

# THE PROBLEM OF PROPORTIONAL CONTRIBUTION

By JAMES DUNDAS WHITE, LL.D.

The problem of proportional contribution arises where different persons have interests in a property and the payment of the land-value tax on it has to be apportioned between them. The most familiar instance is that in which the property has been leased and the liability to pay the land-value tax has to be apportioned between lessor and lessee. It is easy to say that they should be called upon to contribute to the tax in proportion as they participate in the land-value; but it is not so easy to devise a scheme for ascertaining the proportions. In the great majority of leases the lease is a lease of the property as a whole, and the rent is not allocated as between the land and the improvements. In many cases since the commencement of the lease there have been changes in the value of the land, and also in the value of the improvements; some of the improvements, moreover, that were in existence at the commencement of the lease may be exhausted or obsolete or demolished, while others may have been maintained or extended, or replaced by new ones of a different kind. It often happens that, in addition to original lease, there is a sublease, and perhaps a series of subordinate leases, which may have been granted at different times, when the property was in different stages of development; and the foregoing observations may apply to each of them in succession. Other interests must also be kept in view; thus, for instance, the scheme must be capable of being applied to the apportionment of the tax as between the parties to a rentcharge or a mortgage.

In order to deal with these difficulties we need a scheme of apportionment which shall be simple, just, and workable. It should, moreover, be of such a kind as to require little or no data beyond the amount of the land-value, the rate of the land-value tax, and the information contained in the leases and other documents of title. The best scheme that I have been able to formulate is described in the following clauses. In the case of each property it deals first with the interest of the owner of the fee-simple, and then with the owners of the other interests in the descending order of their priority, so far as is necessary to complete the apportionment of the tax. It treats any rent (except in so far as that rent has been allocated as rent for improvements) primarily as rent for the land, up to 5 per cent of the land-value. It provides for those cases where the present annual value of the reversion to the land-value is greater than the annual rent, etc., by taking as the basis of the lessor's contribution the annual rent, etc., that he receives for the land, or 5 per cent of the present value of his reversion to the land-value at the end of the lease, whichever is the greater. It assumes that the land-value is defined and ascertained on the basis of capital or selling value, as in the case of full site value under the Finance Act.

## Valuations, etc., not affected by Severance

1. In the case of each property, the land-value should be ascertained in accordance with the definitions, and neither the valuation, nor the amount of the land-value tax charged on the land, should be affected by any severance of interests.

## Freeholders, Lessees, and Sublessees

2. (1) The owner of the fee-simple,

(a) if he has not leased the land, or if he has leased

it and his annual interest in it (as defined in Clause 3) is equal to or greater than 5 per cent of the land-value, should pay the whole of the land-value tax; and

(b) if he has leased the land and the value of his annual interest in it (as there defined) is less than 5 per cent of the land-value, he should pay a corresponding proportion of the land-value tax.

(2) If any part of the land-value tax then remains outstanding, the lessee,

(a) if he has not subleased the land, or if he has subleased it and his annual interest in it (as defined in Clause 3) is equal to or greater than 5 per cent of the land-value after deducting therefrom the annual interest of the lessor, should pay the whole of the outstanding part of the land-value tax; and

(b) if he has subleased the land and his annual interest in it (as there defined) is less than 5 per cent of the land-value after deducting therefrom the annual interest of the lessor, should pay a corresponding proportion of the outstanding part of the land-value tax.

(3) If any part of the land-value tax still remains outstanding, the same rule should be applied to the case of the sublessee, and so on, through any series of subordinate leases, until the stage is reached at which the whole of the land-value tax is apportioned.

## Interpretation of Terms

3. (1) The expression "owner of the fee-simple" means the person who has the highest estate in the land, and any reference to the owner of any interest in the land implies a reference to his predecessors and successors in title.

(2) The expression "rent" includes any rent or payment by way of rent, except in so far as it has been allocated as rent for improvements, as to which see Clause 5.

(3) The expression "annual interest" of the owner of the fee-simple, who is also a lessor, in the land, means—

(a) The annual rent that he receives for the land, plus the annual detrimental value to the lessee of any unfulfilled onerous obligations and of any restrictions imposed by the lease on the use or transfer of the land; or

(b) an amount equal to 5 per cent of the present value of the reversion to the land-value at the end of the lease;

whichever of these amounts is the greater.

(4) The expression "annual interest" of a lessee, who is also a sublessor, in the land means—

(a) The amount by which the annual rent that he receives for the land exceeds the annual rent that he pays for it, plus the annual detrimental value to the sublessee of any unfulfilled onerous obligations or restrictions imposed by the sublease in addition to those imposed by the lease; or

(b) the amount by which the present value of the reversion to the land-value at the end of the sublease exceeds the present value of the reversion to it at the end of the lease;

whichever of these amounts is the greater.

(5) The expression "annual interest" of a sublessee, who is also a sublessor, is to be ascertained in the same

way as the annual interest of a lessee, with the necessary modifications.

(6) Any present value requiring to be calculated should be calculated on the basis of 5 per cent per annum compound interest, as illustrated by the table in Clause 8.

#### *Rentcharges, Mortgages, etc.*

4. (1) In the application of this system of apportionment to a rentcharge, the owner of the rentcharge and the owner of the interest on which it is charged should be dealt with as if they were respectively lessor and lessee; the annual amount of the rentcharge should be deemed to be the annual interest of the owner of the rentcharge in the land; and where there are two or more rentcharges on the same interest, they should be dealt with in the order of their priority.

(2) In the application of this system of apportionment to a mortgage, the mortgagee and mortgagor should be dealt with as if they were respectively lessor and lessee; the annual amount payable under the mortgage should be deemed to be the annual amount of the mortgagee's interest in the land; and where there are two or more mortgages of the same interest they should be dealt with in the order of their priority.

(3) Where an interest is subject to both a rentcharge and a mortgage they should be dealt with in the order of their priority.

(4) The expression "rentcharge" should include any payment secured by a charge on a property or on any interest therein.

(5) The expression "mortgage" should not include an equitable charge by deposit of title-deeds or otherwise.

(6) The references to rent in Clause 2 (5) should be deemed also to be references to a rentcharge and to the annual payment secured by a mortgage.

#### *Rents Apportioned as Rents for Improvements*

5. Any rent, rentcharge, or annual payment under a mortgage, or any particular part thereof, should be deemed to be allocated as rent for improvements if and in so far as—

(1) an agreement to that effect has been made by the parties interested; or

(2) an order to that effect has been made by the Commissioners of Inland Revenue, on the application of either or both parties and after both parties have had an opportunity of being heard; or

(3) it is a rentcharge or other charge imposed on land or on any interest in land to secure the repayment of any advances made for the improvement of land under the Improvement of Land Acts, 1864 and 1899.

#### *Joint Holdings in Undivided Interests*

6. Where an undivided interest in a property is held by different persons, as in the cases of trustees, joint tenants, and tenants-in-common, they should be required to nominate some person (whether one of themselves or otherwise) to act on their behalf in all matters relating to the land-value tax.

#### *Apportionment by Agreement*

7. (1) Where the parties to any lease or sublease agree to an allocation of the rent as between land and improvements (as where the lease provides that the lessee shall pay an annual rent of £... being £... for the land and £... for the improvements) effect should be given to that agreement.

(2) Where the parties to any lease, sublease, rentcharge or mortgage agree between themselves that the tax chargeable on the owner of any interest should be paid by the owner of any other interest (as where the mortgagee and the mortgagor agree that the tax on the mortgagee's interest should be payable by the mortgagor) effect should be given to that agreement.

(3) Where the owners of any two or more interests agree between themselves that their respective interests should be valued and taxed as a consolidated interest (as where the mortgagee and the mortgagor agree that their interests shall be valued and taxed as if they were a single consolidated interest, which in practice would be equivalent to valuing and taxing the mortgagor's interest as if there were no mortgage) effect should be given to that agreement; provided that the valuation of, and the tax chargeable on, the consolidated interest should not be less than what they would be if the interests had been valued and taxed separately.

#### *Table of Reversionary Values*

8. The following table shows the present value of the reversion to each £1 of capital land-value at the end of certain numbers of years, in decimal fractions of £1, and also 5 per cent of that present value, on the basis of 5 per cent per annum compound interest:

Years	Present value	5 per cent of present value	Years	Present value	5 per cent of present value	Years	Present value	5 per cent of present value
1	·9524	·04762	21	·3589	·01794	41	·1353	·00676
2	·9070	·04535	22	·3418	·01709	42	·1288	·00644
3	·8638	·04319	23	·3256	·01628	43	·1227	·00613
4	·8227	·04113	24	·3101	·01550	44	·1169	·00584
5	·7835	·03917	25	·2953	·01476	45	·1113	·00556
6	·7462	·03731	26	·2812	·01406	46	·1060	·00530
7	·7107	·03553	27	·2678	·01339	47	·1009	·00504
8	·6768	·03384	28	·2551	·01275	48	·0961	·00480
9	·6446	·03223	29	·2429	·01214	49	·0916	·00458
10	·6139	·03064	30	·2314	·01157	50	·0872	·00436
11	·5847	·02923	31	·2204	·01102	55	·0683	·00341
12	·5568	·02784	32	·2099	·01049	60	·0535	·00287
13	·5303	·02651	33	·1999	·00999	65	·0420	·00210
14	·5051	·02525	34	·1904	·00952	70	·0329	·00164
15	·4810	·02405	35	·1813	·00906	75	·0258	·00129
16	·4581	·02290	36	·1727	·00863	80	·0202	·00101
17	·4363	·02181	37	·1644	·00822	85	·0158	·00079
18	·4155	·02077	38	·1566	·00783	90	·0124	·00062
19	·3957	·01978	39	·1491	·00745	95	·0097	·00048
20	·3769	·01884	40	·1420	·00710	100	·0076	·00038

#### *Method of Using the Table (if required)*

9. (1) Ascertain the proportion that the annual rent plus the annual value of any obligations and restrictions bears to the capital land-value by dividing the capital land-value into the combined annual amount. Thus, if the annual rent is £120 and the annual value of the obligations and restrictions is £25—their combined annual amount being thus £145—and the capital land-value is £2,500, the dividing of the £2,500 into the £145 gives ·058 as the proportion.

(2) If (as in the great majority of cases) the proportion is greater than ·04762 (the first decimal in the *italic* 5 per cent column), the lessor's annual interest in the land will be the annual rent, etc., and there is no occasion to use the table.

(3) If the proportion is less than ·04762, compare the proportion with the decimal fraction in that *italic* 5 per cent column opposite the number of years till the land reverts to the lessor, and

(a) if the proportion is greater than the decimal (as will generally happen) the lessor's annual interest will be the annual rent, etc., and there is no occasion to use the table; but

(b) if (as in some exceptional cases) the decimal is greater than the proportion, the lessor's annual interest in the land will be the capital land-value multiplied by the decimal. If, for instance, the land reverts to the lessor at the end of 10 years and the decimal ·03064 is greater than the proportion, and the capital land-value is £1,000, the lessor's interest in the land for the year will be £30·64, or, say, £30 12s. 10d.