

SCHEDULES

SCHEDULE 25

Section 164

STAMP DUTY LAND TAX: AMENDMENTS OF SCHEDULE 17A TO FA 2003

Introduction

- 1 Schedule 17A (stamp duty land tax: further provisions relating to leases) is amended as follows.

Agricultural tenancies variable under statutory provisions

- 2 (1) In paragraph 7 (variable or uncertain rent), after sub-paragraph (4) insert—
- “(4A) For the purposes of this paragraph and paragraph 8, the cases where the amount of 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,
 - (c) section 13, 14, 15 or 31 of the Agricultural Holdings (Scotland) Act 1991, or
 - (d) section 9, 10 or 11 of the Agricultural Holdings (Scotland) Act 2003.”
- (2) In paragraph 13(2), for the words after “increase of rent” substitute “in pursuance of—
- (a) a provision contained in the lease, or
 - (b) a provision mentioned in any of paragraphs (a) to (d) of paragraph 7(4A).”

Backdated lease granted to tenant holding over

- 3 (1) After paragraph 9 insert—

“Backdated lease granted to tenant holding over

- 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.

Status: This is the original version (as it was originally enacted).

- (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.”
- (2) In paragraph 7(3), for the words after “but disregard” substitute “paragraphs 9(2) and 9A(3) (deemed reduction of rent, where further lease granted, for period during which rents overlap)”.

Disapplication of “single lease” treatment where agreement for lease followed by grant

- 4 In paragraph 12A (agreement for lease), at the end of sub-paragraph (3) insert—
- “Paragraph 5 does not apply so as to treat the notional lease and the lease itself as a single lease.”
- 5 (1) In paragraph 19 (provisions relating to leases in Scotland), at the end of sub-paragraph (2) insert—
- “Paragraph 5 does not apply so as to treat the first lease and the second lease as a single lease.”
- (2) At the end of sub-paragraph (4) of that paragraph insert—
- “Paragraph 5 does not apply so as to treat the notional lease and the lease itself as a single lease.”

Disapplication of “new lease” treatment for certain rent increases after fifth year

- 6 (1) In paragraph 13 (increase in rent treated as grant of new lease: variation of lease), in the heading, after “*variation of lease*” insert “*in first five years*”.
- (2) In sub-paragraph (1) of that paragraph, after “to increase the amount of the rent” insert “as from a date before the end of the fifth year of the term of the lease”.

Abnormal rent increase after fifth year

- 7 (1) In paragraph 14 (increase of rent treated as grant of new lease: abnormal increase after fifth year), in sub-paragraph (1)(a), for “in accordance with the provisions of the lease” substitute “, whether in accordance with the provisions of the lease or otherwise”.
- (2) For sub-paragraph (4) of that paragraph substitute—

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

“(4) Where the provisions of this paragraph have not previously applied to an increase in the rent payable under the lease, the rent previously taxed is—

- (a) if paragraph (b) or (c) does not apply, the rent payable under the lease without the increase referred to in sub-paragraph (1);
- (b) if the amount of rent payable under the lease is determined under paragraph 7 (variable or uncertain rent), the rent that is assumed to be payable after the fifth year of the term of the lease (in accordance with paragraph 7(3));
- (c) if there has been a variation in the lease falling within paragraph 13 (increase of rent treated as grant of new lease: variation of lease in first five years), the rent payable as a result of the variation (or, if there has been more than one such variation, the most recent one).

(4A) Where the provisions of this paragraph have previously applied to an increase in the rent payable under the lease, the rent previously taxed is the rent payable as a result of the last increase in relation to which the provisions of this paragraph applied.

(4B) In determining the rent previously taxed, disregard paragraphs 9(2) and 9A(3) (deemed reduction of rent, where further lease granted, for period during which rents overlap).”

(3) At the end of that paragraph insert—

“(7) The reference to a lease in sub-paragraph (1) is to—

- (a) a lease actually granted on or after the implementation date, or
- (b) a lease that is treated as existing by reason of a deemed grant under paragraph 12A(2) or 19(3) of which the effective date is on or after the implementation date.”

8 (1) In paragraph 15 (increase of rent after fifth year: whether regarded as abnormal), for Steps One to Six substitute—

“Step One

Find the start date.

Where the provisions of paragraph 14 have not previously applied to an increase in the rent payable under the lease, the start date is—

- (a) if paragraph (b) or (c) does not apply, the beginning of the term of the lease;
- (b) if the amount of rent payable under the lease is determined under paragraph 7 (variable or uncertain rent), 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);
- (c) if there has been a variation in the lease falling within paragraph 13 (increase of rent treated as grant of new lease: variation of lease in first five years), the date of the variation (or, if there has been more than one such variation, the date of the most recent one).

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

Where the provisions of paragraph 14 have previously applied to an increase in the rent payable under the lease, the start date is the date of the last increase in relation to which the provisions of that paragraph applied.

Step Two

Find the number of whole years in the period between the start date and the date on which the new rent first becomes payable.

Step Three

The rent increase is regarded as abnormal if the excess rent (see paragraph 14(3)) is greater than:

$$\frac{R \times Y}{5}$$

where—

R is the rent previously taxed (see paragraph 14(4) or (4A)), and
 Y is the number of whole years found under Step Two.”

Commencement

- 9 (1) Paragraph 2 has effect in relation to any lease granted or treated as granted on or after commencement day.
- (2) Paragraph 3 has effect in relation to any case where—
- (a) the grant of the old lease was chargeable to stamp duty land tax, and
 - (b) the new lease is granted on or after commencement day.
- “The old lease” and “the new lease” mean the leases referred to in sub-paragraphs (1)(a) and (1)(b), respectively, of paragraph 9A of Schedule 17A to FA 2003 (inserted by paragraph 3).
- (3) Paragraphs 4 and 5 have effect in relation to any agreement that is substantially performed on or after commencement day.
- (4) Paragraph 6 has effect in relation to any variation of a lease made on or after commencement day.
- (5) Paragraphs 7 and 8 have effect in relation to any increase of rent that takes effect on or after commencement day.
- (6) In this paragraph “commencement day” means the day on which this Act is passed.