

SCHEDULE 6

LEASES

PART 4

AGREEMENTS FOR LEASE, ASSIGNMENTS AND VARIATIONS

Agreement for lease

- 20 (1) Where—
- (a) an agreement for a lease is entered into, and
 - (b) the agreement is substantially performed without having been completed,
- the agreement is treated for the purposes of this Act as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of substantial performance.
- (2) The effective date of the transaction is the date of substantial performance of the agreement.
- (3) For the purposes of this paragraph the agreement is completed by the grant of a lease (“the actual lease”) in substantial conformity with the agreement.
- (4) Where the actual lease is subsequently granted the notional lease is treated for the purposes of this Act as if it were a lease granted—
- (a) on the date of substantial performance of the agreement,
 - (b) for a term beginning with that date and ending at the end of the term of the actual lease, and
 - (c) in consideration of the total rent payable over that term and any other consideration given for the agreement or the actual lease.
- (5) Where sub-paragraph (4) applies the grant of the actual lease is disregarded for the purposes of this Act except section 51 (return or further return in consequence of later linked transaction).
- (6) For the purposes of section 51—
- (a) the grant of the notional lease and the grant of the actual lease are linked (whether or not they would be linked by virtue of section 8),
 - (b) the tenant under the actual lease (rather than the tenant under the notional lease) is liable for any tax or additional tax chargeable in respect of the notional lease as a result of sub-paragraph (4), and
 - (c) the reference in section 51(2) to “the buyer in the earlier transaction” is to be read, in relation to the notional lease, as a reference to the tenant under the actual lease.
- (7) Where—
- (a) sub-paragraph (1) applies, and
 - (b) within the period of 12 months beginning with the date of substantial performance of the agreement, the agreement is (to any extent) rescinded or annulled, or is for any other reason not carried into effect, and
 - (c) in consequence, the return made in respect of the agreement is amended,

the tax paid by virtue of that sub-paragraph must (to that extent) be repaid by WRA.

- (8) For the purposes of the application of section 14(1) (substantial performance) to this paragraph and paragraph 21 any agreement for lease is to be treated as a contract.

Assignment of agreement for lease

- 21 (1) This paragraph applies where a person (“P”) assigns P’s interest as tenant under an agreement for lease.
- (2) Where this paragraph applies Schedule 2 (transactions entered into before completion of contract) does not apply.
- (3) If the assignment occurs without the agreement having been substantially performed, section 10 (contract and transfer) has effect as if—
- (a) the agreement were with the assignee (“A”) and not P, and
 - (b) the consideration given by A for entering into the agreement included any consideration given by A for the assignment.
- (4) If the assignment occurs after the agreement has been substantially performed—
- (a) the assignment is a separate land transaction, and
 - (b) the effective date of that transaction is the date of the assignment.
- (5) Where there are successive assignments, this paragraph has effect in relation to each one of them.

Cases where assignment of lease treated as grant of lease

- 22 (1) This paragraph applies where the grant of a lease is relieved from tax by virtue of any of the provisions specified in sub-paragraph (4).
- (2) The first assignment of the lease that is not relieved from tax by virtue of any of the provisions specified in sub-paragraph (4), and in relation to which the assignee does not acquire the lease as a bare trustee of the assignor, is treated for the purposes of this Act as if it were the grant of a lease by the assignor—
- (a) for a term equal to the unexpired term of the lease referred to in sub-paragraph (1), and
 - (b) on the same terms as those on which the assignee holds the lease after the assignment.
- (3) Sub-paragraph (2) does not apply where an assignment of a lease, but for the application of that sub-paragraph, would be relieved from tax by virtue of Schedule 11 (alternative finance investment bonds).
- (4) The provisions are—
- (a) Schedule 9 (sale and leaseback relief);
 - (b) paragraphs 13 and 15 of Schedule 11 (alternative finance investment bond relief);
 - (c) Schedule 16 (group relief);
 - (d) Schedule 17 (reconstruction and acquisition relief);
 - (e) Schedule 18 (charities relief);
 - (f) paragraph 1 of Schedule 20 (relief for certain acquisitions involving public bodies).

Status: This is the original version (as it was originally enacted).

- (5) This paragraph does not apply where the relief in question is group relief, reconstruction or acquisition relief or charities relief and is withdrawn as a result of a disqualifying event occurring before the effective date of the assignment.
- (6) For the purposes of sub-paragraph (5), “disqualifying event” means—
- (a) in relation to the withdrawal of group relief, the event falling within paragraph 8(2)(a) of Schedule 16 (buyer ceasing to be a member of the same group as the seller) as read with paragraph 9 of that Schedule;
 - (b) in relation to the withdrawal of reconstruction or acquisition relief, the change of control of the acquiring company mentioned in paragraph 5(2) of Schedule 17 or, as the case may be, the event mentioned in paragraph 7(2) or (3) of that Schedule;
 - (c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraph 2(4) or 5(2)(b) of Schedule 18.

Assignment of lease

- 23 (1) Where a lease is assigned, anything that but for the assignment would be required or authorised to be done by or in relation to the assignor under or by virtue of—
- (a) section 47 (contingency ceases and consideration is ascertained: duty to make return),
 - (b) section 51 (return or further return in consequence of later linked transaction),
 - (c) paragraph 3 or 5 of this Schedule (return or further return required where fixed term or indefinite term lease continues), or
 - (d) paragraphs 12, 13 and 14 of this Schedule (adjustment where rent ceases to be uncertain),
- must, if the event giving rise to the adjustment or return occurs after the effective date of the assignment, be done instead by or in relation to the assignee.
- (2) So far as necessary for giving effect to sub-paragraph (1) anything previously done by or in relation to the assignor is to be treated as if it had been done by or in relation to the assignee.
- (3) This paragraph does not apply if the assignment is treated as the grant of a lease by the assignor (see paragraph 22).

Reduction of rent or term or other variation of lease

- 24 (1) Where a lease is varied so as to reduce the amount of the rent, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.
- (2) Where any consideration in money or money’s worth (other than an increase in rent) is given by the tenant for any variation of a lease, other than a variation of the amount of the rent or of the term of the lease, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.
- (3) Where a lease is varied so as to reduce the term, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the landlord.

Increase of rent treated as grant of new lease: variation of lease in first 5 years

- 25 (1) Where a lease is varied so as to increase the amount of rent as from a date before the end of the fifth year of the term of the lease, the variation is treated for the purposes of this Act as if it were the grant of a lease in consideration of the additional rent made payable by it.
- (2) Sub-paragraph (1) does not apply to an increase of rent in pursuance of—
- (a) a provision contained in the lease before it was varied, or
 - (b) a provision mentioned in paragraph 10(6)(a) or (b) (variations of certain agricultural leases).