
*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 2004, Paragraph 11. (See end of Document for details)*

SCHEDULES

SCHEDULE 39

STAMP DUTY LAND TAX AND STAMP DUTY

PART 1

AMENDMENTS TO PART 4 OF THE FINANCE ACT 2003: GENERAL

Provisions relating to leases

11 [F1(1) Schedule 17A (further provisions relating to leases) (inserted by the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816)) is amended as follows.

(2) After paragraph 7 insert—

“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.”.

(3) In paragraph 9 (rent for overlap period in case of grant of further lease), in subparagraph (1), at the end of paragraph (b) insert

- (c) a person claiming relief against re-entry or forfeiture as under-lessee in relation to the original sub-lease (“the old lease”) is granted a lease (“the new lease”) in pursuance of an order of a court.”.

(4) After paragraph 12 insert—

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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.”.

- (5) In paragraph 16 (surrender of existing lease in return for new lease), at the end insert — “ Paragraph 5 (exchanges) of Schedule 4 (chargeable consideration) does not apply in such a case. ”.

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(6) In paragraph 19 (provisions relating to leases in Scotland), for sub-paragraph (2) substitute—

“(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—

- (a) there are concluded missives of let that do not constitute a lease, and
- (b) the agreement represented by the missives of let is substantially performed without a lease having been executed,

the missives of let are treated as if they did constitute a lease (“the notional lease”).

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—

- (a) is in conformity with the missives of let, or
- (b) relates to substantially the same property and period as the missives of let.

(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.”.]

Textual Amendments

F1 Sch. 39 para. 11 repealed (with effect in accordance with Sch. 39 para. 26 of the repealing Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#)

Changes to legislation:

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