

*Status: Point in time view as at 01/04/2018.*

*Changes to legislation: There are currently no known outstanding effects for the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, SCHEDULE 6. (See end of Document for details)*

## SCHEDULE 6

(as introduced by section 32(2))

### LEASES

#### PART 1

##### INTRODUCTORY

###### *Overview*

- 1 (1) This Schedule makes provision about the application of this Act in relation to leases.
- (2) The Schedule is arranged as follows—
  - (a) Part 2 makes provision about determining the duration of a lease for the purposes of this Act and associated provision about leases with overlapping terms;
  - (b) Part 3 makes provision about the treatment of consideration in relation to leases, including rent and consideration other than rent and makes provision about not treating certain consideration as chargeable consideration;
  - (c) Part 4 makes provision about agreements for lease and the treatment of certain assignments and variations of leases for the purposes of this Act;
  - (d) Part 5 makes provision for no tax to be chargeable on the rent element of residential leases, sets out how the charge to tax is to be calculated on the rent element of other leases and makes provision about the calculation of the tax charge in relation to consideration other than rent.

###### **Commencement Information**

**11** Sch. 6 para. 1 in force at 1.4.2018 by S.I. 2018/34, art. 3

#### PART 2

##### DURATION OF LEASE AND TREATMENT OF OVERLAPPING LEASES

###### *Lease for a fixed term*

- 2 In applying any provision of this Act to a lease for a fixed term no account is to be taken of—
  - (a) any contingency as a result of which the lease may be terminated before the end of the fixed term, or
  - (b) any right of either party to terminate the lease or renew it.

###### **Commencement Information**

**12** Sch. 6 para. 2 in force at 1.4.2018 by S.I. 2018/34, art. 3

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*Leases that continue after a fixed term*

- 3 (1) This paragraph applies to—
- (a) a lease granted for a fixed term and thereafter until terminated, or
  - (b) a lease granted for a fixed term that may continue beyond the fixed term by operation of law.
- (2) For the purposes of this Act (except section 46 (notifiable transactions: exceptions)) 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 (but see sub-paragraph (5)).
- (3) For the purposes of section 46 (notifiable transactions: exceptions) a lease to which this paragraph applies is treated as granted for a period equal to the original fixed term.
- (4) Where—
- (a) a lease is treated, by virtue of sub-paragraph (2), as continuing for a period longer than the original fixed term, and
  - (b) as a result additional tax is payable in respect of a land transaction or tax is payable in respect of a land transaction 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 day after the end of the period for which the lease is treated as continuing.
- (5) Where—
- (a) a lease would, by virtue of sub-paragraph (2), be treated as continuing for a period (or further period) of one year, but
  - (b) it actually terminates at a time during that one year period,
- the lease is to be treated as continuing under sub-paragraph (2) only until it terminates; and sub-paragraph (4) applies accordingly.
- (6) This paragraph is subject to paragraphs 4 and 8 (rent under a continuing lease to be treated as rent under a new lease).

**Commencement Information**

**I3** Sch. 6 para. 3 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Leases that continue after a fixed term: grant of a new lease*

- 4 (1) This paragraph applies where—
- (a) (ignoring this paragraph) paragraph 3 would apply to treat a lease (“the original lease”) as if it were a lease for a fixed term one year longer than the original fixed term,

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- (b) during that one year period the tenant under that lease is granted a new lease of the same or substantially the same premises,
  - (c) the term of the new lease begins during that one year period, and
  - (d) paragraph 8 (tenant holding over: new lease backdated to previous year) does not apply.
- (2) Paragraph 3 does not apply to treat the lease as continuing after the original fixed term.
- (3) The term of the new lease is treated for the purposes of this Act as beginning with the day after the end of the original fixed term.
- (4) Any rent which, in the absence of this paragraph, would be payable under the original lease in respect of that one year period is to be treated as payable under the new lease (and paragraph 9(3) does not apply to that rent).
- (5) Where the fixed term of a lease has previously been treated as extended (on one or more occasions) under paragraph 3, this paragraph applies as if references to the original fixed term were references to the previously extended fixed term.

#### Commencement Information

**I4** [Sch. 6 para. 4](#) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

#### *Leases for an indefinite term*

- 5 (1) For the purposes of this Act (except section 46 (notifiable transactions: exceptions))
- (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 2 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 3 years, and so on.
  - (2) But where—
    - (a) a lease is treated, by virtue of sub-paragraph (1) as if it were a lease for a fixed term of 2 or more years, and
    - (b) it actually terminates before the end of that fixed term,the lease is to be treated as continuing under sub-paragraph (1) only until it terminates; and sub-paragraph (5) applies accordingly.
  - (3) For the purposes of section 46 (notifiable transactions: exceptions) a lease for an indefinite term is treated as granted for a period of less than 7 years.
  - (4) For the purposes of this Act, no account is to be taken of any other enactment deeming a lease for an indefinite term to be a lease for a different term.
  - (5) Where—
    - (a) a lease is treated, by virtue of sub-paragraph (1), as being for a fixed term,

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- (b) the lease continues after the end of that term and accordingly is treated as being for a longer fixed term, and
- (c) as a result of the lease continuing, additional tax is payable in respect of a land transaction or tax is payable in respect of a land transaction 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 day after the end of the longer fixed term for which the lease is treated as continuing.

(6) Where—

- (a) a lease is treated, by virtue of sub-paragraph (1), as being for a fixed term of one year,
- (b) the lease actually terminates before the end of that fixed term, and
- (c) had the lease been granted for a fixed term ending on the date on which it actually terminates, less tax would have been chargeable than the amount assessed as such in the return made in respect of the grant of the lease,

the buyer may, within the period allowed for amendment of the return, amend it accordingly (for provision as to amendment of returns, see section 41 of TCMA).

#### **Commencement Information**

**I5** [Sch. 6 para. 5](#) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

#### *Successive linked leases*

- 6 (1) For the purposes of this Act a series of linked leases are treated as 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.
- (2) Two or more leases constitute ““a series of linked leases”” if they—
- (a) are successive leases granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and
  - (b) are linked transactions.
- (3) The grant of later leases in the series is accordingly disregarded for the purposes of this Act except section 51 (return or further return in consequence of later linked transaction).

#### **Commencement Information**

**I6** [Sch. 6 para. 6](#) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

#### *Rent for overlap period in case of grant of further lease*

- 7 (1) This paragraph applies where—
- (a) the tenant under a lease (““the old lease””) surrenders it to the landlord and in consideration of that surrender the landlord grants a lease to the tenant of the same or substantially the same premises (““the new lease””),

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- (b) the tenant under a lease (“the old lease”) of premises to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (security of tenure for business, professional and other tenants) applies, makes a request for a new tenancy (“the new lease”) which is then executed,
  - (c) on termination of a lease (“the head lease”) a sub-tenant is granted a lease (“the new lease”) of the same or substantially the same premises as those comprised in the sub-tenant's original lease (“the old lease”) in pursuance of—
    - (i) an order of a court on a claim for relief against re-entry or forfeiture, or
    - (ii) a contractual entitlement arising in the event of the head lease being terminated, or
  - (d) a person who has guaranteed the obligations of a tenant under a lease that has been terminated (“the old lease”) is granted a lease of the same or substantially the same premises (“the new lease”) in pursuance of the guarantee.
- (2) For the purposes of this Act, 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 taxable rent that would have been payable in respect of that period under the old lease (but it cannot be treated as being reduced to a negative amount).
- (3) For the purposes of sub-paragraph (2)—
- (a) the “overlap period” is the period between the date of the grant of the new lease and what would have been the end of the term of the old lease had it not been terminated;
  - (b) rent is “taxable” if or to the extent that it is taken into account in determining the tax chargeable in respect of the acquisition of the old lease.

**Modifications etc. (not altering text)**

- C1** Sch. 6 para. 7 applied in part (with modifications) (1.4.2018) by [The Land Transaction Tax \(Transitional Provisions\) \(Wales\) Regulations 2018 \(S.I. 2018/126\)](#), regs. 1(2), **9**

**Commencement Information**

- I7** Sch. 6 para. 7 in force at 1.4.2018 by [S.I. 2018/34](#), **art. 3**

*Tenant holding over: new lease backdated to previous year*

- 8 (1) This paragraph applies where—
- (a) the tenant under a lease (“the old lease”) continues in occupation after the date on which, under its terms, the lease terminates (“the contractual termination date”),
  - (b) the tenant is granted a lease of the same or substantially the same premises (“the new lease”),
  - (c) the new lease is granted on a date falling more than one year after the contractual termination date, and
  - (d) the term of the new lease is expressed to begin on a date falling within the period —
    - (i) beginning with the contractual termination date, and

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- (ii) ending with the latest anniversary of that date falling before the date on which the new lease is granted,  
 (“the whole years of holdover”).
- (2) The term of the new lease is treated for the purposes of this Act as beginning with the date on which it is expressed to begin.
- (3) The rent payable under the new lease in respect of the period—
  - (a) beginning with the date on which the new lease is expressed to begin, and
  - (b) ending at the end of the whole years of holdover,
 is treated for the purposes of this Act as reduced by the amount of taxable rent payable in respect of the holdover tenancy for that period (but it cannot be treated as being reduced to a negative amount).
- (4) The holdover tenancy is treated for the purposes of this Act as a lease for a fixed term ending at the end of the whole years of holdover.
- (5) For the purposes of this paragraph—
  - (a) “holdover tenancy” means—
    - (i) the old lease if it continues beyond the contractual termination date (whether by virtue of the lease being granted for a fixed term and thereafter until terminated or by operation of law), or
    - (ii) any other tenancy of the same or substantially the same premises by virtue of which the tenant under the old lease continues in occupation after the contractual termination date;
  - (b) rent is “taxable” if or to the extent that it is taken into account in determining the tax chargeable in respect of the acquisition of the holdover tenancy.

#### Modifications etc. (not altering text)

**C2** Sch. 6 para. 8 applied in part (with modifications) by S.I. 2018/126, reg. 9A (as inserted (1.4.2018) by The Land Transaction Tax (Transitional Provisions) (Wales) (Amendment) Regulations 2018 (S.I. 2018/401), regs. 1(2), 2)

#### Commencement Information

**I8** Sch. 6 para. 8 in force at 1.4.2018 by S.I. 2018/34, art. 3

## 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.

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- (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.

**Commencement Information**

**19** Sch. 6 para. 9 in force at 1.4.2018 by S.I. 2018/34, art. 3

*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—
- (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.

**Commencement Information**

**110** Sch. 6 para. 10 in force at 1.4.2018 by S.I. 2018/34, art. 3

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*First rent review in final quarter of fifth year*

11 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.

**Commencement Information**

**III** Sch. 6 para. 11 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Adjustment of tax where rent determined on reconsideration date*

12 (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.

**Commencement Information**

**III2** Sch. 6 para. 12 in force at 1.4.2018 by S.I. 2018/34, art. 3



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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.

**Commencement Information**

**I13** Sch. 6 para. 13 in force at 1.4.2018 by S.I. 2018/34, art. 3

*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).”

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#### Commencement Information

**I14** Sch. 6 para. 14 in force at 1.4.2018 by S.I. 2018/34, art. 3

#### *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;
  - (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.

#### Commencement Information

**I15** Sch. 6 para. 15 in force at 1.4.2018 by S.I. 2018/34, art. 3

#### *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.

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- (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.

**Commencement Information**

**I16** Sch. 6 para. 16 in force at 1.4.2018 by S.I. 2018/34, art. 3

*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.

**Commencement Information**

**I17** Sch. 6 para. 17 in force at 1.4.2018 by S.I. 2018/34, art. 3

*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.

**Commencement Information**

**I18** Sch. 6 para. 18 in force at 1.4.2018 by S.I. 2018/34, art. 3

*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

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

#### Commencement Information

**I19** Sch. 6 para. 19 in force at 1.4.2018 by S.I. 2018/34, art. 3

## 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.

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- (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.

#### Commencement Information

**I20** Sch. 6 para. 20 in force at 1.4.2018 by S.I. 2018/34, art. 3

#### *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

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- (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.

#### Commencement Information

**I21** [Sch. 6 para. 21](#) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

#### *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).
- (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

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- 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.

**Modifications etc. (not altering text)**

- C3** Sch. 6 para. 22 applied in part (with modifications) (1.4.2018) by [The Land Transaction Tax \(Transitional Provisions\) \(Wales\) Regulations 2018 \(S.I. 2018/126\)](#), regs. 1(2), **10**

**Commencement Information**

- I22** Sch. 6 para. 22 in force at 1.4.2018 by [S.I. 2018/34](#), **art. 3**

*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).

**Commencement Information**

- I23** Sch. 6 para. 23 in force at 1.4.2018 by [S.I. 2018/34](#), **art. 3**

*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.



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#### **Commencement Information**

**I24** Sch. 6 para. 24 in force at 1.4.2018 by S.I. 2018/34, art. 3

*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).

#### **Modifications etc. (not altering text)**

**C4** Sch. 6 para. 25 modified (1.4.2018) by The Land Transaction Tax (Transitional Provisions) (Wales) Regulations 2018 (S.I. 2018/126), regs. 1(2), 11

#### **Commencement Information**

**I25** Sch. 6 para. 25 in force at 1.4.2018 by S.I. 2018/34, art. 3

## **PART 5**

### **CALCULATION OF TAX CHARGEABLE**

*Residential leases, non-residential leases and mixed leases*

- 26 For the purposes of this Part of this Schedule, a transaction is—
- (a) an acquisition of a residential lease if—
    - (i) it is the acquisition of a lease or other chargeable interest relating to a lease, the main subject-matter of which consists entirely of residential property, or
    - (ii) where the acquisition is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of residential property;
  - (b) an acquisition of a non-residential lease if—
    - (i) it is the acquisition of a lease or other chargeable interest relating to a lease, the main subject-matter of which consists entirely of land which is not residential property, or
    - (ii) where the acquisition is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of land which is not residential property;
  - (c) an acquisition of a mixed lease if—



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- (i) it is the acquisition of a lease or other chargeable interest relating to a lease, the main subject-matter of which includes land which is not residential property, or
- (ii) where the acquisition is one of a number of linked transactions, the main subject-matter of any of the transactions includes land which is not residential property.

#### Commencement Information

**I26** Sch. 6 para. 26 in force at 1.4.2018 by S.I. 2018/34, art. 3

#### *No tax chargeable in respect of rent: residential leases*

- 27 (1) In the case of an acquisition of a residential lease, no tax is chargeable in respect of so much of the chargeable consideration as consists of rent.
- (2) The Welsh Ministers may by regulations amend this paragraph so as to substitute sub-paragraph (1) with a calculation of tax chargeable in respect of so much of the chargeable consideration as consists of rent in the case of an acquisition of a residential lease.
- (3) Regulations under sub-paragraph (2)—
- (a) must specify the method of calculation (including the method applicable to a case where the acquisition is one of a number of linked transactions each of which being the acquisition of a residential lease), and
  - (b) may make such other supplemental, incidental or consequential modifications of any enactment (including this Act) as the Welsh Ministers consider necessary or expedient.
- (4) If regulations are made under sub-paragraph (2), the Welsh Ministers must by regulations specify the tax bands and percentage tax rates for each band applicable to the chargeable consideration which consists of rent.
- (5) Regulations under sub-paragraph (4) must specify—
- (a) a tax band for which the applicable tax rate is 0% (“the RL zero rate band”),
  - (b) two or more tax bands above the RL zero rate band,
  - (c) the tax rate for each band above the RL zero rate band so that the rate for each band is higher than the rate for the band below it, and
  - (d) a date on which the tax bands and tax rates apply in relation to transactions with an effective date on or after that date.
- (6) Regulations under sub-paragraph (4) may specify—
- (a) different tax bands and tax rates in respect of different categories of acquisition of a residential lease;
  - (b) different dates under sub-paragraph (5)(d) in respect of each specified tax band or tax rate.

#### Commencement Information

**I27** Sch. 6 para. 27 in force at 1.4.2018 by S.I. 2018/34, art. 3

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*Changes to legislation: There are currently no known outstanding effects for the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, SCHEDULE 6. (See end of Document for details)*

*Tax rates and bands: rent element of non-residential and mixed leases*

- 28 (1) The Welsh Ministers must by regulations specify the tax bands and the percentage tax rates for each band applicable to chargeable consideration which consists of rent in cases of the acquisition of a non-residential lease or mixed lease.
- (2) Regulations under sub-paragraph (1) must specify—
- (a) a tax band for which the applicable tax rate is 0% (“the NRL zero rate band”),
  - (b) two or more tax bands above the NRL zero rate band,
  - (c) the tax rate for each band above the NRL zero rate band so that the rate for each band is higher than the rate for the band below it, and
  - (d) a date on which the tax bands and tax rates apply in relation to transactions with an effective date on or after that date.
- (3) Regulations under sub-paragraph (1) may specify—
- (a) different tax bands and tax rates in respect of different categories of acquisition of a non-residential lease or mixed lease;
  - (b) different dates under sub-paragraph (2)(d) in respect of each specified tax band or tax rate.

**Commencement Information**

**I28** Sch. 6 para. 28 in force at 18.10.2017 by S.I. 2017/953, art. 2(g)(i)

*Calculation of tax chargeable in respect of rent: non-residential and mixed leases*

- 29 In the case of the acquisition of a non-residential lease or mixed lease, the amount of tax chargeable on so much of the chargeable consideration as consists of rent is to be calculated as follows (unless paragraph 30 (linked transactions) applies).
- Step 1* Calculate the net present value (the “NPV”) of the rent payable over the term of the lease (see paragraph 31).
- Step 2* For each tax band applicable to the acquisition, multiply so much of the NPV as falls within the band by the tax rate for that band.
- Step 3* Calculate the sum of the amounts reached under Step 2. The result is the amount of tax chargeable in respect of rent.

**Commencement Information**

**I29** Sch. 6 para. 29 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Calculation of tax chargeable in respect of rent: linked transactions*

- 30 Where the acquisition of a non-residential lease or mixed lease is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the amount of tax chargeable in respect of the rent is to be calculated as follows.
- Step 1* Calculate the total of the net present values (the “TNPV”) of the rent payable over the terms of all the linked leases (see paragraph 31).
- Step 2* For each tax band applicable to the acquisition, multiply so much of the TNPV as falls within the band by the tax rate for that band.

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*Step 3* Calculate the sum of the amounts reached under Step 2. The result is the total tax chargeable in respect of rent.

*Step 4* Divide the NPV of the rent payable over the term of the lease in question by the TNPV.

*Step 5* Multiply the total tax chargeable in respect of rent by the fraction reached under Step 4. The result is the amount of tax chargeable in respect of rent for the lease in question.

**Commencement Information**

**I30** Sch. 6 para. 30 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Net present value*

- 31 The NPV of the rent payable over the term of a lease is calculated by applying the following formula—

**Commencement Information**

**I31** Sch. 6 para. 31 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Temporal discount rate*

- 32 For the purposes of paragraph 31 the “temporal discount rate” is 3.5% or such other rate as the Welsh Ministers may by regulations specify.

**Commencement Information**

**I32** Sch. 6 para. 32 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Tax chargeable in respect of consideration other than rent: general*

- 33 (1) Where in the case of an acquisition of a lease there is chargeable consideration other than rent, the provisions of this Act apply in relation to that consideration as in relation to other chargeable consideration (but see paragraphs 34 and 35).
- (2) Tax chargeable under this Part of this Schedule in respect of rent is in addition to any tax chargeable under any provision of this Act in respect of consideration other than rent.

**Commencement Information**

**I33** Sch. 6 para. 33 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Tax chargeable in respect of consideration other than rent: no zero rate band for non-residential leases*

- 34 (1) This paragraph applies in the case of an acquisition of a non-residential lease where—
- (a) there is chargeable consideration other than rent, and

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- (b) section 27 (amount of tax chargeable: transactions which are not linked) or 28 (amount of tax chargeable: linked transactions) applies to the acquisition.
- (2) If the relevant rent is at least the specified amount, the zero rate band does not apply in relation to the consideration other than rent and, accordingly, any case which would have fallen within that band is treated as falling within the next tax band.

#### Commencement Information

**I34** Sch. 6 para. 34 in force at 1.4.2018 by S.I. 2018/34, art. 3

#### *Tax chargeable in respect of consideration other than rent: mixed leases*

- 35 (1) This paragraph applies in the case of an acquisition of a mixed lease where—
- (a) there is chargeable consideration other than rent, and
  - (b) the relevant rent attributable, on a just and reasonable apportionment, to the land which is not residential property is at least the specified amount.
- (2) For the purpose of determining the amount of tax chargeable in relation to the consideration other than rent, the transaction (or where it is one of a number of linked transactions, that set of transactions) is treated as if it were two separate but linked transactions (or two separate sets of linked transactions which are themselves linked) namely—
- (a) one whose subject-matter consists of all the land that is residential property (and section 28 (amount of tax chargeable: linked transactions) applies accordingly), and
  - (b) one whose subject-matter consists of all the land that is not residential property (and that section as modified by paragraph 34 applies accordingly).
- (3) For that purpose, the chargeable consideration attributable to each of those separate transactions (or sets of linked transactions) is the chargeable consideration so attributable on a just and reasonable basis.

#### Commencement Information

**I35** Sch. 6 para. 35 in force at 1.4.2018 by S.I. 2018/34, art. 3

#### *Relevant rent*

- 36 (1) In paragraphs 34 and 35—
- (a) “the relevant rent” means—
    - (i) the annual rent in relation to the transaction in question, or
    - (ii) if that transaction is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the total of the annual rents in relation to all of those transactions;
  - (b) “the specified amount” means an amount of relevant rent specified by the Welsh Ministers by regulations.
- (2) In sub-paragraph (1)(a) “the annual rent” means—
- (a) the average annual rent over the term of the lease, or
  - (b) if—

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- (i) different amounts of rent are payable for different parts of the term,  
and
  - (ii) those amounts (or any of them) are ascertainable at the effective date  
of the transaction,
- the average annual rent over the term for which the highest ascertainable  
rent is payable.

#### Commencement Information

- I36** Sch. 6 para. 36(1)(a)(2) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)
- I37** Sch. 6 para. 36(1)(b) in force at 18.10.2017 for specified purposes by [S.I. 2017/953](#), [art. 2\(g\)\(ii\)](#)
- I38** Sch. 6 para. 36(1)(b) in force at 1.4.2018 in so far as not already in force by [S.I. 2018/34](#), [art. 3](#)

#### *Power to amend or repeal paragraphs 34 to 36*

- 37           The Welsh Ministers may by regulations amend or repeal paragraphs 34 to 36.

#### Commencement Information

- I39** [Sch. 6 para. 37](#) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

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**Changes to legislation:**

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