

Status: Point in time view as at 28/09/2004.

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SCHEDULES

[^{F1}SCHEDULE 17A

Section 120

FURTHER PROVISIONS RELATING TO LEASES

Textual Amendments

- F1** Sch. 17A inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 22\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14) (with Sch. 39 paras. 11, 13(5))

Meaning of “lease”

- 1 In the application of this Part to England and Wales or Northern Ireland “lease” means—
- (a) an interest or right in or over land for a term of years (whether fixed or periodic), or
 - (b) a tenancy at will or other interest or right in or over land terminable by notice at any time.

Leases for a fixed term

- 2 In the application of the provisions of this Part to a lease for a fixed term, no account shall be taken of—
- (a) any contingency as a result of which the lease may determine before the end of the fixed term, or
 - (b) any right of either party to determine the lease or renew it.

Leases that continue after a fixed term

- 3 (1) This paragraph applies to—
- (a) a lease for a fixed term and thereafter until determined, 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 Part (except section 77 (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 one year longer than the original fixed term,

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- (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.
- (3) Where the effect of sub-paragraph (2) in relation to the continuation of the lease after the end of a fixed term is that additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—
 - (a) the purchaser must deliver a return or further 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 a self-assessment of the amount of tax chargeable in respect of the transaction on the basis of the information contained in the return,
 - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
 - (d) the return must be accompanied by payment of the tax or additional tax payable.
 - (4) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to deliver land transaction return), with the adaptation that references to the effective date of the transaction shall be read as references to the day on which the lease becomes treated as being for a longer fixed term.
 - (5) For the purposes of section 77 (notifiable transactions) a lease to which this paragraph applies is a lease for whatever is its fixed term.

Treatment of leases for indefinite term

- 4 (1) For the purposes of this Part (except section 77 (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 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 two 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 three years,
 and so on.
- (2) No account shall be taken for the purposes of this Part of any other statutory provision in England and Wales or Northern Ireland deeming a lease for an indefinite period to be a lease for a different term.
- (3) 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 additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—
 - (a) the purchaser must deliver a return or further 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 a self-assessment of the amount of tax chargeable in respect of the transaction on the basis of the information contained in the return,

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- (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
 - (d) the return must be accompanied by payment of the tax or additional tax payable.
- (4) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to deliver land transaction return), with the adaptation that references to the effective date of the transaction shall be read as references to the day on which the lease becomes treated as being for a longer fixed term.
- (4A) For the purposes of section 77 (notifiable transactions) a lease for an indefinite term is a lease for a term of less than seven years.
- (5) References in this paragraph to a lease for an indefinite period include—
- (a) a periodic tenancy or other interest or right terminable by a period of notice,
 - (b) a tenancy at will in England and Wales or Northern Ireland, or
 - (c) any other interest or right terminable by notice at any time.

Treatment of successive linked leases

- 5 (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 Part 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 Part except section 81A (return or further return in consequence of later linked transaction).

Rent

- 6 (1) For the purposes of this Part 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, shall 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.

Variable or uncertain rent

- 7 (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.

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- (2) As regards rent payable in respect of any period before the end of the fifth year of the term of the lease—
- (a) the provisions of this Part apply as in relation to other chargeable consideration, and
 - (b) the provisions of section 51 (1) and (2) accordingly 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 is assumed for the purposes of this Part to be, in every case, equal to the highest amount of rent payable in respect of any consecutive twelve month period in the first five years of the term.

In determining that amount take into account (if necessary) any amounts determined as mentioned in sub-paragraph (2)(b), but disregard paragraph 9(2) (deemed reduction of rent for overlap period in case of grant of further lease).

- (4) This paragraph has effect subject to paragraph 8 (adjustment where rent payable ceases to be uncertain).
- (5) No account shall be taken for the purposes of this Part of any provision for rent to be adjusted in line with the retail prices index.

First rent review in final quarter of fifth year

- 7A 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 the adjustment) is uncertain, and
 - (ii) has effect from a date (the “review date”) that is expressed as falling five years after a specified date,
- and
- (c) the specified date falls within the three months before the beginning of the term of the lease,
- this Schedule has effect as if references to the first five years of the term of the lease were to the period beginning with the start of the term of the lease and ending with the review date. References to the fifth year of the term of the lease shall be read accordingly.

Adjustment where rent ceases to be uncertain

- 8 (1) Where the provisions of section 51 (1) and (2) (contingent, uncertain or unascertained consideration) apply in relation to a transaction by virtue of paragraph 7 (uncertain rent) and—
- (a) the end of the fifth year of the term of the lease is reached, or
 - (b) the amount of rent payable in respect of the first five years of the term of the lease ceases to be uncertain at an earlier date,
- the following provisions have effect to require or permit reconsideration of how this Part applies to the transaction (and to any transaction in relation to which it is a linked transaction).
- (2) For the purposes of this paragraph the amount of rent payable ceases to be uncertain when—

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- (a) in the case of contingent rent, the contingency occurs or it becomes clear that it will not occur, and
 - (b) in the case of uncertain or unascertained rent, the amount becomes ascertained.
- (3) If the result as regards the rent paid or payable in respect of the first five years of the term of the lease is that a transaction becomes notifiable, or that additional tax is payable in respect of a transaction or that tax is payable where none was payable before—
- (a) the purchaser must make a return to the Inland Revenue within 30 days of the date referred to in sub-paragraph (1)(a) or (b),
 - (b) the return must contain a self-assessment of the tax chargeable in respect of the transaction on the basis of the information contained in the return,
 - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
 - (d) the return must be accompanied by payment of any tax or additional tax payable.
- (4) The provisions of Schedule 10 (returns, enquiries, assessment and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to make land transaction return), subject to the adaptation that references to the effective date of the transaction shall be read as references to the date referred to in sub-paragraph (1)(a) or (b).
- (5) If the result as regards the rent paid or payable in respect of the first five years of the term of the lease is that less tax is payable in respect of the transaction than has already been paid—
- (a) the purchaser may, within the period allowed for amendment of the land transaction return, amend the return accordingly;
 - (b) after the end of that period he may (if the land transaction return is not so amended) make a claim to the Inland Revenue for repayment of the amount overpaid.

Rent for overlap period in case of grant of further lease

- 9 (1) This paragraph applies where—
- (a) A surrenders an existing lease to B (“the old lease”) and in consideration of that surrender B grants a lease to A 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 or the Business Tenancies (Northern Ireland) Order 1996 applies makes a request for a new tenancy (“the new lease”) which is duly 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 his original lease (“the old lease”)—
 - (i) in pursuance of an order of a court on a claim for relief against re-entry or forfeiture, or
 - (ii) in pursuance of a contractual entitlement arising in the event of the head lease being terminated,

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- (d) a person who has guaranteed the obligations of a lessee 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 Part 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 shall be taken to be the amount taken into account in determining the stamp duty land 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.

Tenants' obligations etc that do not count as chargeable consideration

- 10 (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 demised premises (in Scotland, 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.
- (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 obligation as is mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the surrender of the lease.

Cases where assignment of lease treated as grant of lease

- 11 (1) This paragraph applies where—
- (a) the grant of a lease is exempt from charge by virtue of any of the provisions specified in sub-paragraph (3), or
 - (b) a lease is granted to a person as bare trustee of the grantor, with the result that the lease is treated as vested in the grantor by virtue of paragraph 3 of Schedule 16.
- (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 Part as if it were the grant of a lease by the assignor—

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- (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) section 57A (sale and leaseback arrangements);
 - (b) Part 1 or 2 of Schedule 7 (group relief or reconstruction or acquisition relief);
 - (c) section 66 (transfers involving public bodies);
 - (d) Schedule 8 (charities relief);
 - (e) any such regulations as are mentioned in section 123(3) (regulations reproducing in relation to stamp duty land tax the effect of enactments providing for exemption from stamp duty).
- (4) 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.
- (5) For the purposes of sub-paragraph (4) “disqualifying event” means—
- (a) in relation to the withdrawal of group relief, the purchaser ceasing to be a member of the same group as the vendor (within the meaning of Part 1 of Schedule 7);
 - (b) in relation to the withdrawal of reconstruction or acquisition relief, the change of control of the acquiring company mentioned in paragraph 9(1)(a) of that Schedule or, as the case may be, the event mentioned in paragraph 11(1)(a) or (2)(a) of that Schedule;
 - (c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraphs 2(3) or 3(2) of Schedule 8.

Assignment of lease: responsibility of assignee for returns etc

- 12 (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 80 (adjustment where contingency ceases or consideration is ascertained),
 - (b) section 81A (return or further return in consequence of later linked transaction),
 - (c) paragraph 3 or 4 of this Schedule (return or further return required where lease for indefinite period continues), or
 - (d) paragraph 8 of this Schedule (adjustment where rent ceases to be uncertain),
- shall, 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 shall be treated as if it had been done by or in relation to the assignee.
- (3) This paragraph does not apply if the assignment falls to be treated as the grant of a lease by the assignor (see paragraph 11).

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Agreement for lease

- 12A (1) This paragraph applies where in England and Wales or Northern Ireland—
- (a) an agreement for a lease is entered into, and
 - (b) the agreement is substantially performed without having been completed.
- (2) 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 substantial performance.
- The effective date of the transaction is that date.
- (3) Where a lease is subsequently granted in pursuance of the agreement—
- (a) the notional lease is treated as if it were surrendered at that time, and
 - (b) the lease itself is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
- (4) 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 shall (to that extent) be repaid by the Inland Revenue.
- Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.
- (5) In this paragraph “substantially performed” and “completed” have the same meanings as in section 44 (contract and conveyance).

Assignment of agreement for lease

- 12B (1) This paragraph applies, in place of section 45 (contract and conveyance: effect of transfer of rights), where in England and Wales or Northern Ireland a person assigns his interest as lessee under an agreement for a lease.
- (2) If the assignment occurs without the agreement having been substantially performed, section 44 (contract and conveyance) has effect as if—
- (a) the contract were with the assignee and not the assignor, and
 - (b) the consideration given by the assignee for entering into the contract included any consideration given by him for the assignment.
- (3) 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.
- (4) Where there are successive assignments, this paragraph has effect in relation to each of them.

Increase of rent treated as grant of new lease: variation of lease

- 13 (1) Where a lease is varied so as to increase the amount of the rent, the variation is treated for the purposes of this Part 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 provision contained in the lease (but see paragraph 14).

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Increase of rent treated as grant of new lease: abnormal increase after fifth year

- 14 (1) This paragraph applies if, after the end of the fifth year of the term of a lease—
- (a) the amount of rent payable increases (or is increased) in accordance with the provisions of the lease, and
 - (b) the rent payable as a result (“the new rent”) is such that the increase falls to be regarded as abnormal (see paragraph 15).
- (2) The increase in rent is treated as if it were the grant of a lease in consideration of the excess rent.
- (3) The excess rent is the difference between the new rent and the rent previously taxed.
- (4) The rent previously taxed is—
- (a) where the provisions of this paragraph have not previously applied to a rent increase under the lease, the rent that is assumed to be payable after the fifth year of the term of the lease (in accordance with paragraph 7(3));
 - (b) where the provisions of this paragraph have previously so applied, the rent payable as a result of the last increase in relation to which the provisions of this paragraph applied.
- (5) The deemed grant is treated as—
- (a) made on the date on which the increased rent first became payable, and
 - (b) for a term equal to the unexpired part of the original lease,
- and as linked with the grant of the original lease (and with any other transaction with which that transaction is linked).
- (6) The assumption in paragraph 7(3) (that the rent does not change after the end of the fifth year of the term of a lease) does not apply for the purposes of this paragraph or paragraph 15 except for the purpose of determining the rent previously taxed.

Increase of rent after fifth year: whether regarded as abnormal

- 15 Whether an increase in rent is to be regarded for the purposes of paragraph 14 as abnormal is determined as follows:— *Step One*

Find the start date, which is—

- (a) where the provisions of that paragraph have not previously applied to a rent increase under the lease, the beginning of the period by reference to which the rent assumed to be payable after the fifth year of the term of the lease is determined in accordance with paragraph 7(3);
- (b) where the provisions of that paragraph have previously so applied, the date of the last increase in relation to which the provisions of that paragraph applied.

Step Two

Divide the period between the start date and the date on which the new rent first becomes payable (“the reference period”) into—

- (a) successive periods of twelve months running from the start date (if any), and
- (b) any remaining period which does not fall within paragraph (a).

Step Three

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Find the factor by which the retail prices index has increased over each period identified in step two.

This is a figure expressed as a decimal and determined by the formula—

If, in relation to any period, RD is equal to or less than RI, the factor by which the retail prices index has increased over the period in question shall be treated as nil.

If, in relation to any period, the figure determined in accordance with the formula would be a figure having more than 3 decimal places, round it to the nearest third decimal place.

Step Four

Find the relevant factor for each period identified in step two.

This is a figure expressed as a decimal and determined by the formula—

where—

m is the number of months in the period in question (treating part of a month as a whole month), and

r is the factor by which the retail prices index has increased over the period in question, determined under step three.

If, in relation to any period, the figure determined in accordance with the formula would have more than 3 decimal places, round it to the nearest third decimal place.

Step Five

Find the uplift factor for the reference period as follows.

If there is only one period identified in step two, the uplift factor for the reference period is the relevant factor for that period.

If there are only two periods identified in step two, the uplift factor for the reference period is calculated by multiplying the relevant factors for those periods.

If there are more than two periods identified in step two, the uplift factor for the reference period is calculated by—

- (a) multiplying the relevant factors for the first two periods,
- (b) multiplying the result by the relevant factor for the next period,
- (c) if there are further periods, multiplying the result by the relevant factor for the next period,

until all periods have been taken into account.

If the uplift factor for the reference period would be a figure having more than 3 decimal places, round it to the nearest third decimal place.

Step Six

The rent increase is regarded as abnormal if the new rent is greater than:

Reduction of rent or term

- 15A (1) Where a lease is varied so as to reduce the amount of the rent, the variation is treated for the purposes of this Part as an acquisition of a chargeable interest by the lessee.

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- (2) Where a lease is varied so as to reduce the term, the variation is treated for the purposes of this Part as an acquisition of a chargeable interest by the lessor.

Surrender of existing lease in return for new lease

- 16 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.

Paragraph 5 (exchanges) of Schedule 4 (chargeable consideration) does not apply in such a case.

Assignment of lease: assumption of obligations by assignee

- 17 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.

Reverse premium

- 18 (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.

Provisions relating to leases in Scotland

- 19 (1) In the application of this Part to Scotland—
- (a) any reference to the term of a lease is to the period of the lease, and
 - (b) any reference to the reversion on a lease is to the interest of the landlord in the property subject to the lease.
- (2) Where in Scotland there is a lease constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”)—
- (a) the first lease is treated as if it were surrendered at that time, and
 - (b) the second lease is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
- (3) Where in Scotland—

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- (a) there is an agreement (including missives of let 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 substantial performance.

The effective date of the transaction is when the agreement is substantially performed.

- (4) Where sub-paragraph (3) applies and at some later time a lease is executed—
 - (a) the notional lease is treated as if it were surrendered at that time, and
 - (b) the lease itself is treated for the purposes of paragraph 9 as if it were granted in consideration of that surrender.
- (5) References in sub-paragraphs (2) to (4) 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 property and period as, the missives of let or other agreement.
- (6) Where sub-paragraph (3) 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 shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.]

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Point in time view as at 28/09/2004.

Changes to legislation:

Finance Act 2003, SCHEDULE 17A is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.