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## PRACTICE NOTE

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**PN 70/98**

**Date:**

### **Lease Premiums And Related Matters**

#### **Introduction**

This Practice Note arises out of papers submitted to the Tax Liaison Committee from the Income Tax Division and professional representatives, and sets out the Division's treatment of lease premiums and related matters as agreed with the Committee.

The Isle of Man did not introduce comparable legislation to that introduced by the LTK Finance Act 1963 which incorporated an extended definition of 'premium' and introduced a regime which grants relief calculated in relation to the duration of the lease. Consequently, the relief available to a Manx resident person remains subject to the first principles incorporated into the Manx Income Tax Acts.

Furthermore, to the degree that a premium is identified under first principles as being income subject to income tax, the Isle of Man has no equivalent to the UK legislation which grants relief calculated in relation to the duration of the lease.

#### **Lease Premiums Received:**

##### **Lessees paying rents at market rate**

Premiums received will be treated as additional rent unless the Division can be satisfied that the payment is capital in nature. What might be viewed as a capital payment is open to question and depends on the circumstances under which the payment is made. In broad terms a capital payment is one which is paid over and above the market rate of rent and is not in respect of other factors linked to the intrinsic value of the property such as its location and market forces prevailing at the time. Consequently a contention that a lease premium paid in addition to a market return on the property is a capital receipt, is a persuasive argument.

The following example is given as a general guide as to what the Division would consider to be a capital receipt: -

A lessee is seeking to his trade. It will be of great advantage to him by way of savings on relocation costs to acquire an additional let which is becoming available within the same building and to ensure he is granted the tenancy he is prepared to pay a premium. The premium will be treated as a capital payment and capital receipt.

## **Lessees paying rents at less than the market value**

A premium will be treated as additional rent.

Where, in consideration for the reduced level of rent, the lessee undertakes to carry out work on the premises other than normal repairs or maintenance, then the value of the benefit accruing to the landlord will be treated as additional rent received at the commencement of the lease.

## **Assessment And Relief Of The Premium**

Where the premium received is to be assessed as additional rent, the payments will be treated as an expense in the accounts of the payer

## **Assignment/Surrender**

Each case has to be treated on its own merits. However, provided there are no special features attaching to the transaction:-

Surrender - a payment for early surrender of a lease will also be treated as capital.

## **Reverse Premia And Other Incentives**

The Division contends that the need for the lessor to pay the incentive indicates that the rental level is above that necessary to attract a tenant at that time notwithstanding that the rentals may be termed "market rate". Irrespective of the nature of the incentive the Division will agree to the spreading of the benefit on a straight line basis over the period of the lease provided that it is satisfied that the aggregate rent paid over such period amounted to a "market rate".

Where a rent-free period is given for a very short period the Division will accept the lessee taking the benefit of the period as it arises.

## **Other Expenditure In Relation To Leases**

The legal expenses of renewing leases will be allowed as a revenue expense but the costs in drawing up a lease will be capital.

## **Anti-Avoidance**

The Assessor reserves the right to adopt an alternative approach to the assessment and relief of the premium where, in his opinion, an avoidance motive is detected.