

LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT

Schedule 19 – Leases

Part 6 – Other Provisions about Leases

288. [Part 6](#) makes provision for dealing with a number of different and specific circumstances relating to leases that are not covered elsewhere in the schedule.
289. [Paragraph 19](#) defines a lease for a fixed term.

Leases that continue after a fixed term

290. [Paragraph 20](#) applies to leases that continue after a fixed term either by agreement between the parties or by operation of law (such as the Scots law principle of *tacit relocation*). Under sub-paragraph (2), such a lease is treated as if it were a lease for the original fixed term and no longer. If it continues after the end of the term, it is treated as if it were a lease for 1 year longer. As it continues, each year a further year is added to the term of the lease.
291. Sub-paragraph (3) provides that where a lease transaction that was not previously notifiable to the Tax Authority becomes notifiable because of the continuation of the lease beyond its fixed term, a return will be required. The return must be made within 30 days of the day at the end of the 1 year period as a result of which it became notifiable. Sub-paragraph (3)(c) clarifies that the tax rates and bands to be applied in calculating the tax chargeable are those that were in force at the effective date of the transaction.
292. Where a lease continues beyond its fixed term and paragraph 20 would apply but during the 1 year period beyond the fixed term a new lease is granted to the tenant for the same (or substantially the same) premises, then paragraph 21 disapplies the provisions of paragraph 20. The new lease is treated as beginning immediately after the end of the fixed term of the original lease. Sub-paragraph (4) of paragraph 21 provides that any rent which was payable under the original lease after the end of the fixed term is treated as payable under the new lease. Sub-paragraph (5) provides that if the original lease has been extended more than once under the provisions of paragraph 20, then paragraph 21 disapplies paragraph 20 from the end of the last 1 year period when the lease was extended.

Leases granted for an indefinite term

293. [Paragraph 22](#) makes provision for leases which are granted for an indefinite term, in particular for the determination of how long the lease lasts. This may trigger notification of the lease, and may result in tax being chargeable, if the lease continues. Specifically, sub-paragraph (2)(a) provides that a return will be required when a lease becomes notifiable when it was not previously notifiable. In accordance with sub-paragraph (2)

(a), the buyer must submit a return within 30 days of the end of the 1 year period at which the transaction became notifiable. Sub-paragraph (2)(c) clarifies that the tax rates and bands to be applied at the review of the tax chargeable are to be those that were in force at the effective date of the transaction.

Successive linked leases

294. Paragraph 23 is an anti-avoidance provision which treats successive leases of the same premises between the same parties (or are otherwise linked transactions) as one lease for the purposes of the Act. The successive linked leases are treated as being granted at the time of the grant of the first lease in the series, for a term equal to the aggregate of the terms of all the leases and in consideration of the rent payable under all the leases.

Rent for overlap period in case of grant of further lease

295. Paragraph 24 treats rent paid during an “overlap period” between the end of one lease and the grant of another as, in certain circumstances, paid under the old lease and not the new lease. Sub-paragraph (1) sets out the three circumstances where this will apply.

Agreement for lease substantially performed etc.

296. Paragraph 25 deals with the situation where parties enter into an agreement (referred to as a “notional lease”) under which a lease is to be executed and the agreement is substantially performed without a lease having been executed. In such cases, the agreement is treated as if it were the grant of a lease that started on the date it was substantially performed in accordance with the agreement between the parties. Sub-paragraph (2) clarifies that the effective date of the transaction is the date when the agreement was substantially performed.
297. Sub-paragraph (3) provides that if at a later time a lease is formally executed (referred to as the ‘actual lease’), then the Act applies as if the notional lease was granted on the date it was substantially performed, for a term that begins and ends in accordance with the dates set out in the actual lease and in consideration for the total rent payable over that term and any other consideration given for the agreement of the actual lease. Sub-paragraph (4) provides that where sub-paragraph (3) applies, the grant of the actual lease is disregarded unless it is treated as a later linked transaction under section 34 of the Act.
298. Sub-paragraph (5) sets out how paragraph 25 of schedule 19 works with section 34 of the Act. Sub-paragraph (5)(a) links the grant of the notional lease and the grant of the actual lease, regardless of whether the provisions of section 57 would have linked them in any case. Sub-paragraph (5)(b) provides that the tenant under the actual lease is liable for any tax or additional tax due in relation to the notional lease where sub-paragraph (3) applies. Sub-paragraph (5)(c) clarifies that in section 34(2) the reference 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.
299. Sub-paragraphs (6) and (7) allow the tenant to amend their tax return to claim for a repayment of tax by the Tax Authority where an agreement under sub-paragraph (1) is annulled or not carried into effect.

Missives of let followed by execution of formal lease

300. Paragraph 26 makes similar provision to that of paragraph 25 but covers the circumstances where a lease is agreed by concluded missives of let (referred to as the ‘first lease’), and the execution of a formal lease (the ‘second lease’) takes place at a later date. In accordance with sub-paragraph (1), the missives of let are treated as a lease granted on the date the missives of let were concluded, for a term which begins with that date but ends at the end of the term of the second lease and in consideration

of the total rent payable over that term, plus any other consideration given for the first or the second lease.

- 301. Sub-paragraph (2) disregards the second lease for the purposes of the Act except for section 34 (which requires a tax return where there is a second transaction that is linked to the first transaction and makes the first transaction notifiable).
- 302. Sub-paragraph (3) applies the provisions of sections 63 and 64 to decide the effective dates of the first lease and the second lease.
- 303. Sub-paragraph (4) sets out how paragraph 26 of schedule 19 works with section 34 of the Act. Sub-paragraph (4)(a) links the grant of the first lease and the grant of the second lease, regardless of whether the provisions of section 57 would have linked them in any case. Sub-paragraph (4)(b) provides that the tenant under the second lease is liable for any tax or additional tax due in relation to the first lease where sub-paragraph (1) applies. Sub-paragraph (4)(c) clarifies that in section 34(2) the reference to the 'buyer in the earlier transaction' is to be read in relation to the first lease as a reference to the tenant under the second lease.

Cases where assignment of lease treated as grant of a lease

- 304. [Paragraph 27\(1\)](#) applies the provisions of that paragraph where one of the following tax reliefs were claimed for the grant of a lease: sale and leaseback relief, relief for alternative finance investment bonds, group relief, charities relief and public bodies relief (as set out in sub-paragraph (3)).
- 305. Sub-paragraph (2) provides that where the lease is assigned to a different tenant and none of those tax reliefs would apply, then the lease is subject to LBTT and is considered to be the grant of a lease by the assignor for the remaining term of the lease and on the terms agreed to by the assignee.
- 306. Sub-paragraph (4) disapplies paragraph 27 where group relief, reconstruction relief, acquisition relief or charities relief has been withdrawn prior to the effective date of the assignment. Sub-paragraph (5) refers to the relevant provisions in the Act in relation to the withdrawal of each of those reliefs.

Assignment of lease: responsibility of assignee for returns etc.

- 307. [Paragraph 28](#) makes clear that where a lease is assigned, then after the effective date of the assignment, the assignee assumes the assignor's duties in relation to LBTT. Sub-paragraph (2) sets out the relevant provisions of the Act which apply to the assignee. These include the requirement to submit a tax return on every third anniversary of the effective date, in accordance with paragraph 10 of schedule 19. Sub-paragraph (3) requires that anything that was done by the assignor is to be treated as if it was done by the assignee. Sub-paragraph (4) disapplies paragraph 28 in the event that paragraph 27 applies.

Reduction of rent or term or other variation of lease

- 308. Variations are not, generally, treated under Scots law as creating new leases. However paragraph 29 specifies three variations of leases which are treated for the purposes of the tax as acquisitions of chargeable interests.

Increase of rent or term: notification

- 309. [Paragraph 30](#) applies where a lease is varied so as to extend its term or increase the rent payable, the effect of which is that the transaction becomes notifiable to the Tax Authority when it was not previously notifiable. In accordance with sub-paragraph (2), the buyer must submit a tax return within 30 days of the 'relevant date' which sub-paragraph (3) specifies, is the date from which the variation takes effect.

*These notes relate to the Land and Buildings Transaction Tax (Scotland)
Act 2013 (asp 11) which received Royal Assent on 31 July 2013*

Sub-paragraph (2)(c) clarifies that the tax rates and bands to be applied in calculating the tax chargeable are those that were in force at the effective date of the transaction.