
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 41. (See end of Document for details)

SCHEDULES

SCHEDULE 41

Section 197

STAMP DUTY LAND TAX ON LEASES

Introduction

1 Part 4 of FA 2003 (stamp duty land tax) is amended as follows.

Leases that continue after a fixed term

2 (1) In Schedule 17A (further provisions about leases), paragraph 3 (leases that continue after a fixed term) is amended as follows.

(2) In sub-paragraph (3)—

- (a) after “continuation of the lease” insert “ for a period (or further period) of one year ”, and
- (b) in paragraph (a), for “that term” substitute “ that one year period ”.

(3) After that sub-paragraph insert—

“(3A) But no tax or additional tax is payable in respect of a transaction as a result of 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.”

(4) After sub-paragraph (3A) insert—

“(3B) Sub-paragraph (2) is subject to paragraph 3A.”

(5) In sub-paragraph (4), for the words from “the day” to the end substitute “ the last day of the one year period for which the lease is continued or (as the case may be) further continued. ”

(6) After sub-paragraph (5) insert—

“(6) Where—

- (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.”

3 After that paragraph insert—

“3A (1) This paragraph applies where—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 41. (See end of Document for details)

- (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.”
- 4 In section 87 (interest on unpaid tax), in subsection (3)—
- (a) after paragraph (aa) insert—
 - “(aaa) in the case of an amount payable under paragraph 3(3) of Schedule 17A (leases that continue after a fixed term) by reason of the continuation of a lease for a period (or further period) under paragraph 3(2) or (6) of that Schedule, the final day of the period (or further period),” and
 - (b) in paragraph (ab) omit “3(3) or” and “leases that continue after a fixed term and”.
- 5 In section 119 (meaning of “effective date” of a transaction), in subsection (2), at the appropriate place in the list insert— “ paragraph 3(4) of Schedule 17A (leases that continue after a fixed term), ”.

Agreement for lease and assignment of agreement for lease

- 6 (1) Schedule 17A is amended as follows.
- (2) In paragraph 12A (agreement for lease), for sub-paragraph (3) substitute—
- “(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.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 41. (See end of Document for details)

(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.”

(3) In paragraph 19 (missives of let)—

(a) 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”), 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
- (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 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.”

(b) for sub-paragraph (4) substitute—

“(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

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 41. (See end of Document for details)

(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.”

(4) Accordingly, in Schedule 25 to FA 2006, paragraphs 4 and 5 are omitted.

Abnormal rent increases

- 7 (1) In Schedule 17A, omit paragraphs 14 and 15 (abnormal increases in rent after fifth year).
- (2) Accordingly, the following are also repealed—
- (a) in Schedule 25 to FA 2006, paragraphs 7, 8 and 9(5), and
 - (b) in Schedule 3 to the Scotland Act 2012, paragraph 27(9).

Commencement

- 8 (1) The amendments made by paragraph 2(2), (3), (5) and (6) have effect in relation to any one year period for which a lease is continued, or further continued, which begins on or after the commencement day (including any period which would be one year but for paragraph 3(6) of Schedule 17A to FA 2003).
- (2) The amendments made by paragraphs 2(4), 3 and 5 have effect if the one year period mentioned in paragraph 3A(1)(b) of Schedule 17A to FA 2003 begins on or after the commencement day.
- (3) The amendments made by paragraph 4 have effect in relation to amounts payable in consequence of any period for which a lease is continued, or further continued, which begins on or after the commencement day.
- (4) The amendments made by paragraph 6 have effect if the effective date of the actual lease or, as the case may be, second lease falls on or after the commencement day.
- (5) The amendments made by paragraph 7 have effect in relation to any increase in rent that takes effect on or after the commencement day.
- (6) “The commencement day” means the day on which this Act is passed.

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 41.