

## SCHEDULE 6

### LEASES

#### 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.

##### *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).

*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,
  - (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.

*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.

*Status: This is the original version (as it was originally enacted).*

(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,
- (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).

#### *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).

#### *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”),
  - (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,

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*Status: This is the original version (as it was originally enacted).*

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- (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.

*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
    - (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).

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- (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.