

Status: Point in time view as at 01/04/2015.

Changes to legislation: There are currently no known outstanding effects for the Land and Buildings Transaction Tax (Scotland) Act 2013, SCHEDULE 19. (See end of Document for details)

SCHEDULE 19

(introduced by section 52)

LEASES

PART 1

INTRODUCTORY

Overview

- 1 (1) This schedule makes provision about the application of this Act in relation to leases.
- (2) It is arranged as follows—
- Part 2 makes provision for the calculation of the tax chargeable in relation to chargeable consideration which consists of rent,
 - Part 3 makes provision about the calculation of the tax chargeable in relation to other chargeable consideration,
 - Part 4 makes provision for the review of tax chargeable at periodic intervals and on certain events,
 - Part 5 makes provision about chargeable consideration in relation to leases, including consideration which consists of rent, consideration other than rent and consideration that is not treated as chargeable consideration,
 - Part 6 makes provision about duration of leases and about the application of this Act to transactions involving leases generally.

Commencement Information

I1 Sch. 19 para. 1 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

Calculation of tax chargeable where chargeable consideration includes rent

- 2 Where the chargeable consideration for a chargeable transaction to which this schedule applies consists of rent (or includes rent and chargeable consideration other than rent), the tax chargeable is the sum of—
- (a) any tax chargeable on so much of the chargeable consideration as consists of rent, and
 - (b) any tax chargeable on so much of the chargeable consideration other than rent.

Commencement Information

I2 Sch. 19 para. 2 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

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PART 2

AMOUNT OF TAX CHARGEABLE: RENT

Tax rates and tax bands

- 3 (1) The Scottish Ministers must, by order, specify the tax bands and the percentage tax rates for each band applicable to chargeable consideration which consists of rent.
- (2) An order under sub-paragraph (1) must specify—
- (a) a nil rate tax band and at least one other tax band,
 - (b) the tax rate for the nil rate tax band, which must be 0%, and
 - (c) the tax rate for each tax band above the nil rate tax band so that the rate for each band is higher than the rate for the band below it.

Commencement Information

I3 Sch. 19 para. 3 in force at 7.11.2014 by [S.S.I. 2014/279](#) , [art. 2](#) , [Sch.](#)

Amount of tax chargeable in respect of rent

- 4 The amount of tax chargeable on so much of the chargeable consideration as consists of rent is to be determined as follows.
- Step 1* Calculate the net present value (NPV) of the rent payable over the term of the lease (see paragraph 6).
- Step 2* For each tax band, 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

I4 Sch. 19 para. 4 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

Amount of tax chargeable in respect of rent: linked transactions

- 5 Where a chargeable transaction to which this schedule applies 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 determined as follows.
- Step 1* Calculate the total of the net present values (TNPV) of the rent payable over the terms of all the leases (see paragraph 6).
- Step 2* For each tax band, multiply so much of the TNPV 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 total tax chargeable in respect of rent.
- Step 4* Divide the net present value of the rent payable over the term of the lease in question by the TNPV.

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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

I5 Sch. 19 para. 5 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

Net present value

- 6 The net present value (NPV) of the rent payable over the term of a lease is calculated by applying the following formula—

Commencement Information

I6 Sch. 19 para. 6 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

Temporal discount rate

- 7 (1) For the purposes of this schedule the “temporal discount rate” is 3.5% or such other rate as may be specified by the Scottish Ministers by order.
- (2) An order under this paragraph may—
- (a) specify a rate or make provision for any such rate to be determined by reference to such rate or the average of such rates as may be referred to in the order,
 - (b) provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae,
 - (c) provide for rates arrived at by reference to averages to be rounded up or down, and
 - (d) provide for circumstances in which alteration of a rate is or is not to take place.

Commencement Information

I7 Sch. 19 para. 7 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

PART 3

AMOUNT OF TAX CHARGEABLE: CONSIDERATION OTHER THAN RENT

Amount of tax chargeable in respect of consideration other than rent: general

- 8 (1) Where in the case of a transaction to which this schedule applies 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 paragraph 9).

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- (2) Where a transaction to which this schedule applies falls to be taken into account as a linked transaction for the purposes of section 26, no account is to be taken of rent in determining the relevant consideration.

Commencement Information

I8 Sch. 19 para. 8 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

Amount of tax chargeable in respect of consideration other than rent: nil rate tax band

- 9 (1) This paragraph applies in the case of a transaction to which this schedule applies where—
- (a) there is chargeable consideration other than rent, and
 - (b) section 25 or 26 applies to the transaction.
- (2) If the relevant rent is at least £1,000, the nil rate tax band does not apply in relation to the consideration other than rent and any such consideration that would have fallen within that band is treated as falling within the next tax band.
- (3) Sub-paragraphs (4) and (5) apply if—
- (a) the transaction to which this schedule applies is one of a number of linked transactions,
 - (b) the relevant land is partly residential property and partly non-residential property, and
 - (c) the relevant rent attributable, on a just and reasonable apportionment, to the land that is non-residential property is at least £1,000.
- (4) For the purposes of determining the amount of tax chargeable under section 26 in relation to the consideration other than rent, the transactions are treated as if they were two sets of transactions, namely—
- (a) one whose subject-matter consists of all of the interests in land that is residential property, and
 - (b) one whose subject-matter consists of all of the interests in land that is non-residential property.
- (5) For that purpose, the chargeable consideration attributable to each of those separate sets of linked transactions is the chargeable consideration so attributable on a just and reasonable apportionment.
- (6) In this paragraph “ the relevant rent ” means—
- (a) the annual rent in relation to the transaction in question, or
 - (b) 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.
- (7) In sub-paragraph (6) the “ annual rent ” means—
- (a) the average annual rent over the term of the lease, or
 - (b) if—
 - (i) different amounts of rent are payable for different parts of the term,
 - and

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- (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.
- (8) In this paragraph “ relevant land ” means—
- (a) the land an interest in which is the main subject-matter of the transaction,
 - (b) if the transaction in question is one of a number of linked transactions, any land an interest in which is the main subject-matter of any of those transactions.

Commencement Information

19 Sch. 19 para. 9 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

PART 4

REVIEW OF TAX CHARGEABLE

Regular review of tax chargeable

- 10 (1) This paragraph applies where, in relation to a chargeable transaction to which this schedule applies—
- (a) the buyer made a land transaction return, or
 - (b) where such a return was not made, the buyer made—
 - (i) a return under section 31 (return where contingency ceases or consideration ascertained),
 - (ii) a return under paragraph 20 (return where lease for fixed term continues after end of term),
 - (iii) a return under paragraph 22 (return in relation to lease for indefinite term), or
 - (iv) a return under paragraph 30 (return where transaction becomes notifiable on variation of rent or term).
- (2) The buyer must make a further return to the Tax Authority if, on a review date, the lease—
- (a) has not been assigned, or
 - (b) has not terminated (whether on the term of the lease coming to an end or otherwise).
- (3) The return must be made before the end of the period of 30 days beginning with the day after the review date.
- (4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction at that review date.
- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

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- (6) Where less tax is payable in respect of the transaction than has already been paid, the overpayment is to be repaid by the Tax Authority.
- (7) In this paragraph, the “review date” is—
- (a) in the case of a transaction to which sub-paragraph (1)(a) applies, the day falling on the third anniversary of the effective date of the transaction and on each subsequent third anniversary of that date,
 - (b) where the return mentioned in sub-paragraph (1)(b)(i) is the first return made in relation to the transaction, the day falling on the third anniversary of the date on which the event mentioned in section 31(2) occurred,
 - (c) where the return mentioned in sub-paragraph (1)(b)(ii) is the first return made in relation to the transaction, the day falling on the third anniversary of the date on which the 1 year period mentioned in paragraph 20(3) ended and on each subsequent third anniversary of that date,
 - (d) where the return mentioned in sub-paragraph (1)(b)(iii) is the first return made in relation to the transaction, the day falling on the third anniversary of the date on which the deemed fixed term mentioned in paragraph 22(2) ended and on each subsequent third anniversary of that date,
 - (e) where the return mentioned in sub-paragraph (1)(b)(iv) is the first return made in relation to the transaction, the day falling on the third anniversary of the date the variation mentioned in paragraph 30 takes effect and on each subsequent third anniversary of that date.

Commencement Information

I10 Sch. 19 para. 10 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

Review of tax chargeable on certain events

- 11 (1) This paragraph applies where, in relation to a chargeable transaction to which this schedule applies—
- (a) paragraph 10 applies, and
 - (b) the lease—
 - (i) is assigned, or
 - (ii) terminates (whether on the term of the lease coming to an end or otherwise).
- (2) The buyer must make a further return to the Tax Authority.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the day (the “relevant day”) on which the lease is assigned or terminated.
- (4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction at the relevant day.
- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (6) Where less tax is payable in respect of the transaction than has already been paid, the overpayment is to be repaid by the Tax Authority.

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Commencement Information

I11 Sch. 19 para. 11 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

PART 5

CHARGEABLE CONSIDERATION: RENT AND CONSIDERATION OTHER THAN RENT

Rent

- 12 (1) For the purposes of this Act, 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, is to be treated as entirely rent.
- (2) Sub-paragraph (1) is without prejudice to the application of paragraph 4 of schedule 2 (chargeable consideration: just and reasonable apportionment) where separate sums are expressed to be payable in respect of rent and other matters.

Commencement Information

I12 Sch. 19 para. 12 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

Variable or uncertain rent

- 13 (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) The provisions of this Act apply as in relation to other chargeable consideration and accordingly the provisions of sections 18 and 19 apply if the amount is contingent, uncertain or unascertained.
- (3) But section 20(b) does not apply.
- (4) For the purposes of this paragraph, 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 13, 14, 15 or 31 of the Agricultural Holdings (Scotland) Act 1991 (c.55), or
 - (b) section 9, 10 or 11 of the Agricultural Holdings (Scotland) Act 2003 (asp 11).
- (5) No account is to be taken for the purposes of this paragraph of any provision for rent to be adjusted in line with the retail prices index, consumer prices index or any other similar index.

Commencement Information

I13 Sch. 19 para. 13 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

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Reverse premium

- 14 (1) In the case of the grant, assignation or renunciation 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 assignation of a lease, a premium moving from the assignor to the assignee,
 - (c) in relation to the renunciation of a lease, a premium moving from the tenant to the landlord.

Commencement Information

I14 Sch. 19 para. 14 in force at 1.4.2015 by [S.S.I. 2015/108](#) , **art. 2**

Tenant's obligations etc. that do not count as chargeable consideration

- 15 (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 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,
 - (f) any other obligation of the tenant to bear the landlord's reasonable costs or expenses of or incidental to the grant of a lease,
 - (g) 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 the land subject to the lease).
- (2) Where sub-paragraph (1) applies in relation to an obligation, a payment made in discharge of the obligation does not count as chargeable consideration.
- (3) The release of any such obligations as in mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the renunciation of the lease.

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I15 Sch. 19 para. 15 in force at 1.4.2015 by [S.S.I. 2015/108](#) , **art. 2**

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Assignment of lease: assumption of obligations by assignee

- 16 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

I16 Sch. 19 para. 16 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

Loan or deposit in connection with grant or assignment of lease

- 17 (1) Where, under arrangements made in connection with the grant of a lease—
- (a) a tenant, or any person connected with or acting on behalf of the tenant, pays a deposit, or makes a loan, to any person, and
 - (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the tenant or on the death of the tenant,
- the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the grant of the lease.
- (2) Where, under arrangements made in connection with the assignment of a lease—
- (a) the assignee, or any person connected with or acting on behalf of the assignee, pays a deposit, or makes a loan, to any person, and
 - (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the assignee or on the death of the assignee,
- the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the assignment of the lease.
- (3) Sub-paragraph (1) or (2) does not apply in relation to a deposit if the amount that would otherwise fall within the sub-paragraph in question in relation to the grant or (as the case requires) 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 consecutive 12 month period during the term of the lease,
 - (b) in relation to the assignment of a lease, the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease remaining outstanding as at the date of the assignment.
- (5) In determining the highest amount of rent for the purposes of sub-paragraph (4), take into account (if necessary) any amounts determined by virtue of paragraph 13(2) but disregard paragraph 24(2) (deemed reduction of rent, where further lease granted, for periods during which rents overlap).
- (6) Tax is not chargeable by virtue of this paragraph merely because of paragraph 9 (which excludes the nil rate tax band in cases where the relevant rent attributable to non-residential property is not less than £1,000 a year).

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I17 Sch. 19 para. 17 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

Renunciation of existing lease in return for new lease

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

Commencement Information

I18 Sch. 19 para. 18 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

PART 6

OTHER PROVISION ABOUT LEASES

Meaning of lease for a fixed term

- 19 In the application of this schedule 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 terminate before the end of the fixed term, or
 - (b) any right of either party to terminate the lease or renew it.

Commencement Information

I19 Sch. 19 para. 19 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

Leases that continue after a fixed term

- 20 (1) This paragraph applies to—
- (a) a lease for a fixed term and thereafter until terminated, or
 - (b) a lease for a fixed term that may continue beyond the fixed term by operation of law.
- (2) For the purposes of this Act (except section 30 (notifiable transactions)), 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,

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- (b) if the lease continues after the end of that term, as if it were a lease for a fixed term of 1 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 2 years longer than the original fixed term,
- and so on.
- (3) In a case where no land transaction return or any other return has been made in relation to the transaction, where the effect of sub-paragraph (2) in relation to the continuation of the lease for a period (or further period) of 1 year after the end of a fixed term is that the transaction becomes notifiable—
- (a) the buyer must make a return in respect of that transaction before the end of the period of 30 days beginning with the day after the end of that 1 year period,
 - (b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and
 - (c) the tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (4) Sub-paragraph (3) is subject to paragraph 21.
- (5) For the purposes of section 30 (notifiable transactions), a lease to which this paragraph applies is a lease for its original fixed term.
- (6) Where—
- (a) a lease would be treated as continuing for a period (or further period) of 1 year under sub-paragraph (2), but
 - (b) (ignoring that sub-paragraph) the lease actually terminates at a time during that period,
- the lease is to be treated as continuing under sub-paragraph (2) only until that time; and the references in sub-paragraph (3) to that 1 year period are accordingly to be read as references to so much of that year as ends with that time.

Commencement Information

I20 Sch. 19 para. 20 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

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

- 21 (1) This paragraph applies where—
- (a) (ignoring this paragraph) paragraph 20 would apply to treat a lease (“the original lease”) as if it were a lease for a fixed term 1 year longer than the original term,
 - (b) during that 1 year period the tenant under that lease is granted a new lease of the same or substantially the same premises, and
 - (c) the term of the new lease begins during that 1 year period.
- (2) Paragraph 20 does not apply to treat the lease as continuing after the original fixed term.

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- (3) The term of the new lease is treated for the purposes of this Act as beginning immediately after 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 1 year period is to be treated as payable under the new lease.
- (5) Where the fixed term of a lease has previously been extended (on one or more occasions) under paragraph 20, this paragraph applies as if references to the original term were references to the fixed term as previously so extended.

Commencement Information

I21 Sch. 19 para. 21 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

Treatment of leases for indefinite term

- 22 (1) For the purposes of this Act (except section 30 (notifiable transactions))—
- (a) a lease for an indefinite term is treated in the first instance as if it were a lease for a fixed term of 1 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) In a case where no land transaction return or any other return has been made in relation to the transaction, 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 the transaction becomes notifiable—
- (a) the buyer must make a 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 an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and
 - (c) the tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (3) For the purposes of section 30 (notifiable transactions) a lease for an indefinite term is a lease for a term of less than 7 years.
- (4) References in this paragraph to a lease for an indefinite term include an interest or right terminable by a period of notice or by notice at any time.

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I22 Sch. 19 para. 22 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

Treatment of successive linked leases

- 23 (1) This paragraph applies where—

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- (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 Act 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 Act except section 34 (return or further return in consequence of later linked transaction).

Commencement Information

I23 Sch. 19 para. 23 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

Rent for overlap period in case of grant of further lease

- 24 (1) This paragraph applies where—
- (a) A renounces an existing lease to B (“the old lease”) and in consideration of that renunciation B grants a lease to A of the same or substantially the same premises (“the new lease”),
 - (b) 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 tenant’s original lease (“the old lease”) in pursuance of a contractual entitlement arising in the event of the head lease being terminated, or
 - (c) 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 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 is to be taken to be the amount taken into account in determining the tax chargeable in respect of the acquisition of the old lease.
- (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.

Modifications etc. (not altering text)

C1 Sch. 19 para. 24(1)(a)-(c) applied (1.4.2015) by [The Land and Buildings Transaction Tax \(Transitional Provisions\) \(Scotland\) Order 2014 \(S.S.I. 2014/377\)](#), [arts. 1](#), [10\(1\)](#)

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Changes to legislation: There are currently no known outstanding effects for the Land and Buildings Transaction Tax (Scotland) Act 2013, SCHEDULE 19. (See end of Document for details)

C2 Sch. 19 para. 24(4) modified (1.4.2015) by [The Land and Buildings Transaction Tax \(Transitional Provisions\) \(Scotland\) Order 2014 \(S.S.I. 2014/377\)](#), arts. 1, **10(2)**

Commencement Information

I24 Sch. 19 para. 24 in force at 1.4.2015 by [S.S.I. 2015/108](#), **art. 2**

Agreement for lease substantially performed etc.

- 25 (1) Where—
- (a) there is an agreement (including missives not constituting a lease) under which a lease is to be executed, and
 - (b) the agreement is substantially performed without a lease having been executed,
- the agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of the substantial performance.
- (2) The effective date of the transaction is when the agreement is substantially performed.
 - (3) Where sub-paragraph (1) applies and at some later time a lease (“the actual lease”) is executed, this Act applies as if the notional lease were a lease granted—
 - (a) on the date the agreement was substantially performed,
 - (b) for a term which begins with that date and ends 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.
 - (4) Where sub-paragraph (3) applies the grant of the actual lease is disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).
 - (5) For the purposes of section 34—
 - (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 57),
 - (b) the tenant under the actual lease (rather than the tenant under the notional lease) is liable for any tax or additional tax payable in respect of the notional lease as a result of sub-paragraph (3), and
 - (c) the reference in section 34(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.
 - (6) Where sub-paragraph (1) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph is to be (to that extent) repaid by the Tax Authority.
 - (7) That repayment must be claimed by amendment of the return made in respect of the agreement.
- [^{F1}(7A) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014 (asp 16).]

Status: Point in time view as at 01/04/2015.

Changes to legislation: There are currently no known outstanding effects for the Land and Buildings Transaction Tax (Scotland) Act 2013, SCHEDULE 19. (See end of Document for details)

- (8) In this paragraph, references to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same premises and term as, the agreement.

Textual Amendments

- F1** Sch. 19 para. 25(7A) inserted (1.4.2015) by [Revenue Scotland and Tax Powers Act 2014 \(asp 16\)](#), s. 260(2), [Sch. 4 para. 9\(23\)](#) (with ss. 257-259); S.S.I. 2015/110, art. 2(1)

Commencement Information

- I25** Sch. 19 para. 25 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

Missives of let followed by execution of formal lease

- 26 (1) Where a lease is constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”), the first lease is treated as if it were a lease granted—
- on the date the missives of let were concluded,
 - for a term which begins with that date and ends at the end of the term of the second lease, and
 - in consideration of the total rent payable over that term and any other consideration given for the first lease or the second lease.
- (2) Where sub-paragraph (1) applies the grant of the second lease is disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).
- (3) Section 63 (read with section 64) makes provision for the effective dates in relation to the first lease and the second lease.
- (4) For the purposes of section 34—
- the grant of the first lease and the grant of the second lease are linked (whether or not they would be linked by virtue of section 57),
 - the tenant under the second lease (rather than the tenant under the first lease) is liable for any tax or additional tax payable in respect of the first lease as a result of sub-paragraph (1), and
 - the reference in section 34(2) 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.
- (5) In this paragraph, references to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same premises and term as, the missives of let.

Commencement Information

- I26** Sch. 19 para. 26 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

Status: Point in time view as at 01/04/2015.

Changes to legislation: There are currently no known outstanding effects for the Land and Buildings Transaction Tax (Scotland) Act 2013, SCHEDULE 19. (See end of Document for details)

Cases where assignment of lease treated as grant of lease

- 27 (1) This paragraph applies where the grant of a lease is exempt from charge by virtue of any of the provisions specified in sub-paragraph (3).
- (2) The first assignment of the lease that is not exempt from charge by virtue of any of the provisions specified in sub-paragraph (3), 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 that lease after the assignment.
- (3) The provisions are—
- (a) schedule 3 (sale and leaseback relief),
 - (b) schedule 8 (relief for alternative finance investment bonds),
 - (c) schedule 10 (group relief),
 - (d) schedule 11 (reconstruction relief and acquisition relief),
 - (e) schedule 13 (charities relief),
 - (f) schedule 16 (public bodies relief).
- (4) This paragraph does not apply where the relief in question is group relief, reconstruction relief, 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 event falling within paragraphs 14 and 15 of schedule 10 (purchaser ceasing to be a member of the same group as the seller), as read with paragraphs 32 to 40 of that schedule,
 - (b) in relation to the withdrawal of reconstruction relief or acquisition relief, the change in control of the acquiring company mentioned in paragraphs 13 and 14 of schedule 11 or, as the case may be, the event mentioned in paragraphs 22 to 24 or 25 to 28 of that schedule,
 - (c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraph 5 or 6 of schedule 13.

Modifications etc. (not altering text)

- C3** Sch. 19 para. 27 modified (1.4.2015) by [The Land and Buildings Transaction Tax \(Transitional Provisions\) \(Scotland\) Order 2014 \(S.S.I. 2014/377\)](#), arts. 1, **11(2)(c)**
- C4** Sch. 19 para. 27(1) applied (1.4.2015) by [The Land and Buildings Transaction Tax \(Transitional Provisions\) \(Scotland\) Order 2014 \(S.S.I. 2014/377\)](#), arts. 1, **11(2)(a)**
- C5** Sch. 19 para. 27(2) applied (1.4.2015) by [The Land and Buildings Transaction Tax \(Transitional Provisions\) \(Scotland\) Order 2014 \(S.S.I. 2014/377\)](#), arts. 1, **11(2)(b)**

Commencement Information

- I27** Sch. 19 para. 27 in force at 1.4.2015 by [S.S.I. 2015/108](#), **art. 2**

Status: Point in time view as at 01/04/2015.

Changes to legislation: There are currently no known outstanding effects for the Land and Buildings Transaction Tax (Scotland) Act 2013, SCHEDULE 19. (See end of Document for details)

Assignment of lease: responsibility of assignee for returns etc.

- 28 (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 any provision mentioned in sub-paragraph (2) 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) The provisions are—
- (a) section 31 (return where contingency ceases or consideration ascertained),
 - (b) section 34 (return or further return in consequence of later linked transaction),
 - (c) paragraph 10 of this schedule (return on 3-yearly review),
 - (d) paragraph 11 of this schedule (return on assignment or termination of lease),
 - (e) paragraph 20 of this schedule (return or further return where lease for fixed term continues after end of term),
 - (f) paragraph 22 of this schedule (return or further return in relation to lease for indefinite term),
 - (g) paragraph 30 of this schedule (return where transaction becomes notifiable on variation of rent or term).
- (3) 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.
- (4) This paragraph does not apply if the assignment falls to be treated as the grant of a lease by the assignor (see paragraph 27).

Commencement Information

I28 Sch. 19 para. 28 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

Reduction of rent or term or other variation of lease

- 29 (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.

Commencement Information

I29 Sch. 19 para. 29 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

Status: Point in time view as at 01/04/2015.

Changes to legislation: There are currently no known outstanding effects for the Land and Buildings Transaction Tax (Scotland) Act 2013, SCHEDULE 19. (See end of Document for details)

Increase of rent or term: notification

- 30 (1) This paragraph applies where, in relation to a land transaction in respect of a lease which was not notifiable under section 30 (notifiable transactions)—
- (a) the lease is varied so as to—
 - (i) extend its term, or
 - (ii) increase the amount of rent, and
 - (b) the effect of the variation is that the transaction would have been notifiable under section 30 had it been a lease for that term as so extended or for that rent as so increased (whether or not the effect of the variation is also that tax is payable in respect of the transaction where none was payable before).
- (2) Where this paragraph applies—
- (a) the buyer must make a return in respect of the transaction before the end of the period of 30 days beginning with the day after the relevant date,
 - (b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and
 - (c) any tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (3) The “relevant date” is the date from which the variation takes effect.
- (4) For the purposes of section 30—
- (a) a lease to which sub-paragraph (1)(a)(i) applies is a lease for whatever is its term as so extended, and
 - (b) a lease to which sub-paragraph (1)(a)(ii) applies is a lease for whatever is its rent as so increased.

Commencement Information

I30 Sch. 19 para. 30 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

Status:

Point in time view as at 01/04/2015.

Changes to legislation:

There are currently no known outstanding effects for the Land and Buildings Transaction Tax (Scotland) Act 2013, SCHEDULE 19.