

SCHEDULE 19 LEASES

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.

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,
 - (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—

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- (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.

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.
- (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.

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

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- (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.

Treatment of successive linked leases

- 23 (1) This paragraph applies where—
- (a) successive leases are granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and
 - (b) those grants are linked transactions.
- (2) This 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).

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.

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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.
 - (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.

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—
- (a) on the date the missives of let were concluded,

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- (b) for a term which begins with that date and ends at the end of the term of the second lease, and
 - (c) 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—
 - (a) 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),
 - (b) 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
 - (c) 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.

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 assignation 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 assignation.
 - (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 assignation.
 - (5) For the purposes of sub-paragraph (4), “disqualifying event” means—

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- (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.

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).

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.

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.