

SCHEDULE

AMENDMENTS TO THE FINANCE ACT 2003

Further provisions relating to leases

8.—(1) For section 120 (meaning of “lease” and other supplementary provisions) substitute—

“120 Further provisions relating to leases

120 Schedule 17A contains further provisions relating to leases.”.

(2) After Schedule 17 insert—

“SCHEDULE 17A

Section 120

FURTHER PROVISIONS RELATING TO LEASES

Meaning of “lease”

1. In the application of this Part to England and Wales or Northern Ireland “lease” means—
 - (a) an interest or right in or over land for a term of years (whether fixed or periodic), or
 - (b) a tenancy at will or other interest or right in or over land terminable by notice at any time.

Leases for a fixed term

2. In the application of the provisions of this Part to a lease for a fixed term, no account shall be taken of—

- (a) any contingency as a result of which the lease may determine before the end of the fixed term, or
- (b) any right of either party to determine the lease or renew it.

Leases that continue after a fixed term

- 3.—(1) This paragraph applies to—
 - (a) a lease for a fixed term and thereafter until determined, or
 - (b) a lease for a fixed term that may continue beyond the fixed term by operation of law.
- (2) A lease to which this paragraph applies is treated—
 - (a) in the first instance as if it were a lease for the original fixed term and no longer,
 - (b) if the lease continues after the end of that term, as if it were a lease for a fixed term one year longer than the original fixed term,
 - (c) if the lease continues after the end of the term resulting from the application of paragraph (b), as if it were a lease for a fixed term two years longer than the original fixed term,

and so on.

(3) Where the effect of sub-paragraph (2) in relation to the continuation of the lease after the end of a fixed term is that a transaction becomes notifiable, or that additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—

- (a) the purchaser must deliver a return or further return in respect of that transaction before the end of the period of 30 days after the end of that term,

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- (b) the return must include a self-assessment of the amount of tax chargeable in respect of the transaction on the basis of the information contained in the return,
- (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
- (d) the return must be accompanied by payment of the tax or additional tax payable.

(4) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to deliver land transaction return), with the adaptation that references to the effective date of the transaction shall be read as references to the day on which the lease becomes treated as being for a longer fixed term.

Treatment of leases for indefinite term

4.—(1) For the purposes of this Part—

- (a) a lease for an indefinite term is treated in the first instance as if it were a lease for a fixed term of a year,
- (b) if the lease continues after the end of the term resulting from the application of paragraph (a), it is treated as if it were a lease for a fixed term of two years,
- (c) if the lease continues after the end of the term resulting from the application of paragraph (b), it is treated as if it were a lease for a fixed term of three years,

and so on.

(2) No account shall be taken for the purposes of this Part of any other statutory provision in England and Wales or Northern Ireland deeming a lease for an indefinite period to be a lease for a different term.

(3) Where the effect of sub-paragraph (1) in relation to the continuation of the lease after the end of a deemed fixed term is that a transaction becomes notifiable, or that additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—

- (a) the purchaser must deliver a return or further return in respect of that transaction before the end of the period of 30 days after the end of that term,
- (b) the return must include a self-assessment of the amount of tax chargeable in respect of the transaction on the basis of the information contained in the return,
- (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
- (d) the return must be accompanied by payment of the tax or additional tax payable.

(4) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to deliver land transaction return), with the adaptation that references to the effective date of the transaction shall be read as references to the day on which the lease becomes treated as being for a longer fixed term.

(5) References in this paragraph to a lease for an indefinite period include—

- (a) a periodic tenancy or other interest or right terminable by a period of notice,
- (b) a tenancy at will in England and Wales or Northern Ireland, or
- (c) any other interest or right terminable by notice at any time.

Treatment of successive linked leases

5.—(1) This paragraph applies where—

- (a) successive leases are granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and
- (b) those grants are linked transactions.

(2) This Part applies as if the series of leases were a single lease—

- (a) granted at the time of the grant of the first lease in the series,
- (b) for a term equal to the aggregate of the terms of all the leases, and
- (c) in consideration of the rent payable under all of the leases.

(3) The grant of later leases in the series is accordingly disregarded for the purposes of this Part except section 81A (return or further return in consequence of later linked transaction).

Rent

6.—(1) For the purposes of this Part a single sum expressed to be payable in respect of rent, or expressed to be payable in respect of rent and other matters but not apportioned, shall 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.

Variable or uncertain rent

7.—(1) This paragraph applies to determine the amount of rent payable under a lease where that amount—

- (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) the provisions of this Part apply as in relation to other chargeable consideration, and
- (b) the provisions of section 51(1) and (2) accordingly 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 is assumed for the purposes of this Part to be, in every case, equal to the highest amount of rent payable in respect of any consecutive twelve month period in the first five years of the term.

In determining that amount take into account (if necessary) any amounts determined as mentioned in sub-paragraph (2)(b).

(4) This paragraph has effect subject to paragraph 8 (adjustment where rent payable ceases to be uncertain).

(5) No account shall be taken for the purposes of this Part of any provision for rent to be adjusted in line with the retail price index.

Adjustment where rent ceases to be uncertain

8.—(1) Where the provisions of section 51(1) and (2) (contingent, uncertain or unascertained consideration) apply in relation to a transaction by virtue of paragraph 7 (uncertain rent) and—

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- (a) the end of the fifth year of the term of the lease is reached, or
- (b) the amount of rent payable in respect of the first five years of the term of the lease ceases to be uncertain at an earlier date,

the following provisions have effect to require or permit reconsideration of how this Part applies to the transaction (and to any transaction in relation to which it is a linked transaction).

(2) For the purposes of this paragraph 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, and
- (b) in the case of uncertain or unascertained rent, the amount becomes ascertained.

(3) If the result as regards the rent paid or payable in respect of the first five years of the term of the lease is that a transaction becomes notifiable, or that additional tax is payable in respect of a transaction or that tax is payable where none was payable before—

- (a) the purchaser must make a return to the Inland Revenue within 30 days of the date referred to in sub-paragraph (1)(a) or (b),
- (b) the return must contain a self-assessment of the tax chargeable in respect of the transaction on the basis of the information contained in the return,
- (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
- (d) the return must be accompanied by payment of any tax or additional tax payable.

(4) The provisions of Schedule 10 (returns, enquiries, assessment and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to make land transaction return), subject to the adaptation that references to the effective date of the transaction shall be read as references to the date referred to in sub-paragraph (1)(a) or (b).

(5) If the result as regards the rent paid or payable in respect of the first five years of the term of the lease is that less tax is payable in respect of the transaction than has already been paid, the amount overpaid shall on a claim by the purchaser be repaid together with interest as from the date of payment.

Rent for overlap period in case of grant of further lease

9.—(1) This paragraph applies—

- (a) where A surrenders an existing lease to B (“the old lease”) and in consideration of that surrender B grants a lease to A of the same or substantially the same premises (“the new lease”), or
- (b) the tenant under a lease (“the old lease”) of premises to which Part 2 of the Landlord and Tenant Act 1954⁽¹⁾ or the Business Tenancies (Northern Ireland) Order 1996⁽²⁾ applies makes a request for a new tenancy (“the new lease”) which is duly executed.

(2) For the purposes of this Part the rent payable under the new lease in respect of any period falling within the overlap period is treated as reduced by the amount of the rent that would have been payable in respect of that period under the old lease.

(3) The overlap period is the period between the date of grant of the new lease and what would have been the end of the term of the old lease had it not been terminated.

(4) The rent that would have been payable under the old lease shall be taken to be the amount taken into account in determining the tax chargeable in respect of the acquisition of the old lease.

(1) 1954 c. 56.

(2) S.I. 1996/725 (N.I. 5).

(5) This paragraph does not have effect so as to require the rent payable under the new lease to be treated as a negative amount.

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

10.—(1) In the case of the grant of a lease none of the following counts as chargeable consideration—

- (a) any undertaking by the tenant to repair, maintain or insure the demised premises (in Scotland, 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 undertaken by 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.

(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 any such obligation as is mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the surrender of the lease.

Cases where assignment of lease treated as grant of lease

11.—(1) If the grant of a lease ("the original lease") is exempt from charge by virtue of any of the provisions specified in sub-paragraph (2), the first assignment of the lease that is not exempt from charge by virtue of any of those provisions is treated for the purposes of this Part as if it were the grant of a lease by the assignor.

(2) The provisions are—

- (a) section 57A (sale and leaseback arrangements);
- (b) Part 1 or 2 of Schedule 7 (group relief or reconstruction or acquisition relief);
- (c) section 66 (transfers involving public bodies);
- (d) Schedule 8 (charities relief);
- (e) any such regulations as are mentioned in section 123(3) (regulations reproducing in relation to stamp duty land tax the effect of enactments providing for exemption from stamp duty).

(3) The grant is treated as being—

- (a) for a term equal to the unexpired term of the original lease, and
- (b) on the same terms as those on which assignee holds that lease after the assignment.

(4) 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.

(5) For the purposes of sub-paragraph (4) "disqualifying event" means—

- (a) in relation to the withdrawal of group relief, the purchaser ceasing to be a member of the same group as the vendor (within the meaning of Part 1 of Schedule 7);

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- (b) in relation to the withdrawal of reconstruction or acquisition relief, the change of control of the acquiring company mentioned in paragraph 9(1)(a) of that Schedule or, as the case may be, the event mentioned in paragraph 11(1)(a) or (2)(a) of that Schedule;
- (c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraph 2(3) of Schedule 8.

Assignment of lease: responsibility of assignee for returns etc.

12.—(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 80 (adjustment where contingency ceases or consideration is ascertained),
- (b) section 81A (return or further return in consequence of later linked transaction),
- (c) paragraph 3 or 4 of this Schedule (return or further return required where lease for indefinite period continues), or
- (d) paragraph 8 of this Schedule (adjustment where rent ceases to be uncertain),

shall, 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 shall be treated as if it had been done by or in relation to the assignee.

(3) This paragraph does not apply if the assignment falls to be treated as the grant of a lease by the assignor (see paragraph 11).

Increase of rent treated as grant of new lease: variation of lease

13.—(1) Where a lease is varied so as to increase the amount of the rent, the variation is treated for the purposes of this Part 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 provision contained in the lease (but see paragraph 14).

Increase of rent treated as grant of new lease: abnormal increase after fifth year

14.—(1) This paragraph applies if, after the end of the fifth year of the term of a lease—

- (a) the amount of rent payable increases (or is increased) in accordance with the provisions of the lease, and
- (b) the rent payable as a result (“the new rent”) is such that the increase falls to be regarded as abnormal (see paragraph 15).

(2) The increase in rent is treated as if it were the grant of a lease in consideration of the excess rent.

(3) The excess rent is the difference between the new rent and the rent previously taxed.

(4) The rent previously taxed is—

- (a) where the provisions of this paragraph have not previously applied to a rent increase under the lease, the rent that is assumed to be payable after the fifth year of the term of the lease (in accordance with paragraph 7(3));
- (b) where the provisions of this paragraph have previously so applied, the rent payable as a result of the last increase in relation to which the provisions of this paragraph applied.

(5) The deemed grant is treated as—

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(a) made on the date on which the increased rent first became payable, and
(b) for a term equal to the unexpired part of the original lease,
and as linked with the grant of the original lease (and with any other transaction with which that transaction is linked).

(6) The assumption in paragraph 7(3) (that the rent does not change after the end of the fifth year of the term of a lease) does not apply for the purposes of this paragraph or paragraph 15 except for the purpose of determining the rent previously taxed.

Increase of rent after fifth year: whether regarded as abnormal

15. Whether an increase in rent is to be regarded for the purposes of paragraph 14 as abnormal is determined as follows:

Step One

Find the start date, which is—

- (a) where the provisions of that paragraph have not previously applied to a rent increase under the lease, the beginning of the period by reference to which the rent assumed to be payable after the fifth year of the term of the lease is determined in accordance with paragraph 7(3);
- (b) where the provisions of that paragraph have previously so applied, the date of the last increase in relation to which the provisions of that paragraph applied.

Step Two

Divide the period between the start date and the date on which the new rent first becomes payable (“the reference period”) into—

- (a) successive periods of twelve months running from the start date (if any), and
- (b) any remaining period which does not fall within paragraph (a).

Step Three

Find the factor by which the retail prices index has increased over each period identified in step two.

This is a figure expressed as a decimal and determined by the formula—

$$\frac{(RD - RI)}{RI}$$

where—

RD is the retail prices index for the month in which the last day of the period in question falls, and

RI is the retail prices index for the month in which the first day of the period in question falls.

If, in relation to any period, *RD* is equal to or less than *RI*, the increase in the retail prices index over the period in question is nil.

If, in relation to any period, the figure determined in accordance with the formula, would be a figure having more than 3 decimal places, round it to the nearest third decimal place.

Step Four

Find the relevant factor for each period identified in step two.

This is a figure expressed as a decimal and determined by the formula—

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$$1 + \left\{ 0.05 \times \frac{m}{12} \right\} + r$$

where—

m is the number of months in the period in question (treating part of a month as a whole month), and

r is the increase in the retail price index over the period in question, determined under step three.

If, in relation to any period, the figure determined in accordance with the formula would have more than 3 decimal places, round it to the nearest third decimal place.

Step Five

Find the uplift factor for the reference period as follows.

If there is only one period identified in step two, the uplift factor for the reference period is the relevant factor for that period.

If there are only two periods identified in step two, the uplift factor for the reference period is calculated by multiplying the relevant factors for those periods.

If there are more than two periods identified in step two, the uplift factor for the reference period is calculated by—

- (a) multiplying the relevant factors for the first two periods,
- (b) multiplying the result by the relevant factor for the next period,
- (c) if there are further periods, multiplying the result by the relevant factor for the next period,

until all periods have been taken into account.

If the uplift factor for the reference period would be a figure having more than 3 decimal places, round it to the nearest third decimal place.

Step Six

The rent increase is regarded as abnormal if the new rent is greater than:

$$R \times UF$$

where—

R is the rent previously taxed (see paragraph 14(4)), and

UF is the uplift factor for the reference period.

Surrender of existing lease in return for new lease

16. 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.

Assignment of lease: assumption of obligations by assignee

17. 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.

Reverse premium

18.—(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;
- (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.

Provisions relating to leases in Scotland

19.—(1) In the application of this Part to Scotland—

- (a) any reference to the term of a lease is to the period of the lease, and
- (b) any reference to the reversion on a lease is to the interest of the landlord in the property subject to the lease.

(2) Where tax has been paid in respect of a land transaction (“the first transaction”) that involves missives of let in Scotland that constitute a lease, and subsequent to those missives of let a lease is granted (“the second transaction”) which either—

- (a) is in conformity with the missives of let, or
- (b) relates to substantially the same property and period as the missives of let,

the tax that would otherwise be charged in respect of the second transaction is reduced by the amount of tax paid in respect of the first transaction in respect of the missives of let.”.

(3) In section 51 (contingent, uncertain or unascertained consideration), after subsection (4) add—

“(5) This section applies in relation to chargeable consideration consisting of rent only to the extent that it is applied by paragraph 7 of Schedule 17A.”.

(4) In section 77(2)(a) and (b) (notifiable transactions: grant of lease) omit “contractual”.

(5) In section 80 (adjustment where contingency ceases or consideration becomes certain)—

- (a) in subsection (3) leave out “land transaction return” and insert “return under section 76 (general requirement to make land transaction return), subject to the adaptation that references to the effective date of the transaction shall be read as references to the date of the event as a result of which the return is required”; and

(b) after subsection (4) add—

“(5) This section does not apply so far as the consideration consists of rent (see paragraph 8 of Schedule 17A).”.

(6) In section 87 (interest on unpaid tax), in subsection (3) (meaning of “the relevant date”) after paragraph (aa) (inserted by paragraph 5(4) above) insert—

“(ab) in the case of an amount payable under paragraph 3(3) or 4(3) of Schedule 17A (leases that continue after a fixed term and treatment of leases for an indefinite term), the day on which the lease becomes treated as being for a longer fixed term;”.

(7) In section 90 (application to defer payment in case of contingent or uncertain consideration), after subsection (6) add—

“(7) This section does not apply so far as the consideration consists of rent.”.

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(8) In the table in section 122 (index of defined expressions), in the second column of the entry for “lease and related expressions” for “section 120” substitute “Schedule 17A”.

(9) In paragraph 3 of Schedule 5 omit “(see paragraphs 4 and 5)” and “(see paragraphs 6 and 7)”.

(10) In paragraph 7 of Schedule 19 (commencement and transitional provisions: earlier related transactions under stamp duty), after sub-paragraph (3) add—

“(4) For the purposes of paragraph 5 of Schedule 17A (treatment of successive linked leases) no account shall be taken of any transaction that is not an SDLT transaction.”.

(11) The following provisions (which are re-enacted, with modifications, in Schedule 17A inserted by sub-paragraph (2) above) are repealed—

in Schedule 4, paragraphs 13 to 15;

in Schedule 5, paragraphs 4 to 7, 10 and 11.