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SCHEDULE 6

LEASES

VALID FROM 01/04/2018

PART 3

RENT AND OTHER CONSIDERATION

Rent

- 9 (1) For the purposes of this Act, a single sum expressed to be payable in respect of rent and other matters but not apportioned is to be treated as entirely rent.
- (2) Sub-paragraph (1) is without prejudice to the application of paragraph 4 of Schedule 4 (chargeable consideration: just and reasonable apportionment) where separate sums are expressed to be payable in respect of rent and other matters.
- (3) For the purposes of this Act, “rent” does not include any chargeable consideration for the grant of a lease that is payable in respect of a period before the grant of the lease.

Variable or uncertain rent

- 10 (1) This paragraph applies where the amount of rent payable under a lease—
- (a) varies in accordance with provision in the lease, or
 - (b) is contingent, uncertain or unascertained.
- (2) As regards rent payable in respect of any period before the end of the fifth year of the term of the lease—
- (a) this Act applies as in relation to other chargeable consideration, and
 - (b) accordingly sections 19 and 20 apply if the amount is contingent, uncertain or unascertained.
- (3) As regards rent payable in respect of any period after the end of the fifth year of the term of the lease, the annual amount of rent is assumed, in every case, to be the equal to the highest amount of rent payable in respect of any period of 12 consecutive months in the first 5 years of the term.
- (4) In determining that amount—
- (a) disregard paragraphs 7(2) and 8(3) (where further lease granted, deemed reduction of rent for overlap period), and
 - (b) if necessary, take into account any amounts determined in accordance with sub-paragraph (2)(b).
- (5) This paragraph is subject to paragraph 12 (adjustment where rent ceases to be uncertain).
- (6) For the purposes of this paragraph and paragraph 12, the cases where the amount of rent payable under a lease is uncertain or unascertained include cases where there is a possibility of that amount being varied under—

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- (a) section 12, 13 or 33 of the Agricultural Holdings Act 1986 (c. 5) (provisions relating to increases, reductions and other variations of rent), or
- (b) Part 2 of the Agricultural Tenancies Act 1995 (c. 8) (rent review under farm business tenancy).

(7) For the purposes of this Act, no account is to be taken of any provision for rent to be adjusted in line with the retail prices index, consumer prices index or any other similar index used to express a rate of inflation.

First rent review in final quarter of fifth year

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Where—

- (a) a lease contains provision under which the rent may be adjusted,
- (b) under that provision the first (or only) such adjustment—
 - (i) is to an amount that (before that adjustment) is uncertain, and
 - (ii) has effect from a date (the “review date”) that is expressed as falling 5 years after a specified date, and
- (c) the specified date falls within the period of 3 months before the beginning of the term of the lease,

this Act applies as if references to the first 5 years of the term of the lease were to the period beginning with the start of the term and ending with the review date and references to the fifth year of the term of the lease are to be read accordingly.

Adjustment of tax where rent determined on reconsideration date

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(1) Where, in the case of a land transaction relating to a lease—

- (a) section 19 or 20 (contingent, uncertain or unascertained consideration) applies to the land transaction by virtue of paragraph 10, and
- (b) the reconsideration date is reached,

the buyer in the transaction must, on the reconsideration date, determine the rent paid or payable in respect of the first 5 years of the term of the lease.

(2) Paragraphs 13 and 14 make provision for the adjustment of tax payable in respect of a land transaction (and of any transaction linked to such a transaction) as a result of such a determination.

(3) For the purposes of this paragraph and paragraphs 13 and 14, the reconsideration date is —

- (a) the date falling at the end of the fifth year of the term of the lease, or
- (b) any earlier date on which the amount of rent payable in respect of the first 5 years of the term of the lease ceases to be uncertain.

(4) For the purposes of sub-paragraph (3)(b) and paragraph 13(2), the amount of rent payable ceases to be uncertain when—

- (a) in the case of contingent rent, the contingency occurs or it becomes clear that it will not occur;
- (b) in the case of uncertain or unascertained rent, the amount becomes ascertained.

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Underpayment of tax where rent determined on reconsideration date

- 13 (1) If, as a result of determining on the reconsideration date the rent paid or payable in respect of the first 5 years of the term of the lease—
- (a) a land transaction becomes notifiable, or
 - (b) additional tax is payable in respect of a land transaction or tax is payable where none was payable,
- the buyer must make a return or further return (including a self-assessment) in respect of the land transaction before the end of the period of 30 days beginning with the reconsideration date.
- (2) Where—
- (a) a return is made under sub-paragraph (1) as a result of determining the rent paid or payable in respect of the first 5 years of the term of the lease on the date falling at the end of the fifth year of that term,
 - (b) when the return is made, the rent so paid or payable remains uncertain, and
 - (c) no later than the end of the period of 12 months beginning with the filing date for the return, that rent ceases to be uncertain,
- the buyer must amend the return in accordance with section 41 of TCMA.

Overpayment of tax where rent determined on reconsideration date

- 14 (1) If, as a result of determining on the reconsideration date the rent paid or payable in respect of the first 5 years of the term of the lease, less tax is payable in respect of a land transaction than has already been paid—
- (a) the buyer may, within the period allowed for amendment of the return, amend it accordingly;
 - (b) after the end of that period, the buyer may (if the return is not so amended) make a claim for repayment of the amount overpaid in accordance with Chapter 7 of Part 3 of TCMA as modified by sub-paragraph (2).
- (2) In its application to a claim to which sub-paragraph (1)(b) applies, Chapter 7 of Part 3 of TCMA applies as if for section 78 there were substituted—

“78 Time limit for making claims

A claim under section 63 to which paragraph 14(1)(b) of Schedule 6 to LTTA applies must be made before the later of the end of—

- (a) the period of 4 years beginning with the day after the filing date for the tax return to which the land transaction tax already paid relates, or
- (b) the period of 12 months beginning with the reconsideration date (within the meaning of paragraph 12(3) of that Schedule).”

Reverse premiums

- 15 (1) In the case of the grant, assignment or surrender of a lease a reverse premium does not count as chargeable consideration.
- (2) A “reverse premium” means—
- (a) in relation to the grant of a lease, a premium moving from the landlord to the tenant;

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- (b) in relation to the assignment of a lease, a premium moving from the assignor to the assignee;
- (c) in relation to the surrender of a lease, a premium moving from the tenant to the landlord.

Tenants' obligations etc. that do not count as chargeable consideration

- 16 (1) In the case of a grant of a lease none of the following counts as chargeable consideration —
- (a) any undertaking by the tenant to repair, maintain or insure the leased premises;
 - (b) any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord's costs of management;
 - (c) any other obligation of the tenant that is not such as to affect the rent that a tenant would be prepared to pay in the open market;
 - (d) any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease;
 - (e) any penal rent, or increased rent in the nature of a penal rent, payable in respect of the breach of any obligation of the tenant under the lease;
 - (f) any liability of the tenant for costs under section 14(2) of the Leasehold Reform Act 1967 (c. 88) or section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) (costs to be borne by person exercising statutory rights to be granted lease);
 - (g) any other obligation of the tenant to bear the landlord's reasonable costs or expenses of, or incidental to, the grant of the lease;
 - (h) any obligation under the lease to transfer to the landlord, on the termination of the lease, payment entitlements granted to the tenant under the single payment scheme (that is, the scheme of income support for farmers in pursuance of Title III of Council Regulation (EC) No 73/2009) in respect of land subject to the lease.
- (2) Where sub-paragraph (1) applies in relation to an obligation, a payment made in discharge of the obligation does not count as chargeable consideration.
- (3) The release of an obligation mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the surrender of the lease.

Surrender of existing lease in return for new lease

- 17 (1) Where a lease is granted in consideration of the surrender of an existing lease between the same parties—
- (a) the grant of the new lease does not count as chargeable consideration for the surrender, and
 - (b) the surrender does not count as chargeable consideration for the grant of the new lease.
- (2) Paragraph 5 (exchanges) of Schedule 4 (chargeable consideration) does not apply in such a case.

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Assignment of lease: assumption of obligations by assignee

- 18 In the case of an assignment of a lease the assumption by the assignee of the obligation—
- (a) to pay rent, or
 - (b) to perform or observe any other undertaking of the tenant under the lease,
- does not count as chargeable consideration for the assignment.

Loan or deposit in connection with grant or assignment of lease

- 19 (1) Where, under arrangements made in connection with the grant of a lease—
- (a) the tenant, or any person connected with or acting on behalf of the tenant, pays a deposit, or makes a loan, to any person, and
 - (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the tenant, or on the death of the tenant,
- the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the grant of the lease.
- (2) Where, under arrangements made in connection with the assignment of a lease—
- (a) the assignee, or any person connected with or acting on behalf of the assignee, pays a deposit, or makes a loan, to any person, and
 - (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the assignee, or on the death of the assignee,
- the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the assignment of the lease.
- (3) Sub-paragraph (1) or (2) does not apply in relation to a deposit if the amount that would otherwise fall within the sub-paragraph in question in relation to the grant or assignment of the lease is not more than twice the relevant maximum rent.
- (4) The relevant maximum rent is—
- (a) in relation to the grant of a lease, the highest amount of rent payable in respect of any period of 12 consecutive months in the first 5 years of the term of the lease;
 - (b) in relation to the assignment of a lease, the highest amount of rent payable in respect of any period of 12 consecutive months falling within the first 5 years of the term remaining outstanding as at the date of the assignment.
- (5) In determining the highest amount of rent for the purposes of sub-paragraph (4)—
- (a) disregard paragraphs 7(2) and 8(3) (where further lease granted, deemed reduction of rent for overlap period), and
 - (b) if necessary, take into account any amounts determined in accordance with paragraph 10(2)(b) (determining contingent, uncertain or unascertained rent).
- (6) Tax is not chargeable by virtue of this paragraph if it would be chargeable only as a result of the application of paragraph 34 (which excludes the zero rate band in cases where the relevant rent attributable to non-residential property is not less than

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£1,000 a year) to an amount of chargeable consideration determined under subparagraph (1) or (2).

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