

*Status: Point in time view as at 17/12/2020.*

*Changes to legislation: Finance Act 2003, SCHEDULE 17A is up to date with all changes known to be in force on or before 17 July 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. (See end of Document for details)*

## SCHEDULES

### [<sup>F1</sup>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 [<sup>F2</sup>In this Part] “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.

##### Textual Amendments

- F2** Words in Sch. 17A para. 1 substituted (with effect in accordance with s. 29(4) of the amending Act) by [Scotland Act 2012 \(c. 11\)](#), s. 44(2)(b)(3)(b), [Sch. 3 para. 27\(2\)](#) (with s. 29(5)(6)); S.I. 2015/637, [art. 2](#)

##### *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 [<sup>F3</sup>sections 77 and 77A] (notifiable transactions)), a lease to which this paragraph applies is treated—

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- (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.

<sup>F4</sup>(3) Where the effect of sub-paragraph (2) in relation to the continuation of the lease for a period (or further period) of one year after the end of a fixed term is that a transaction becomes notifiable, the purchaser must deliver a return in respect of that transaction before the end of the period of 14 days after the end of that one year period.

(3ZA) Where the effect of sub-paragraph (2) in relation to the continuation of the lease for a period (or further period) of one year after the end of a fixed term is that—

- (a) tax is payable in respect of a transaction where none was payable before and sub-paragraph (3) does not apply, or
- (b) additional tax is payable in respect of a transaction,

the purchaser must deliver a further return in respect of that transaction before the end of the period of 30 days after the end of that one year period.

(3ZB) For the purposes of sub-paragraphs (3) and (3ZA), any tax or additional tax payable is calculated according to the effective date of the transaction.

(3ZC) Where a purchaser is required to deliver a return under sub-paragraph (3) or a further return under sub-paragraph (3ZA)—

- (a) that 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, and
- (b) the tax or additional tax payable must be paid not later than the filing date for that return.]

[ But no tax or additional tax is payable in respect of a transaction as a result of <sup>F5</sup>(3A) the continuation of a lease for a period (or further period) of one year under sub-paragraph (2) if, during that one year period, the tenant under the lease is granted a new lease of the same or substantially the same premises in circumstances where paragraph 9A applies.]

[ Sub-paragraph (2) is subject to paragraph 3A.]

<sup>F6</sup>(3B)

(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 <sup>F7</sup>the last day of the one year period for which the lease is continued or (as the case may be) further continued.]

(5) For the purposes of <sup>F8</sup>sections 77 and 77A] (notifiable transactions) a lease to which this paragraph applies is a lease for whatever is its fixed term.

[ Where—

<sup>F9</sup>(6)

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- (a) a lease would be treated as continuing for a period (or further period) of one 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-paragraphs (3) and (4) to that one year period are accordingly to be read as references to so much of that year as ends with that time.]

#### Textual Amendments

- F3** Words in Sch. 17A para. 3(2) substituted (with effect in accordance with s. 94(5) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 30 para. 14**
- F4** [Sch. 17A para. 3\(3\)-\(3ZC\)](#) substituted for [Sch. 17A para. 3\(3\)](#) (with effect in accordance with s. 46(10) of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **s. 46(8)(a)**
- F5** Sch. 17A para. 3(3A) inserted (with effect in accordance with Sch. 41 para. 8(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 41 para. 2(3)**
- F6** Sch. 17A para. 3(3B) inserted (with effect in accordance with Sch. 41 para. 8(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 41 para. 2(4)**
- F7** Words in Sch. 17A para. 3(4) substituted (with effect in accordance with Sch. 41 para. 8(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 41 para. 2(5)**
- F8** Words in Sch. 17A para. 3(5) substituted (with effect in accordance with s. 94(5) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 30 para. 14**
- F9** Sch. 17A para. 3(6) inserted (with effect in accordance with Sch. 41 para. 8(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 41 para. 2(6)**

#### Modifications etc. (not altering text)

- C1** Sch. 17A para. 3(1)(2) applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Taxable Property Provisions\) Regulations 2006 \(S.I. 2006/1958\)](#), regs. 1(1), 7

- [
- <sup>F10</sup>3A (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 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 9A (backdated lease granted to tenant holding over) does not apply.
- (2) Paragraph 3 does not apply to treat the lease as continuing after the original term.
- (3) The term of the new lease is treated for the purposes of this Part as beginning immediately after the original 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 1A of Schedule 5 does not apply to it).
- (5) Where the fixed term of a lease has previously been extended (on one or more occasions) under paragraph 3, this paragraph applies as if references to the original term were references to the fixed term as previously so extended.]

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### Textual Amendments

**F10** Sch. 17A para. 3A inserted (with effect in accordance with Sch. 41 para. 8(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 41 para. 3](#)

### *Treatment of leases for indefinite term*

- 4 (1) For the purposes of this Part (except [<sup>F11</sup>sections 77 and 77A] (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.
- [<sup>F12</sup>(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 a transaction becomes notifiable, the purchaser must deliver a return in respect of that transaction before the end of the period of 14 days after the end of that term.
- (3A) 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—
- (a) tax is payable in respect of a transaction where none was payable before and sub-paragraph (3) does not apply, or
  - (b) additional tax is payable in respect of a transaction,
- the purchaser must deliver a further return in respect of that transaction before the end of the period of 30 days after the end of that term.
- (3B) For the purposes of sub-paragraphs (3) and (3A), any tax or additional tax payable is calculated according to the effective date of the transaction.
- (3C) Where a purchaser is required to deliver a return under sub-paragraph (3) or a further return under sub-paragraph (3A)—
- (a) that 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, and
  - (b) the tax or additional tax payable must be paid not later than the filing date for that return.]
- (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.

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- (4A) For the purposes of [<sup>F13</sup>sections 77 and 77A] (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 <sup>F14</sup>..., or
  - (c) any other interest or right terminable by notice at any time.

#### Textual Amendments

- F11** Words in Sch. 17A para. 4(1) substituted (with effect in accordance with s. 94(5) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 30 para. 14**
- F12** [Sch. 17A para. 4\(3\)-\(3C\)](#) substituted for [Sch. 17A para. 4\(3\)](#) (with effect in accordance with s. 46(10) of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **s. 46(8)(b)**
- F13** Words in Sch. 17A para. 4(4A) substituted (with effect in accordance with s. 94(5) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 30 para. 14**
- F14** Words in Sch. 17A para. 4(5)(b) omitted (with effect in accordance with s. 29(4) of the amending Act) by virtue of [Scotland Act 2012 \(c. 11\)](#), [s. 44\(2\)\(b\)\(3\)\(b\)](#), **Sch. 3 para. 27(3)** (with [s. 29\(5\)\(6\)](#)); S.I. 2015/637, art. 2

#### Modifications etc. (not altering text)

- C2** Sch. 17A para. 4(1)(2) applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Taxable Property Provisions\) Regulations 2006 \(S.I. 2006/1958\)](#), [regs. 1\(1\), 7](#)
- C3** Sch. 17A para. 4(5) applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Taxable Property Provisions\) Regulations 2006 \(S.I. 2006/1958\)](#), [regs. 1\(1\), 7](#)

#### *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.

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- (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.
- (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 [<sup>F15</sup>paragraphs 9(2) and 9A(3) (deemed reduction of rent, where further lease granted, for period during which rents overlap)].

- (4) This paragraph has effect subject to paragraph 8 (adjustment where rent payable ceases to be uncertain).

[ For the purposes of this paragraph and paragraph 8, the cases where the amount of <sup>F16</sup>(4A) rent payable under a lease is uncertain or unascertained include cases where there is a possibility of that amount being varied under—

- (a) section 12, 13 or 33 of the Agricultural Holdings Act 1986,
- (b) Part 2 of the Agricultural Tenancies Act 1995,
- <sup>F17</sup>(c) .....
- <sup>F18</sup>(d) .....

- (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.

**Textual Amendments**

- F15** Words in Sch. 17A para. 7(3) substituted (with effect in accordance with Sch. 25 para. 9(2)(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 25 para. 3\(2\)](#)
- F16** Sch. 17A para. 7(4A) inserted (with effect in accordance with Sch. 25 para. 9(1)(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 25 para. 2\(1\)](#)
- F17** Sch. 17A para. 7(4A)(c) omitted (with effect in accordance with s. 29(4) of the amending Act) by virtue of [Scotland Act 2012 \(c. 11\)](#), s. 44(2)(b)(3)(b), [Sch. 3 para. 27\(4\)](#) (with s. 29(5)(6)); S.I. 2015/637, [art. 2](#)
- F18** Sch. 17A para. 7(4A)(d) omitted (with effect in accordance with s. 29(4) of the amending Act) by virtue of [Scotland Act 2012 \(c. 11\)](#), s. 44(2)(b)(3)(b), [Sch. 3 para. 27\(4\)](#) (with s. 29(5)(6)); S.I. 2015/637, [art. 2](#)

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*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—

- (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.

<sup>F19</sup>(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, the purchaser must make a return to HMRC within 14 days of the date referred to in sub-paragraph (1)(a) or (b).

(3A) 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) tax is payable in respect of a transaction where none was payable before and sub-paragraph (3) does not apply, or
- (b) additional tax is payable in respect of a transaction,

the purchaser must make a further return to HMRC within 30 days of the date referred to in sub-paragraph (1)(a) or (b).

(3B) If a purchaser is required to make a return under sub-paragraph (3) or a further return under sub-paragraph (3A)—

- (a) that 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,

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- (b) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
  - (c) the tax or additional tax payable must be paid not later than the filing date for that return.]
- (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.

#### Textual Amendments

**F19** Sch. 17A para. 8(3)-(3B) substituted for Sch. 17A para. 8(3) (with effect in accordance with s. 46(10) of the amending Act) by Finance Act 2019 (c. 1), s. 46(8)(c)

#### Modifications etc. (not altering text)

**C4** Sch. 17A para. 8(1)(2) applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by The Pensions Schemes (Taxable Property Provisions) Regulations 2006 (S.I. 2006/1958), regs. 1(1), 8

#### *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,
- or
- (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



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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.

*[<sup>F20</sup>Backdated lease granted to tenant holding over*

**Textual Amendments**

**F20** Sch. 17A para. 9A and cross-heading inserted (with effect in accordance with Sch. 25 para. 9(2)(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 25 para. 3\(1\)](#)

- 9A (1) This paragraph applies where—
- (a) the tenant under a lease continues in occupation after the date on which, under its terms, the lease terminates (“the contractual termination date”),
  - (b) he is granted a new lease of the same or substantially the same premises, and
  - (c) the term of the new lease is expressed to begin on or immediately after the contractual termination date.
- (2) The term of the new lease is treated for the purposes of this Part as beginning on the date on which it is expressed to begin.
- (3) The rent payable under the new lease in respect of any period falling—
- (a) after the contractual termination date, and
  - (b) before the date on which the new lease is granted,
- is treated for the purposes of this Part as reduced by the amount of taxable rent that is payable in respect of that period otherwise than under the new lease.
- (4) For the purposes of sub-paragraph (3) rent is “taxable” if or to the extent that it is taken into account in determining liability to stamp duty land tax.
- (5) Sub-paragraph (3) 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 <sup>F21</sup>...;

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- (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.
  - [<sup>F22</sup>(f) any liability of the tenant for costs under section 14(2) of the Leasehold Reform Act 1967 or section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (costs to be borne by person exercising statutory right to be granted lease);
  - (g) any other obligation of the tenant to bear the landlord's reasonable costs or expenses of or incidental to the grant of a lease;
  - (h) 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 [<sup>F23</sup>Council Regulation (EC) No 73/2009] ) in respect of 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 obligation as is mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the surrender of the lease.

#### Textual Amendments

- F21** Words in Sch. 17A para. 10(1)(a) omitted (with effect in accordance with s. 29(4) of the amending Act) by virtue of [Scotland Act 2012 \(c. 11\)](#), s. 44(2)(b)(3)(b), [Sch. 3 para. 27\(5\)](#) (with s. 29(5)(6)); S.I. 2015/637, [art. 2](#)
- F22** Sch. 17A para. 10(1)(f)-(h) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Stamp Duty Land Tax \(Amendment to the Finance Act 2003\) Regulations 2006 \(S.I. 2006/875\)](#), regs. 1(1), [4](#)
- F23** Words in Sch. 17A para. 10(1)(h) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Stamp Duty Land Tax \(Amendment to the Finance Act 2003\) Regulations 2012 \(S.I. 2012/1667\)](#), regs. 1(1), [3](#)

#### *Cases where assignment of lease treated as grant of lease*

- 11 [<sup>F24</sup>(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 Part 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.

*Status: Point in time view as at 17/12/2020.*

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- (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);
  - [ Part 1 or 2 of Schedule 7A (PAIF seeding relief and COACS seeding relief);]
  - <sup>F25</sup>(ba) (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<sup>F26</sup>, PAIF seeding relief, COACS seeding 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, [<sup>F27</sup>the event falling within paragraph 3(1)(a) of Schedule 7 (purchaser ceasing to be a member of the same group as the vendor), as read with paragraph 4A of that Schedule];
  - (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;
  - [ in relation to the withdrawal of PAIF seeding relief—
  - <sup>F28</sup>(ba) (i) the purchaser ceasing to be a property AIF as mentioned in paragraph 5 of Schedule 7A,
  - (ii) a person making a relevant disposal of units as mentioned in paragraph 7 of that Schedule, or
  - (iii) the grant of permission to a non-qualifying individual to occupy a dwelling as mentioned in paragraph 8 of that Schedule;
  - (bb) in relation to the withdrawal of COACS seeding relief—
  - (i) the purchaser ceasing to be a co-ownership authorised contractual scheme as mentioned in paragraph 13 of Schedule 7A,
  - (ii) a person making a relevant disposal of units as mentioned in paragraph 17 of that Schedule, or
  - (iii) the grant of permission to a non-qualifying individual to occupy a dwelling as mentioned in paragraph 18 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.
- [ This paragraph also does not apply where the relief in question is PAIF seeding relief
- <sup>F29</sup>(6) or COACS seeding relief and is withdrawn as a result of a requirement not being met at a time which is before the effective date of the assignment of the lease.
- (7) For the purposes of sub-paragraph (6), the reference to a requirement not being met is a reference to—
- (a) in relation to the withdrawal of PAIF seeding relief under paragraph 6 of Schedule 7A, the portfolio test not being met (see paragraph 6(7));

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- (b) in relation to the withdrawal of COACS seeding relief under paragraph 14 of Schedule 7A, the genuine diversity of ownership condition not being met (see paragraph 15);
- (c) in relation to the withdrawal of COACS seeding relief under paragraph 16 of Schedule 7A, the portfolio test not being met (see paragraph 16(7)).]

#### Textual Amendments

- F24** Sch. 17A para. 11(1) substituted (with effect in accordance with Sch. 10 para. 16(4)(6)-(9) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 10 para. 12](#)
- F25** Sch. 17A para. 11(3)(ba) inserted (with effect in accordance with Sch. 16 para. 15 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 16 para. 14\(2\)](#)
- F26** Words in Sch. 17A para. 11(4) inserted (with effect in accordance with Sch. 16 para. 15 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 16 para. 14\(3\)](#)
- F27** Words in Sch. 17A para. 11(5)(a) substituted (with effect in accordance with Sch. 10 para. 16(1)(6)-(9) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 10 para. 7](#)
- F28** Sch. 17A para. 11(5)(ba)(bb) inserted (with effect in accordance with Sch. 16 para. 15 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 16 para. 14\(4\)](#)
- F29** Sch. 17A para. 11(6)(7) inserted (with effect in accordance with Sch. 16 para. 15 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 16 para. 14\(5\)](#)

#### Modifications etc. (not altering text)

- C5** Sch. 17A para. 11 modified (7.4.2010) by [The Stamp Duty Land Tax \(Alternative Finance Investment Bonds\) Regulations 2010 \(S.I. 2010/814\)](#), regs. 1, 2

#### *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).

#### *Agreement for lease*

- 12A (1) This paragraph applies where <sup>F30</sup>...—
- (a) an agreement for a lease is entered into, and
  - (b) the agreement is substantially performed without having been completed.

*Status: Point in time view as at 17/12/2020.*

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- (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.

- [<sup>F31</sup>(3) Where a lease (“the actual lease”) is subsequently granted in pursuance of the agreement, the notional lease is to be treated for the purposes of this Part as if it 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 notional lease or the actual lease.

- (3A) Where sub-paragraph (3) applies the grant of the actual lease is disregarded for the purposes of this Part except section 81A (return or further return in consequence of later linked transaction).

- (3B) For the purposes of section 81A—

- (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 108),
- (b) the lessee under the actual lease (rather than the lessee 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 81A(1)(a) to “the purchaser under the earlier transaction” is to be read, in relation to the notional lease, as a reference to the lessee under the actual lease.]

- (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).

#### Textual Amendments

- F30** Words in Sch. 17A para. 12A(1) omitted (with effect in accordance with s. 29(4) of the amending Act) by virtue of [Scotland Act 2012 \(c. 11\)](#), s. 44(2)(b)(3)(b), [Sch. 3 para. 27\(6\)](#) (with s. 29(5)(6)); S.I. 2015/637, [art. 2](#)
- F31** Sch. 17A para. 12A(3)-(3B) substituted for Sch. 17A para. 12A(3) (with effect in accordance with Sch. 41 para. 8(4) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 41 para. 6\(2\)](#)

#### *Assignment of agreement for lease*

- 12B (1) This paragraph applies, in place of [<sup>F32</sup>Schedule 2A (transactions entered into before completion of contract)], where <sup>F33</sup>... a person assigns his interest as lessee under an agreement for a lease.

*Status: Point in time view as at 17/12/2020.*

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- (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.

#### Textual Amendments

- F32** Words in Sch. 17A para. 12B(1) substituted (with effect in accordance with Sch. 39 para. 11 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 39 para. 10](#)
- F33** Words in Sch. 17A para. 12B(1) omitted (with effect in accordance with s. 29(4) of the amending Act) by virtue of [Scotland Act 2012 \(c. 11\)](#), s. 44(2)(b)(3)(b), [Sch. 3 para. 27\(7\)](#) (with s. 29(5)(6)); S.I. 2015/637, [art. 2](#)

*Increase of rent treated as grant of new lease: variation of lease [<sup>F34</sup>in first five years]*

#### Textual Amendments

- F34** Words in Sch. 17A para. 13 heading inserted (with effect in accordance with Sch. 25 para. 9(4)(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 25 para. 6\(1\)](#)

- 13 (1) Where a lease is varied so as to increase the amount of the rent [<sup>F35</sup>as from a date before the end of the fifth year of the term of the lease], 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 [<sup>F36</sup>in pursuance of—
- (a) a provision contained in the lease, or
  - (b) a provision mentioned in [<sup>F37</sup>paragraph (a) or (b)] of paragraph 7(4A).]

#### Textual Amendments

- F35** Words in Sch. 17A para. 13(1) inserted (with effect in accordance with Sch. 25 para. 9(4)(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 25 para. 6\(2\)](#)
- F36** Words in Sch. 17A para. 13(2) substituted (with effect in accordance with Sch. 25 para. 9(1)(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 25 para. 2\(2\)](#)
- F37** Words in Sch. 17A para. 13(2)(b) substituted (with effect in accordance with s. 29(4) of the amending Act) by [Scotland Act 2012 \(c. 11\)](#), s. 44(2)(b)(3)(b), [Sch. 3 para. 27\(8\)](#) (with s. 29(5)(6)); S.I. 2015/637, [art. 2](#)

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

<sup>F38</sup>14 .....

**Textual Amendments**

**F38** Sch. 17A para. 14 omitted (with effect in accordance with Sch. 41 para. 8(5) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 41 para. 7\(1\)](#)

*Increase of rent after fifth year: whether regarded as abnormal*

<sup>F39</sup>15 .....

**Textual Amendments**

**F39** Sch. 17A para. 15 omitted (with effect in accordance with Sch. 41 para. 8(5) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 41 para. 7\(1\)](#)

*[<sup>F40</sup>Reduction of rent or term or other variation of lease]*

**Textual Amendments**

**F40** Sch. 17A para. 15A heading substituted (with effect in accordance with Sch. 10 para. 16(5)-(9) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 10 para. 13\(b\)](#)

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.

[ Where any consideration in money or money's worth (other than an increase in rent) <sup>F41</sup>(1A) is given by the lessee 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 Part as an acquisition of a chargeable interest by the lessee.]

(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.

**Textual Amendments**

**F41** Sch. 17A para. 15A(1A) inserted (with effect in accordance with Sch. 10 para. 16(5)-(9) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 10 para. 13\(a\)](#)

*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.

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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.

*<sup>F42</sup>Loan or deposit in connection with grant or assignment of lease*

**Textual Amendments**

**F42** Sch. 17A para. 18A and cross-heading inserted (with effect in accordance with Sch. 10 para. 16(5)-(9) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 10 para. 14**

- 18A (1) Where, under arrangements made in connection with the grant of a lease—
- (a) the lessee, or any person connected with him or acting on his behalf, 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 lessee or on the death of the lessee,
- the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Part 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 him or acting on his behalf, 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 Part to be consideration other than rent given for the assignment of the lease.



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- (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 twelve month period in the first five years of the term;
  - (b) in relation to the assignment of a lease, the highest amount of rent payable in respect of any consecutive twelve month period in the first five years of the term remaining outstanding as at the date of the assignment,
- the highest amount of rent being determined (in either case) in the same way as the highest amount of rent mentioned in paragraph 7(3).
- (5) Tax is not chargeable by virtue of this paragraph—
- (a) merely because of paragraph [F439A] of Schedule 5 (which excludes the 0% band in [F44Table B] in section 55(2) in cases where [F45the relevant rent attributable to non-residential property is not less than £1,000] a year), or
  - F46(b) .....
- (6) [F47Section 1122 of the Corporation Tax Act 2010] (connected persons) has effect for the purposes of this paragraph.]

#### Textual Amendments

- F43** Word in Sch. 17A para. 18A(5)(a) substituted (with effect in accordance with s. 95(13) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 95\(12\)\(a\)](#)
- F44** Words in Sch. 17A para. 18A(5)(a) substituted (with effect in accordance with s. 95(13) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 95\(12\)\(b\)](#)
- F45** Words in Sch. 17A para. 18A(5)(a) substituted (with effect in accordance with s. 95(13) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 95\(12\)\(c\)](#)
- F46** Sch. 17A para. 18A(5)(b) omitted (with effect in accordance with Sch. 39 para. 10(4) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\), Sch. 39 para. 8\(2\)\(b\)\(iii\)](#) (with [Sch. 39 paras. 11-13](#))
- F47** Words in Sch. 17A para. 18A(6) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 419](#) (with [Sch. 2](#))

#### *Provisions relating to leases in Scotland*

- 19 [F48(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.
- [F49(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”), the first lease is to be treated for the purposes of this Part as if it were a lease granted—
- (a) on the date the missives of let were concluded,
  - (b) for a period which begins with that date and ends at the end of the period of the second lease, and

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- (c) in consideration of the total rent payable over that period and any other consideration given for the first lease or the second lease.
- (2A) Where sub-paragraph (2) applies the grant of the second lease is disregarded for the purposes of this Part except section 81A (return or further return in consequence of later linked transaction).
- (2B) For the purposes of section 81A—
- (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 108),
  - (b) the lessee under the second lease (rather than the lessee under the first lease) is liable for any tax or additional tax payable in respect of the first lease lease as a result of sub-paragraph (2), and
  - (c) the reference in section 81A(1)(a) to “the purchaser under the earlier transaction” is to be read, in relation to the first lease, as a reference to the lessee under the second lease.]
- (3) Where in Scotland—
- (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.
- [<sup>F50</sup>(4) Where sub-paragraph (3) applies and at some later time a lease (“the actual lease”) is executed, this Part applies as if the notional lease were a lease granted—
- (a) on the date the agreement was substantially performed,
  - (b) for a period which begins with that date and ends at the end of the period of the actual lease, and
  - (c) in consideration of the total rent payable over that period and any other consideration given for the agreement or the actual lease.
- (4A) Where sub-paragraph (4) applies the grant of the second lease is disregarded for the purposes of this Part except section 81A (return or further return in consequence of later linked transaction).”
- (4B) For the purposes of section 81A—
- (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 108),
  - (b) the lessee under the actual lease (rather than the lessee 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 (4), and
  - (c) the reference in section 81A(1)(a) to “the purchaser under the earlier transaction” is to be read, in relation to the notional lease, as a reference to the lessee under the actual lease.]
- (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.

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- (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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**Textual Amendments**

- F48** Sch. 17A para. 19 omitted (with effect in accordance with s. 29(4) of the amending Act) by virtue of [Scotland Act 2012 \(c. 11\)](#), s. 44(2)(b)(3)(b), [Sch. 3 para. 27\(10\)](#) (with s. 29(5)(6))
- F49** Sch. 17A para. 19(2)-(2B) substituted for Sch. 17A para. 19(2) (with effect in accordance with Sch. 41 para. 8(4) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 41 para. 6\(3\)\(a\)](#)
- F50** Sch. 17A para. 19(4)-(4B) substituted for Sch. 17A para. 19(4) (with effect in accordance with Sch. 41 para. 8(4) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 41 para. 6\(3\)\(b\)](#)

**Status:**

Point in time view as at 17/12/2020.

**Changes to legislation:**

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