 2005). The percentage for this period is derived from the Table as follows:

Percentage for nine whole years		43.2
Number of complete months	9	
Twenty days counting as one month	1	
Addition for this broken year	10	
10	x	(46.7 - 43.2)
12		= 2.9
		P(3) = 46.1

In this case -

$$E = \frac{81.1 - 46.1}{81.1} \times \text{€}14,000 = \text{€}6,042$$

	€
Amount received on assignment	25,000
Less €14,000 - €6,042 = €7,958 x 2.539 (indexation)	20,206
Chargeable gain	4,794



## 21.09 Enhancement expenditure

Where, after the expenditure on the acquisition of a lease, additional allowable expenditure is incurred, the exclusion of part of the additional expenditure is computed in the same way as the exclusion of part of the original expenditure but by reference to a percentage (P(2)) derived from the Table for the duration of the lease at the time when the additional expenditure was first reflected in the nature of the lease (see [Tax and Duty Manual Part 19.02.10 Par. 1](#)). In relation to such expenditure [A(2)] the formula is as follows:-

$$E = \frac{P(2) - P(3)}{P(2)} \times A(2)$$

### Example 3

The facts are the same as in Example 1 but in addition X has extended the shop at a capital cost of €1,000, the date when this expenditure was first reflected in the nature of the lease being agreed as 1 July 1989, when the lease has sixteen years to run. The percentage in the Table appropriate to sixteen years is 64.1. The exclusion from this expenditure is calculated as follows:-

$$\begin{aligned} E &= \frac{64.1 - 46.7}{64.1} \times \text{€1,000} \\ &= \text{€272} \end{aligned}$$

The further allowable expenditure results in a realised loss as follows:-

	€	€	€	€
Amount received on assignment				25,000
Original expenditure	14,000			
Less exclusion	5,939	8,061 x 2.539 =	20,467	
Subsequent expenditure	<u>1,000</u>			
Less exclusion	272	728 x 1.178 =	858	21,325
Chargeable gain				<u>3,675</u>

## 21.10 New lease subject to a sub-lease

If at the time a lease is acquired it is subject to an existing sub-lease not at a rent representing the full value of the land, with the consequence that the value of the head lease when the sub-lease expires (estimated at the time when the head lease was acquired) is greater than the consideration paid for the head lease, the head lease is not deemed to become a wasting asset until the end of the period of the sub-lease.

### Example 4

In 1990 a person, A, acquired a lease with twenty years left to run, cost €20,000. At that time the lease was subject to a sub-lease at a rent fixed below market rent. The sub-lease is due to expire in 1995. It is agreed that the value of the lease when the sub-lease expires is €25,000 - lessor will be in a position to receive increased rental. In these circumstances the expenditure of €20,000 will not be regarded as wasting until 1995 although in 1990 the lease had only 20 years to run.

## 21.11 Wasting assets and capital allowances

**Paragraph 2(6) of Schedule 14**, applies to leases the general principle that there shall be no "wasting asset" exclusion from allowable expenditure to the extent that that expenditure has qualified for capital allowances (see Tax and Duty Manual [Part 19.02.17 Par. 1](#)).

### Example 5

On 6 April 1986, X acquires by assignment a leasehold interest in a factory which X uses for the purposes of X's manufacturing trade and in respect of which X is entitled to industrial buildings allowances. At the date of acquisition, the lease (which was originally for 99 years) has exactly 21 years to run and the amount paid for the lease (including expenses of acquisition) is €21,000. The residue of the previous owner's capital expenditure in respect of which X is entitled to industrial buildings allowances is €2,100.

In 1988/89, X incurs capital expenditure of €1,900 on additions to the factory and claims industrial buildings allowances on the whole amount.

On 6 April 1996, X assigns the lease for a capital payment of €13,000 (net after expenses).

For industrial buildings allowance purposes, the assignment of the lease is an occasion for a balancing allowance or charge and the total of capital allowances given (after deducting balancing charges) is as follows:

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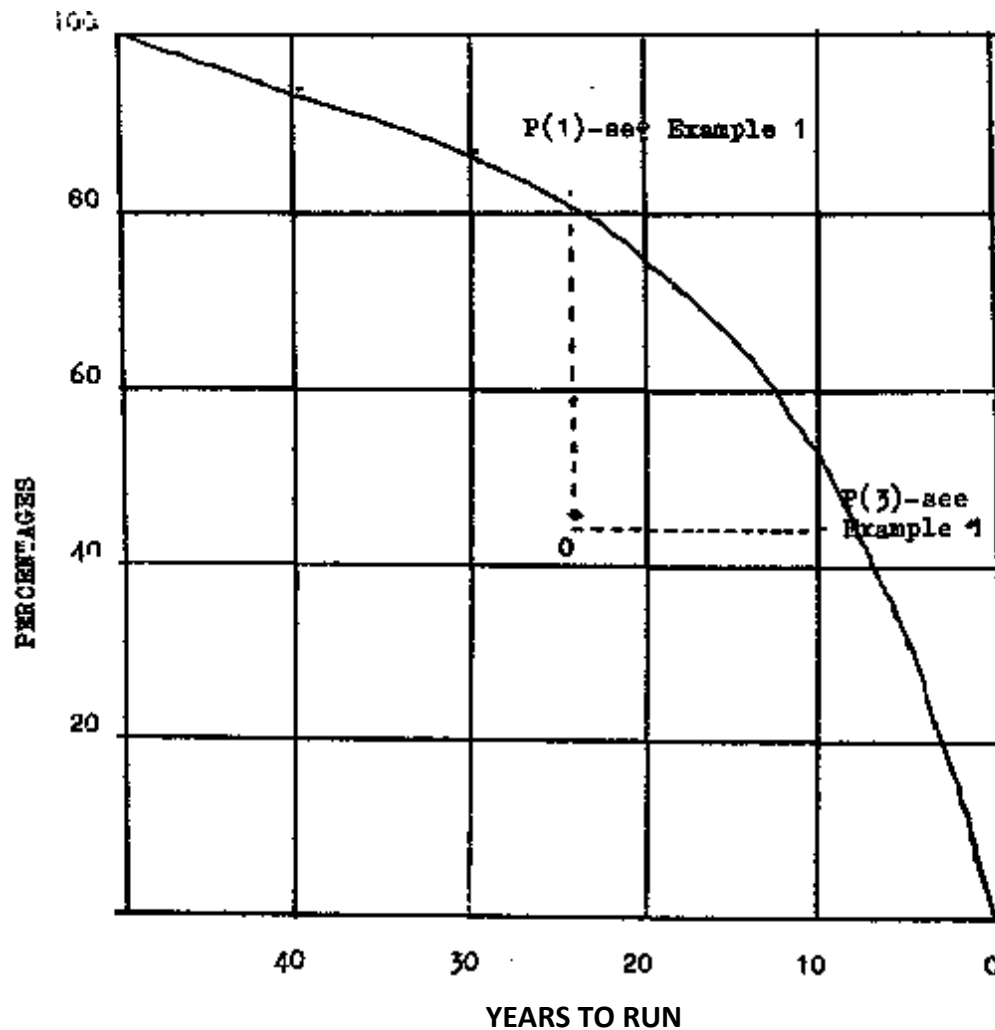
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	A	B	C
	Residue on acquisition	Expenditure in 1988	Balance
	€	€	€
Cost	2,100	-	18,900
Expenditure	-	1,900	-
Apportioned sale price (say)	1,000	2,000	10,000
Net capital allowances	1,100	NIL	

The apportionment used for capital allowances is followed for Capital Gains Tax and the computations for items A and B are made without reference to the "wasting asset" provisions. The computation is as follows:

		€
Part A	Apportioned sale price	1,000
	Less apportioned cost	2,100
	Loss	<u>1,100</u>
	Less capital allowances	1,100
	Allowable loss	<u>NIL</u>
Part B	Apportioned sale price	2,000
	Less expenditure <span style="float: right;">1,900 x 1.217 =</span>	<u>2,312</u>
	Indexed loss	(312)
	Treat as no Gain/no Loss	-
Part C	Balance of sale price	10,000
	Percentage attributable to lease on acquisition (21 years)	74.6
	Percentage attributable to lease on reassignment (11 years)	<u>50.0</u>
	Percentage attributable to "wastage"	<u>24.6</u>
		€
	Apportioned cost	18,900
	Part not allowable -	
	24.6 X €18,900	<u>6,232</u>
	<u>74.6</u>	
		<u>12,668</u>
	Loss	(2,668)
	Less chargeable gain (B above)	NG/NL
	Total allowable loss	<u>2,668</u>

## 21.12 Graph from Table - Sch. 14, Para. 2.



The above graph represents the Table in **Paragraph 2, Schedule 14**. The vertical distance P(1) corresponds to the percentage (34.4) appropriate to the period (15 years) for which the lease was held in Example 1 (**Par. 8**).

## 21.13 Exclusion of premium taxed under Schedule D

As certain premiums payable in respect of leases of land are within the charge to Income Tax under Schedule D, there is provision in **Paragraph 6, Schedule 14** for deductions to be made in Capital Gains Tax computations in order to avoid double taxation. These special provisions displace, in relation to premiums in respect of leases, the general provisions (see Tax and Duty Manual [Part 19.02.04 Par. 2](#)) for the exclusion of sums taken into account for Income Tax purposes.

Such a deduction can be required only where the premium arises on the grant of a lease for fifty year or less. The details of the computation depend upon whether the interest out of which the short lease is granted is -

- (a) a freehold or a lease with more than fifty years to run, or
- (b) a lease with not more than fifty years to run which is therefore a wasting asset.

### 21.14 Short lease granted from a freehold or long lease

Where the interest out of which the short lease is granted is either a freehold or a lease with more than fifty years to run at the time when the sub-lease was granted, the amount charged under Schedule D is to be deducted from the premium received. In arriving at the allowable expenditure (i.e., the cost of the interest which is being disposed of), the amount charged under Schedule D is to be excluded from the numerator only of the part disposal formula. It is not deducted from the denominator since the denominator must represent the value of the whole interest of the grant immediately before the grant of the sub-lease.

#### Example 6

On 6 April, 1990, X buys a freehold property for €60,000, including expenses of purchase. On 6 April, 1992, X grants a 46 years lease for a premium of €30,000 and a rent. The value of the interest in the property retained (i.e., of the right to receive rent for the term of the lease plus the reversion - see **Par. 4**) is €45,000. The computations are as follows:-

<u>Schedule D</u>	€
Premium received	30,000
Less	
€30,000	x
	<u>46 - 1</u>
	50
	<u>27,000</u>
Schedule D liability on	3,000
<u>Capital Gains Tax</u>	
Premium received	30,000
Less taxed under Schedule D	<u>3,000</u>
	27,000
Less part cost allowable -	
[€60,000 x $\frac{(30,000 - 3,000)}{(30,000 + 45,000)}$ ]	= €21,600 x 1.064 (indexation)
	<u>22,983</u>
Chargeable Gain	4,017

The cost of the interest retained is €38,400 (€60,000 - €21,600). If the lease had been granted for 61 years, there would be no Schedule D liability and the capital gain would have been computed as follows:

		€
Premium received		30,000
Less part cost allowable -		
60,000	x $\frac{30,000}{30,000 + 45,000}$	= 24,000 x 1.064 (indexation)
		<u>25,526</u>
Chargeable gain		4,464

The cost of the interest retained would then be €36,000 (60,000 - 24,000).

### 21.16 Short lease out of a short lease

Where the interest out of which the short lease is granted is itself a lease with not more than fifty years to run at that time -

- (a) the gain should be computed by reference to the gross premium received, and
- (b) the amount charged under schedule D should then be deducted from that gain.

The deduction under (b) cannot, however, create an allowable loss, neither can it augment an allowable loss already arrived at. As regards the computation generally of a gain arising from a premium taken on the grant of a short lease out of a lease with not more than fifty years to run, see **Par. 18** et seq.

### 21.17 Deduction for part of that premium in arriving at the Schedule D

Where a tenant grants a sub-lease out of a lease he himself acquired for a premium and is given a deduction for part of that premium in arriving at the Schedule D assessment on the rent, the amount of that deduction reduces any allowable loss for capital gains tax purposes accruing to him on the grant of the sub-lease (see Example 12 in **Par. 21**).

The deduction cannot, however, convert a loss into a chargeable gain, neither can it increase any chargeable gain.

## 21.18 Short leases granted out of wasting asset leases

The principles which normally apply to a part disposal of an asset are not appropriate to the grant of a sub-lease out of a lease which has itself not more than fifty years to run and is thus a wasting asset. **Paragraph 5 of Schedule 14**, therefore, provides a special rule for determining how much of the original cost of the head lease is to be deducted from the premium received on a part disposal of that lease. In general, the principle is followed of deducting from the premium that amount which will waste away over the duration of the sub-lease, calculated by the method described in **Par. 8**.

### Example 7

In December 1981, X acquires a long lease of a shop for a premium which, with expenses of acquisition, amounts to €20,000. The lease runs for 60 years to 25 December, 2041. On 25 December, 1993 (when the lease still has 48 years to run), X grants a sub-lease for 21 years (at the same rent as X pays under the head lease) for a premium of €16,000.

The granting of the sub-lease is a part disposal of X's interest in the property which, by 1993, has become a wasting asset. The computations are as follows:-

<u>Schedule D</u>		€
Premium received		16,000
Less 16,000 x	21 - 1	6,400
	<hr style="width: 50%; margin: 0 auto;"/> 50	<hr style="width: 50%; margin: 0 auto;"/>
Schedule D liability on		<hr style="width: 50%; margin: 0 auto;"/> 9,600

### Capital Gains Tax

Percentage applicable to lease of 48 years	99.3
Less percentage applicable to lease of 27 years	83.8
Percentage applicable to period of sub-lease of 21 years	<hr style="width: 50%; margin: 0 auto;"/> 15.5
Percentage applicable to original lease of 60 years	100
Premium received	16,000
Less allowable expenditure	
(20,000 x $\frac{15.5}{100}$ ) = 3,100 x 2.012 (indexation)	<hr style="width: 50%; margin: 0 auto;"/> 6,238
	9,762
Less taxed under Schedule D	9,600
Chargeable gain	<hr style="width: 50%; margin: 0 auto;"/> 162



## Example 8

On 6 April, 1990, X acquires a lease on assignment for a payment of €16,400. At that date the lease (which was originally for 99 years) has exactly 41 years to run. On 6 April, 1991, X grants a sub-lease for a period of 11 years (at the same rent as that payable by X under the head lease) and obtains a premium of €10,000. (See points p and q on the graph in **Par. 22**)

The computations arising out of this part disposal of a wasting asset are as follows:-

<u>Schedule D</u>		€
Premium received		10,000
Less 10,000 x	11 - 1	2,000
	<hr style="width: 100px; margin: 0 auto;"/> 50	<hr style="width: 100px; margin: 0 auto;"/>
Schedule D liability on		8,000

Capital Gains Tax

Percentage applicable to lease of 40 years	95.5
Less percentage applicable to lease of 29 years	86.2
Percentage applicable to period of sub-lease of 11 years	<hr style="width: 100px; margin: 0 auto;"/> 9.3
Percentage applicable to period of leases when X acquired it (41 years)	<hr style="width: 100px; margin: 0 auto;"/> 96.0
Premium received	10,000
Less allowable expenditure	
(16,400 x 9.3) = 1,589 x 1,026 (indexation)	1,631
	<hr style="width: 100px; margin: 0 auto;"/> 96.0
	<hr style="width: 100px; margin: 0 auto;"/>
	8,369
Less taxed under Schedule D	8,000
Chargeable gain	<hr style="width: 100px; margin: 0 auto;"/> 369

## Example 9

The facts are the same as in Example 8 except that, instead of granting the sub-lease on 6 April 1991, X grants it for a period of 11 years from 6 April, 2011, (see points X and Y on the graph in **Par. 22**). The computation is then as follows:

<u>Capital Gains Tax</u>	€
Percentage applicable to lease of 20 years	72.8
Less percentage applicable to lease of 9 years	43.2
Percentage applicable to period of sub-lease of 11 years granted at the later date	<u>29.6</u>
Premium received	10,000
Less allowable expenditure	
(€16,400            x    29.6    =	5,057
96.0	4,943
Less taxed under Schedule D	8,000
Chargeable gain	Nil
There is no allowable loss ( <b>Par. 16</b> ).	

## 21.19 Sub-lease rent greater than the rent payable under the head lease

Where the rent receivable under the sub-lease is greater than the rent payable under the head lease (i.e., where part of the value of the asset is taken an income), the premium will be less than the premium (the "full notional premium") which could have been taken if the rent receivable had been the same as the rent payable. In such a case the allowable expenditure to be deducted from the premium received is the amount calculated as in **Par. 18** multiplied by the fraction -

$$\frac{\text{actual premium}}{\text{notional full premium}}$$

## Example 10

The facts are the same as in Example 7 except that X takes a profit rent under the sub-lease and therefore a premium of €12,000 (instead of the same rent and a premium of €16,000). The allowable expenditure then becomes –

$$\begin{array}{r} \phantom{\text{€3,100}} \phantom{\phantom{x}} \phantom{\phantom{16,000}} \phantom{=} \phantom{\text{€2,325}} \phantom{\phantom{(instead of \text{€3,100})}} \\ \phantom{\text{€3,100}} \phantom{\phantom{x}} \phantom{\phantom{16,000}} \phantom{=} \phantom{\text{€2,325}} \phantom{\phantom{(instead of \text{€3,100})}} \\ \phantom{\text{€3,100}} \phantom{\phantom{x}} \phantom{\phantom{16,000}} \phantom{=} \phantom{\text{€2,325}} \phantom{\phantom{(instead of \text{€3,100})}} \\ \text{€3,100} \phantom{\phantom{x}} \phantom{\phantom{16,000}} \phantom{=} \phantom{\text{€2,325}} \phantom{\phantom{(instead of \text{€3,100})}} \end{array}$$

## 21.20 Allowable expenditure attributable to the part disposed

Where the sub-lease covers only part of the land comprised in the head lease, the allowable expenditure attributable to the part disposed of should be arrived at by apportionment by reference to the market values of the part which is subject to the sub-lease and the whole of the land respectively. The balance of the expenditure remains as the allowable expenditure on the whole of the land for the purpose of any subsequent disposal or part disposal of it by the head lessor.

## Example 11

On 6 April 1990, X acquires a lease of a property on assignment for a payment of €16,200 (including expenses of acquisition) and an annual rent of €1,200. At that date the lease (which was originally for 99 years) has exactly 21 years to run. On 6 April, 1993, he sublets part of the property for a premium of €4,000 and an annual rent of €800 for a period of 16 years to 5 April, 2009. The computations are as follows:-

<u>Schedule D</u>	€
Premium received	4,000
Less €4,000 x $\frac{16 - 1}{50}$	1,200
	2,800
Schedule D liability on	2,800

Capital Gains Tax

It is necessary to ascertain -

- (i) the value of the head lease at 6 April 1993;
- (ii) the amount included in (i) for the part of the property sublet;
- (iii) the amount of the premium which would have been obtainable if the rent payable under the sub-lease were equal to that part of the rent payable under the head lease which is applicable to the property sublet.

These figures are agreed at -

- (i) €24,000,
- (ii) €8,000,
- (iii) €5,000

The computation now proceeds in the following stages:-

- A. The part of the total cost to X attributable to the property sublet is -

$$= \frac{8,000}{24,000} \times \frac{\text{value of part sublet}}{\text{value of whole}} \times \text{cost} = \frac{8,000}{24,000} \times \text{€16,200} = \text{€5,400}$$

- B The part of that figure which is allowable is determined as in **Par. 18**

Percentage applicable to lease of 18 years	68.7
Less percentage applicable to lease of 2 years	11.6
Percentage applicable to period of sub-lease of 16 years	57.1
Percentage applicable to period of lease when X acquired it (21 years)	74.6

The allowable fraction of the cost is therefore -

$$\frac{57.1}{74.6}$$

C. The fraction determined in accordance with **Par. 19** is -

$$\frac{\text{actual premium}}{\text{notional full premium}} = \frac{4,000}{5,000} = \frac{4}{5}$$

D. The allowable expenditure is therefore -

$$\frac{4}{5} \times \frac{57.1}{74.6} \times \text{€}5,400 = \text{€}3,307$$

	€
Premium received	4,000
Less allowable expenditure      €3,307 x 1.084 (indexation)	3,585
	415
Less taxed under Schedule D	2,800
Chargeable gain or allowable loss	Nil

### 21.21 Capital loss arising from the grant of a sub-lease

The following example illustrates a capital loss arising from the grant of a sub-lease out of a lease which is a wasting asset, the loss being reduced by the amount allowable under Schedule D (see **Par. 17**).

#### Example 12

On 29 September 1985, X takes a lease of a property for 21 years for a premium of €12,600. X incurs incidental expenditure of €200 on the acquisition, making the total cost €12,800.

In 1992, X has difficulty in letting the property and on 29 September, 1992, he grants a sub-lease for a period of 7 years for a premium of €1,000 and a rent equal to that payable by him under the head lease. The computations are as follows:-

Schedule D

X is entitled to a deduction in respect of the premium he paid for the head lease.

The annual deduction is -

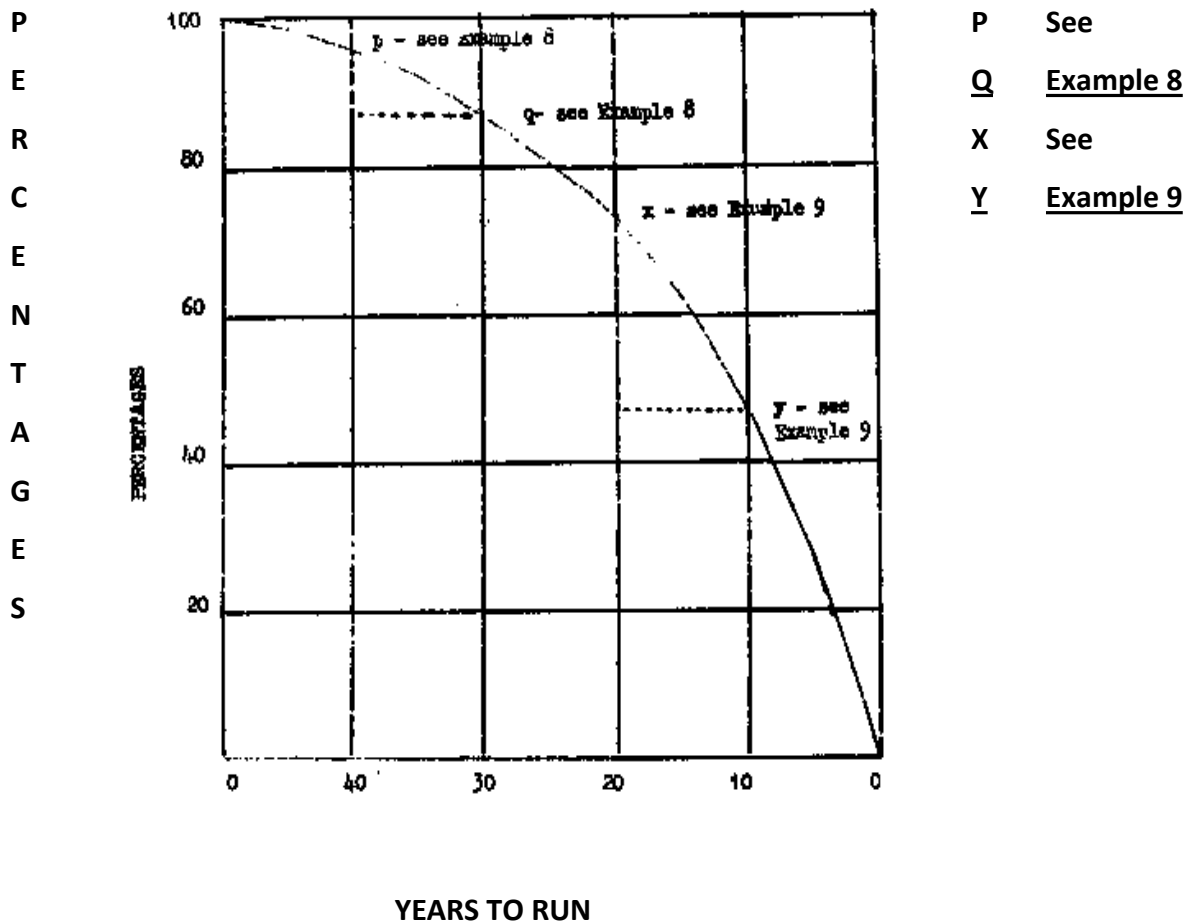
<u>30</u>	x	<u>1</u>	x	€12,600	=	€360	
50		21					
							€
Premium received							1,000
Less	1,000	x	7 - 1				120
			<u>50</u>				<u>880</u>
Less deduction for premium paid, 7 years at €360 a year							2,520
Schedule D allowance available over 7 years.							<u>1,640</u>

Capital Gains Tax

Percentage applicable to lease of 14 years		59.0	
Less percentage applicable to lease of 7 years		35.4	
Percentage applicable to period of this sublease of 7 years		<u>23.6</u>	
Percentage applicable to original lease of 21 years		74.6	
Premium received			1,000
Less allowable expenditure	(€12,800 x	23.6)	*4,050
		<u>74.6</u>	<u>          </u>
Loss			(3,050)
Reduce by Schedule D allowance			1,640
Loss allowable against capital gains			<u>1,410</u>

\* No indexation.

## 21.22 Graph



This graph illustrates Examples 8 and 9 in **Par. 18** showing that the percentage (and therefore the wastage) appropriate to a sub-lease at 11 years is greater when the sub-lease is granted later rather than earlier in the period of 50 years.

## 21.23 Mergers of leases

Where a leaseholder of land under a lease which has fifty years or less to run acquires the freehold reversion (i.e. the freehold subject to the lease) so that the lease is extinguished he then owns the whole of the unencumbered freehold and the two separate assets are generally regarded as "merged" within the meaning of **section 559**.

On disposal of the freehold (which is an asset derived in part from the lease), the allowable expenditure is the sum of the consideration given for -

- (a) the acquisition of the lease after the exclusion of that part of the expenditure which has "wasted" (see **Par.7** et seq.) down to the date of acquisition of the freehold reversion (when the lease is no longer a wasting asset), and

(b) the freehold reversion.

The same principle and basis of computation apply where a sub-lessee acquires the head lease which has more than fifty years to run at the time of the merger.

### Example 13

On 6 April, 1982, X acquires a twenty-five year lease of a property for €16,220 (including expenses of acquisition) and on 6 April, 1992, acquires the freehold for €15,000 (including expenses). On 6 April, 1994, X sells the property for €42,000.

The chargeable gain (subject to expenses of sale) is computed as follows:-

The overall gain is -				€
Sale price of property				42,000
			€	
Less cost of lease		16,220		
Less part cost not allowable				
(i.e., the "wastage" from 6 April 1982 to 6 April, 1992).				
Percentage applicable to 25 years	81.1			
Percentage applicable to 15 years	61.6			
Percentage applicable to 10 years		19.5 (to 6/4/92)		
Part not allowable -				
	19.5	x	€16,220	=
				3,900
	81.1			
Allowable cost of lease	12,320 x 1,722 (indexation) =			21,215
Add cost of freehold	15,000 x 1.037 (indexation) =			15,555
Overall gain				36,770
				5,230



## 21.24 Sum payable for the surrender of the lease

Where a freeholder or superior leaseholder pays a sum to his lessee for the surrender of the lease the sum paid is expenditure allowable under **section 552(1)(b)**. As regards payments made by lessees on surrenders of leases, see **Par.29**.

### Example 14

On 6 April, 1981, X acquires, by assignment to him for €19,200 (including expenses), a lease of a property which has 41 years to run. The lease is subject to a twenty-one year lease granted on 6 April, 1979, at a rack rent (**Par. 4**).

On 6 April, 1986, he pays €6,000 to the sub-lessee for his rights under the sub-lease. The sub-lease becomes merged in the head lease.

On 6 April, 1991, he assigns his rights under the head lease for €50,000 (net after expenses of disposal).

As the original lease was subject to a sub-lease at rack rent **Paragraph 2(2), Schedule 14** does not apply and the original expenditure of £19,200 is deemed to "waste" from 6 April, 1981 to 6 April, 1991. The chargeable gain is then computed as follows:-

### A

The amount allowable in respect of the original expenditure of £19,200 is	€
-	
Amount of original expenditure	19,200
Less part not allowable -	
Percentage applicable to 41 years (i.e., attributable to lease on acquisition)	96.0
Percentage applicable to 31 years (i.e., attributable to lease on disposal)	88.4
Percentage attributable to "wastage"	<u>7.6</u>
<u>7.6</u> x €19,200 =	<u>1,520</u>
96.0	
Amount allowable	17,680

**B**

The amount allowable in respect of the expenditure on extinguishing the sub-lease is -	€
Amount of expenditure	6,000
Less part not allowable -	
Percentage applicable to 36 years (i.e., attributable to lease at date of expenditure)	92.8
Percentage applicable to 31 years (i.e., attributable to lease on disposal)	88.4
Percentage attributable to "wastage"	<u>4.4</u>
<u>4.4</u> x €6,000 =	<u>285</u>
92.8	
Amount allowable	5,715

**C.**

The chargeable gain is	€	€
Amount received on assignment	50,000	
Less amount allowable (A above) 17,680 x 1.905 (indexation)	33,681	
Less amount allowable (B above) 5,715 x 1.165 (indexation)	6,658	40,339
Chargeable gain		<u>9,661</u>

**21.25 Merged lease**

Where a leaseholder of land under a lease which has fifty years or less to run acquires the immediately superior leasehold interest which also has fifty years or less to run, the two leases are "merged" within the meaning of **section 559**.

On a later disposal of the "merged" lease, the allowable expenditure should be computed by -

- calculating the balance of the consideration for the original lease after excluding "wastage" (see **Par. 7**) based on the length of that lease down to the date of the merger; and
- adding to any consideration given for the superior lease the balance found in (a) and excluding from the total the "wastage" based on the length of the superior lease down to the date of the disposal.

See Example 15 below.

## Example 15

On 6 April 1981, X acquires for €7,460 the balance of a lease which then has 21 years to run.

On 6 April 1986, X acquires for €2,320 the immediately superior leasehold interest which then has 30 years to run.

On 6 April 1991, he assigns his rights for €15,000 (net after expenses of disposal).

The chargeable gain is computed as follows:-

<b>A.</b>	The balance at 6 April, 1986, of the consideration for the original lease is -	€		
	Amount of original expenditure			7,460
	Less part not allowable -			
	Percentage applicable to 21 years		74.6	
	Percentage applicable to 16 years		<u>64.1</u>	
	Percentage attributable to wastage		<u>10.5</u>	
	<u>10.5</u> x €7,460			<u>1,050</u>
	74.6			
	Balance			6,410
<b>B.</b>				
(i)	Balance at A above			6,410
(ii)	Consideration for superior lease			<u>2,320</u>
	Total			8,730
	Less part not allowable -			
	Percentage applicable to 30 years		87.3	
	Percentage applicable to 25 years		<u>81.1</u>	
	Percentage attributable to wastage		<u>6.2</u>	
	<u>6.2</u> x (i) €6,410 = 455			
	87.3			
	x (ii) €2,320 = 165			<u>620</u>
	Amount allowable			8,110
<b>C.</b>	The chargeable gain is -			
	Amount received on assignment			15,000
	Less/			
	amount allowable (i) 6,410 – 455 = 5,955 x 1.905 (indexation)		11,344	
	(B above) =			
	(ii) 2,320 – 165 = 2,155 x 1.165 (indexation) =		<u>2,511</u>	<u>13,855</u>
	Chargeable gain			1,145

## 21.26 Disposal of extended leases

Where a leaseholder disposes of a lease for which the leaseholder obtained an extension of its term at a time when the original lease had fifty years or less to run, the instructions in **Par. 23** or **25**, as appropriate, should be followed in computing the chargeable gain. If, however, the original lease had expired before the new term was obtained, the whole of the expenditure on the original lease would have “wasted” (see **Par. 7**) and the new lease should be dealt with as a separate asset.

## 21.27 Surrender of a lease before the lease expires

The surrender of a lease by a leaseholder before the lease expires and the grant to him of a new lease for the same or an extended term should not, in practice, be regarded as a disposal or part disposal of the old lease unless a capital sum is received by the lessee. This practice avoids the necessity of obtaining valuations and of computing the gain (or loss) at the date of change.

## 21.28 Sums received for alteration, etc., of terms of lease

**Paragraph 4, Schedule 14** deals with lump sums paid for the surrender of a lease, in commutation of rent or for the variation or waiver of the terms of a lease. The terms of the Schedule D legislation relating to such sums (**section 98(3) and (4)**) are broadly followed.

## 21.29 A payment received for the surrender of a lease

A payment received by a lessor (under the terms subject to which a lease is granted) for the surrender of a lease is to be treated as if it were a premium received by him under a separate transaction consisting of the disposal by him of his interest in the lease.

Where a payment, which is not made under the terms subject to which the lease is granted, is received by a lessor for the surrender of a lease, the amount received should be treated as a part disposal of the lessor's interest.

As regards payments made by lessors on surrender of leases, see **Par. 24**.

## Example 16

(surrender of lease to freeholder)

On 6 April, 1985, X acquires a freehold property for €20,000 including expenses of purchase. On 6 April, 1990, X grants a twenty-one year lease for a premium of €4,200 and a rent. Under the terms of the lease the tenant is entitled to and does surrender the lease after seven years on payment of €4,000 to X.

The value of the property retained by X on 6 April, 1990 (including the right to receive rent) is agreed at €21,000.

The following are the computations:-

On the premium

<u>Schedule D</u>	€
Premium received	4,200
Less $4,200 \times \frac{7-1}{50}$	<u>504</u>
Schedule D liability on	3,696
<u>Capital Gains Tax</u>	
Premium received	4,200
Less taxed under Schedule D	<u>3,696</u>
	504
Less part cost (see <b>Par. 5</b> )	
$20,000 \times \frac{504}{4,200 + 21,000} = 400 \times 1.188$ (indexation)	<u>475</u>
Chargeable gain	29

On the surrender payment

<u>Schedule D</u>	
Payment on surrender	4,000
Less $4,000 \times \frac{7-1}{50}$	<u>480</u>
Schedule D liability on	3,520
<u>Capital Gains Tax</u>	
Payment on surrender	4,000
Less taxed under Schedule D	<u>3,520</u>
Chargeable gain	480

There is no allowance in this computation (i.e. of the gain of €480) in respect of the part cost of the freehold as the sum received on surrender is treated as arising from an entirely separate asset, namely, the interest in the lease. The allowable cost of the property for use in the computations on a subsequent disposal is €19,600, i.e., €20,000 less €400 allowed on the grant of the lease.

**Example 17**  
(surrender of lease to superior leaseholder)

The facts are the same as in Example 16 except that the property acquired for €20,000 is a lease running for 41 years from the date of acquisition (6 April, 1985) and the rent payable under the sub-lease is equal to the rent payable under the main lease. The computations are as follows: -

<u>On the premium for the sub-lease</u>		€
<u>Schedule D</u>		4,200
Less €4,200 x	$\frac{7 - 1}{50}$	504
		<hr/> 3,696
Less deduction in respect of premium paid -		
(€20,000 x	$\frac{10}{50} \times \frac{7}{41}$	683
Schedule D liability on		<hr/> 3013

Capital Gains Tax

The allowable proportion of the premium is computed as follows, the sub-lease being treated as a lease of 7 years (see **Par. 32**):

Percentage applicable to lease of 36 years		92.8
Less percentage applicable to lease of 29 years		<hr/> 86.2
Percentage applicable to lease lasting 7 years		<hr/> 6.6
Percentage applicable to original lease of 41 years		<hr/> 96.0
Premium received		€ 4,200
Less proportion allowable	$\frac{6.6}{96.0} \times 20,000 = 1,375 \times 1.188$	<hr/> 1,634
Capital gains		2,566
Less taxed under Schedule D		<hr/> 3,013
Chargeable gain		NIL
Allowable loss		<hr/> NIL

On the surrender payment

The computations are the same as in Example 16 (for Schedule D, €3,520; for Capital Gains Tax, €480). There is no allowance in the Capital Gains Tax computation in respect of the part cost of the head lease as the sum received on surrender of the sub-lease is treated as arising from an entirely separate asset, namely, the interest in the sub-lease.

### 21.30 Payment received in commutation of rent

A payment received by a lessor (under the terms subject to which a lease is granted) in commutation of rent is to be treated as if it were a premium, in addition to any other premium (e.g., upon the grant of the lease), for the period in relation to which it is payable. A payment made as consideration for the variation or waiver of any of the terms of a lease is to be similarly treated except that it is regarded as being for the period from the time when the variation or waiver takes effect to the time when it ceases to have effect.

Where the recipient of the payment either is the freeholder or is a tenant under a lease which has at that time more than fifty years to run, the deemed premium is to be treated as if it were part of the premium or other consideration given at the time when the lease was granted. The gain or loss on the original grant of the lease has therefore to be recomputed. Any necessary assessment arising from such re-computation is made for the year in which the premium is deemed to have been received.

Full details should be obtained before a decision is taken on the treatment of a payment received by a lessor in commutation of the rent and which is not made under the terms subject to which a lease was granted.

Where the recipient of the payment is a tenant under a lease which is at that time a wasting asset, the deemed premium is to be treated as paid for the part of the period of the sub-lease to which it relates and is not to be carried back to the start of the sub-lease. In the computation of the gain or loss of the sub-tenant on any disposal by him of his interest, the payment should be treated as "additional expenditure" (see **Par. 10**) dated from the date of payment.

#### Example 18

(commutation of rent out of freehold)

On 6 April, 1990, X buys a freehold shop for €20,000, including expenses of purchase. On 6 April, 1993, X grants a lease for 21 years at a rent of €2,500 a year. Under the terms of the lease the tenant may commute the rent for any period on the payment of a lump sum. On 6 April, 1995, the tenant exercises this right and pays €37,500 in commutation of the rent from that date until the end of the lease (i.e., for 19 years). The amount assessable under Schedule D in respect of the payment is computed as follows:-

			€
Payment in commutation of rent			37,500
Less	37,500	x	
		<u>19 - 1</u>	
		50	<u>13,500</u>
Schedule D liability on			<u>24,000</u>

For the purpose of Capital Gains Tax, the commutation of the rent is to be treated as a part disposal at the date the lease was granted and the value of the property which remained undisposed of represents the right to receive rent for the period from 6 April, 1993, to 5 April, 1995, together with the right to the reversion at the end of the lease.

This value is agreed with the taxpayer to be €12,500. The computation of the gain is then as follows:

	€
Payment in commutation of rent	37,500
Less taxed under Schedule D	24,000
	13,500
Less part cost (see <b>Par. 15</b> )	
$20,000 \times \frac{13,500}{37,500 + 12,500} = 5,400 \times 1.084 \text{ (indexation)}$	5,854
Gain chargeable for 1995-96	7,646

#### Example 19

(commutation of rent out of lease which is itself a wasting asset).

On 6 April, 1990, X acquires a forty-one year lease of a property at a rent of €2,000 a year and no premium. On 6 April, 1993, he grants a twenty-one year lease of the whole property at a rent of €3,000 a year. Under the terms of the lease the tenant may commute the rent for any period on the payment of a lump sum. On 6 April, 1996, the tenant exercises this right and pays €16,000 in commutation of the rent from that date until 5 April, 2002 (i.e., for 6 years). The amount assessable under Schedule D in respect of the payment is computed as follows. -

	€
Payment in commutation of rent	16,000
Less $16,000 \times \frac{6 - 1}{50}$	1,600
Schedule D liability (subject to rent payable by X) on	14,400

The following is the computation for Capital Gains Tax purposes:-

Payment in commutation of rent	16,000
Less allowable expenditure (no premium paid)	NIL
Gain	16,000
Less taxed under Schedule D	14,400
Gain chargeable for 1996-97	1,600



**Example 20**

(commutation of rent out of lease which is itself a wasting asset where premium paid on obtaining head lease).

The facts are the same as in Example 19 except that X pays €4,100 as a premium for the lease he acquired on 6 April, 1990

For Schedule D purposes X becomes entitled to an allowance against his rents in respect of the premium he pays. This amount is –

$$€4,100 \quad \times \quad \frac{10}{50} \quad \times \quad \frac{1}{41} \quad = \quad €20 \text{ a year}$$

On receipt of the commutation sum on 6 April, 1996, the Schedule D computation becomes -

	€
Amount chargeable under Schedule D as Example 19	14,400
Less deduction in respect of premium paid (€20 a year for 6 years)	120
Schedule D liability on	<u>14,280</u>

The allowable proportion of the premium for the purposes of Capital Gains Tax is computed as follows:-

Percentage (see <b>Par. 9</b> ) applicable to lease of 35 years	92.0
Less percentage applicable to lease or 29 years	<u>86.2</u>
Less Percentage applicable to period to which commutation sum applies	5.8
Percentage applicable to original lease of 41 years	96.0
Allowance is $\frac{5.8}{96.0} \times €4,100 = €248$	

	€
Payment in commutation of rent	16,000
Less allowable proportion of premium: 248 x 1.153 (indexation) =	286
Gain (subject to expenses)	<u>15,714</u>
Less taxed under Schedule D	14,280
Gain chargeable for 1996-97	<u>1,434</u>

**Example 21**

(commutation of rent out of lease which is itself a wasting asset where premiums paid on obtaining both head lease and sub-lease).

The facts are the same as in Example 19 as modified in Example 20 except that X obtains a premium of €8,400 on the grant of the sub-lease on 6 April, 1993. The amount of the premium which would have been obtained if the rent under the sub-lease had been €2,000 a year (i.e., equal to the rent paid) is €16,800.

The amount assessable under Schedule D in respect of the premium is -

Premium		8,400
Less	$\text{€}8,400 \times \frac{21 - 1}{50}$	<u>3,360</u>
		5,040
Less deduction in respect of premium paid (€20 a year for 21 years)		<u>420</u>
Schedule D liability on		4,620

The allowable proportion of the premium for the purposes of Capital Gains Tax is as follows:-

Percentage applicable to lease of 38 years	94.2
Less percentage applicable to lease of 17 years	<u>66.5</u>
Percentage applicable to period of sub-lease of 21 years	<u>27.7</u>
Percentage applicable to original lease of 41 years	96.0

The allowance is scaled down in the proportion which the premium for the sub-lease bears to the premium which would have been paid if the rent had been €2,000 a year (see **Par. 19**) as follows:-

$\frac{27.7 \times 8,400}{96.0 \times 16,800}$	$\times \text{€}4,100$	=	€592
			€
Premium received			8,400
Less allowable as above = 592 x 1.084 (indexation)			<u>642</u>
			7,758
Less taxed under Schedule D			<u>4,620</u>
Chargeable gain			3,138

On receipt of the commutation sum the amount assessable under Schedule D is €14,400 as in Example 19. There is no further deduction in respect of the premium paid. The Capital Gains Tax computation is as follows:

	€
Payment in commutation of rent	16,000
Less proportion of allowable expenditure* 124 x 1.153 (indexation)	<u>143</u>
	15,857
Less taxed under Schedule D	<u>14,400</u>
Gain chargeable in 1996-97	<u>1,457</u>

(\*The proportion of the allowable expenditure is  $\frac{5.80}{96.0} \times \text{€}4,100 = \text{€}248$

as in Example 20; but one-half of this expenditure  $\frac{8,400}{16,800}$

was allowed in computing the gain on the premium of €8,400 so that the allowance is €124).

### 21.31 Miscellaneous matters

Where the recipient of a premium which is payable by instalments claims under **section 98**, to have the instalments treated as rent chargeable to Income Tax, the whole amount of the premium so treated should be dealt with as indicated in **Par. 15** and **16** and with few exceptions the computation for capital gains tax will show neither a gain nor a loss.

### 21.32 Change in duration in lease term

The duration of a lease is normally the term for which it is granted but the following special rules should be applied by reference to the facts as known or ascertainable at the time the leaseholder in question acquired the lease (whether by grant or assignment):-

- (a) Where under the terms of the lease the lessor is able to terminate it at an earlier date or dates, the lease should be taken as ending on the earliest such date.
- (b) Where the terms of the lease are such that the lease is unlikely to continue beyond a date falling before the end of the stated term (e.g. where the lease provides for an increase in rent beyond a commercial level at a time when the lessee has an option to break), the lease should be taken as ending on that date.
- (c) Where the terms of the lease permit the lessee to extend the lease, the duration of the lease should, subject to both (a) and (b) above, be taken as running to the end of the extended term.

### 21.33 Capital value of improvements

Where a lessor has been charged to Income Tax, by virtue of **section 98(2)**, on a notional premium representing the capital value of improvements made by his lessee, he should be treated for Capital Gains Tax purposes as if the amount on which he has been so charged were additional expenditure incurred by him on the asset at the date of the lease. If the grant of that lease is a disposal for Capital Gains Tax purposes (i.e., where a premium is taken - see **Par. 4**), the deemed expenditure allowable under this instruction should be taken into account in the computation on the disposal.

### 21.34 Lease not at arm's length

Where a lease is granted gratuitously or not at arm's length, the provisions of **section 547** are applicable – see Tax and Duty Manual [Part 19.02.06 Par. 1 and 3](#).

### 21.35 Leases and section 99 TCA 1997

**Section 99**, imposes a charge to Tax to counteract certain avoidance transactions having as their main feature the assignment of a lease which was granted at less than its market value. In such cases market value is substituted for the consideration in computing the amount chargeable to income tax as rent.

**Paragraph 7(2)** of **Schedule 14** provides that the general principle which excludes from the consideration for disposals sums chargeable to Income Tax (see Tax and Duty Manual [Part 19.02.04 Par. 2](#)) shall not apply to any amount on which tax is paid under **section 99**. Thus, in applying the provisions of **Schedule 14, Para. 6**, the substituted amount under **section 99** is to be taken into account in the Capital Gains Tax computation.

### 21.36 Leases and section 100 TCA 1997

Where under **section 100**, Income Tax is charged in a case of a sale of an interest in land with a right of reconveyance, the amount so charged is to be excluded from the Capital Gains Tax computation in the following manner:-

- (a) where the interest which is sold is a lease which is at that time a wasting asset, the amount which is charged to Income Tax is to be deducted from the gain calculated by reference to the gross disposal figure.
- (b) In all other cases the amount charged to Income Tax should be dealt with on the principle described in **Par. 15**.

## Example 22

On 1 July, 1986, X acquires a freehold property for €20,000 (including expenses of acquisition). On 1 July, 1989, he sells the property for €25,000, subject to a right of repurchase at any time within three years after 30 June, 1999, for €12,000. The computations are as follows:-

<u>Schedule D</u>	€
Sale price	25,000
Less repurchase price	12,000
Excess	<u>13,000</u>
Less €13,000 x $\frac{10-1}{50}$	<u>2,340</u>
Schedule D liability on	<u>10,660</u>

Capital Gains Tax

X is regarded as having made a part disposal of his interest in the land on 1 July, 1989, and the value as at that date of his right of repurchase must be ascertained. This is agreed with the taxpayer to be €6,000.

The computation now proceeds as follows:

	€
Sale price	25,000
less taxed under Schedule D.	10,660
	<u>14,340</u>
Less part cost -	
20,000 x $\frac{14,340}{25,000 + 6,000}$ = 9,252 x 1.090 (indexation)	<u>10,085</u>
Chargeable gain	4,255

The remainder of the cost of the property, €10,748 (i.e., 20,000 - 9,252) represents the cost of the right retained. The cost of the property after repurchase will therefore be €22,746 (i.e., 10,748 + 12,000).

Where repayment of Income Tax is made in the circumstances contemplated by (b) of **section 100(2)**, the Capital Gains Tax computation is to be revised to take account only of the net amount of Income Tax borne.

### 21.37 Disposal of long term lease subject to terms

The disposal of a freehold interest in land (or the assignment of a lease with more than fifty years to run at the date of assignment) which is subject to terms, under one or more formal contracts, that the purchaser is to grant a lease of the whole or part of the land to the vendor, should be treated as a part disposal. As the original freeholder (or long leaseholder) retains an interest (i.e., the new lease), the market value of that interest should be taken into account when applying the part disposal formula to ascertain the part of the cost allowable in computing the gain on disposal.

#### Example 23

In 1993/94, A acquires a freehold property for €50,000 (including expenses of acquisition). In 1995/96, A disposes of the freehold to B in consideration of a sum of €45,000 together with the immediate grant by B to A of a lease of the property for 99 years at a rent of €5,000 per annum. The market value of the lease is agreed with the taxpayer to be €10,000.

The transaction is a part disposal by A (the leasehold interest being retained and the freehold subject to the lease being disposed of) and the chargeable gain (subject to any allowable incidental expenses on the disposal) is computed as follows -

	€
Sale price	45,000
Less part cost allowable -	
$50,000 \times \frac{45,000}{45,000 + 10,000} = 40,910 \times 1.043$ (indexation)	42,669
Chargeable gain	2,331

#### Example 24

The facts are the same as in Example 20 except that the consideration for the disposal of the freehold is €54,000 (instead of €45,000) and A agrees to pay B a rent of €6,000 per annum which is equal to the rent which would have been charged on the grant of a lease for the same period at no premium. The market value of the lease would then be nil (instead of €10,000). The gain on the part disposal is the same as if the transaction had been dealt with as a full disposal, namely -

	€
Sale price	54,000
Less part cost allowable	
$50,000 \times \frac{54,000}{54,000} = 50,000 \times 1.043$ (indexation)	52,150

	54,000 + Nil	
Chargeable gain		1,850

### 21.38 Short lease with right to lease back

Where a lease with fifty years or less to run is assigned with a right to lease back, the allowable expenditure for the purposes of computing the gain on the part disposal is the apportioned part (computed in accordance with **Par. 37**) of the original expenditure on acquiring the lease, as reduced by the amount excluded because of "wastage" to the date of assignment (see **Par. 8**).

#### Example 25

On 6 April, 1981, C acquires by assignment, in consideration of a sum of €7,500 (including expenses of acquisition), a lease which then has sixty years to run. The rent payable under the lease is €800 per annum.

On 6 April, 2001, C assigns the lease to D in consideration of a sum of €15,000 together with the immediate grant by D to C of a sub-lease of the property for twenty-one years at a rent of €1,800 per annum. The market value of the sub-lease held by C is agreed at €2,000.

The transaction is a part disposal by C of an asset which, at the time of disposal, is a "wasting asset" and the gain (subject to any allowable incidental expenses on the disposal) is computed as follows:-

(a)	The amount allowable in respect of the original cost of the lease is		
			€
	Original cost		7,500
	Less "wasting asset" exclusion ( <b>Par. 9</b> )		
	7,500 x $\frac{100 - 95.5}{100}$		338
	Amount allowable		7,162
(b)	The gain then becomes		
	Amount received on assignment		15,000
	Less part cost allowable		
	7,162 x $\frac{15,000}{15,000 + 2,000}$	= 6,320 x 2.2 (est. indexation)	13,904
	Gain		1,096

The balance of the cost attributable to the sub-lease held by C is €842 (€7,162 less €6,320), which should be "wasted" over the twenty-one years from 6 April, 1981, in any computation on a subsequent disposal of the sub-lease.



### 21.39 Lease which is wasting asset held on 6 April, 1974

The following example illustrates the computation of the chargeable gains arising from disposals of or out of a leasehold interest which was held on 6 April, 1974, and which was a wasting asset at that date (see **Par. 7** et. seq.). The lease is deemed to have been acquired at its open market value at 6 April 1974.

#### Example 26

(assignment of lease)

On 6 April, 1965, X acquired a lease of a shop for 21 years for a premium of €7,500. On 6 April 1980, when the lease has 6 years to run, X assigns it for €4,000. The market value at 6 April 1974 of X's leasehold interest is agreed to be €6,150. The capital gain arising on the assignment is computed as follows:-

The percentage appropriate to 12 years is 53.2 and the percentage appropriate to 6 years is 31.2. Then the amount to be excluded from the market value is:-

$\frac{53.2 - 31.2}{53.2} \times €6,150 =$	€2,543
	€
Amount received on assignment	4,000
Less 6,150 - 2,543 = 3,607 x 2.324 (indexation)	8,383
Indexed loss	(4,383)
Monetary gain	393
Result	No Gain/No Loss

### 21.40 Leases of property other than land

The rules in **Schedule 14** relating to the following topics and applicable to leases of land, apply with the necessary modifications to leases of assets other than land:-

- (a) Part disposals.
- (b) Payments treated as premiums.
- (c) Apportionment of allowable expenditure.
- (d) Duration of leases.

### 21.41 Lease of a wasting asset which is moveable property

A lease of a wasting asset which is moveable property is assumed to terminate not later than the end of the life of the wasting asset. Thus, expenditure on the lease wastes away by reference to the length of the lease or the length of life of the asset, whichever is the shorter. This is an anti-avoidance provision against the device of creating a lease for, say, 100 years over an asset with a life of only three years.

### 21.42 Tenants' rights

A tenant of land (**Par. 2**) who has not been granted a lease of the land at a premium may in certain circumstances, receive a capital payment in consideration for giving up occupation of the land. Examples of such tenants' rights, which should all be regarded as chargeable assets, are as follows:

- (a) The rights of a tenant of a rent controlled dwelling.
- (b) The tenant of a tenement who, under the Landlord and Tenant Amendment Acts 1967 to 1994, has a right to obtain a new tenancy on the expiration of his current tenancy.

### 21.43 The receipt of the capital sum by the tenant

The receipt of the capital sum by the tenant constitutes the disposal of the asset. Unless a capital sum was paid in similar circumstances at the commencement of the tenancy, the only allowable expenditure is the expenditure which may have been incurred in negotiating the amount of the sum.

### 21.44 Capital sum for vacating the property

Where a landlord or an ingoing tenant pays a capital sum to the sitting tenant as consideration for vacating the property, the payment is expenditure allowable to the payer on a subsequent disposal of the property or the acquired right.

### 21.45 Landlord sells with vacant possession

Where a landlord sells with vacant possession a property which was occupied by a sitting tenant on 6 April 1974, the valuation at that date should be made on the basis of the circumstances then prevailing (i.e. not on the basis of vacant possession).

## 21.46 The right of occupation of a statutory tenant

The right of occupation of a statutory tenant may be regarded as an interest in the dwelling house for the purposes of **section 604** (exemption of gain on disposal of private residence). A capital sum received in respect of such a right of occupation should therefore not be charged to Capital Gains Tax.