

Stamp duty land tax: leases simplification

Who is likely to be affected?

Businesses and individuals who enter into leases on which stamp duty land tax (SDLT) is chargeable.

General description of the measure

These changes abolish the rules on abnormal rent increases and simplify the reporting requirements where a lease continues after the expiry of its fixed term or an agreement for lease is substantially performed before the actual lease is granted.

Policy objective

This measure serves the Government's objective of simplifying the tax system. The changes will streamline the reporting requirements that apply to specific lease arrangements, and so reduce the related costs for both businesses and individuals.

Background to the measure

The Government announced in Budget 2012 that HM Revenue & Customs (HMRC) would conduct an informal consultation on simplifying the complex SDLT rules that apply to certain lease arrangements. Consultation meetings were held during the summer and this measure reflects the proposals discussed at the meetings.

Detailed proposal

Operative date

The amendments will have effect on and after the date on which Finance Bill 2013 receives Royal Assent. The abolition of the rules on abnormal rent increases will apply to any increases on or after that date. The changes to the rules on fixed term leases will apply where the period of extension begins on or after that date. The amendments concerning substantial performance will apply where the effective date of the actual lease is on or after that date.

Current law

Schedule 17A to the Finance Act 2003 contains special rules that apply to leases.

Paragraph 3 applies where a fixed term lease continues after the end of the fixed term, either under the terms of the lease or by operation of law. The original lease is initially treated as extended for a period of one year, and, if it continues after that, as extended for two years and so on. If any additional tax is due in respect of the extended lease, or if tax is due where none was payable previously, an SDLT return must be submitted, and any tax due paid to HMRC within 30 days of the first day of the period of extension.

Paragraph 12A applies where, before a lease is granted, an agreement for lease is entered into and that agreement is substantially performed. The agreement is treated as the grant of a notional lease, beginning on the date of substantial performance. If the transaction is notifiable, a return has to be submitted, and any tax due paid, before the end of 30 days after the date of substantial performance. When the actual lease is granted, the notional lease is treated as surrendered and the actual lease is treated as if it were granted in consideration of the surrender. A second return is required for the actual lease, with relief

being available for any period of overlap between the notional and actual leases. Paragraph 19 contains similar rules for leases in Scotland.

The rules on abnormal rent increases are at paragraphs 14 and 15. They impose an additional SDLT charge where there is a rent increase after the first five years of the term of a lease and this increase is 'abnormal'. Broadly speaking, an increase is abnormal if the rent doubles, or more than doubles, after the fifth year. HMRC must be notified each time there is an abnormal increase.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to amend paragraph 3, Schedule 17A to the Finance Act 2003 to provide that:

- where a new lease is granted within one year of the expiry of the original lease, the new lease will be treated as if it were granted on the day following the expiry of the original lease; and,
- where a new lease is not granted within one year of the expiry of the original lease, notification of any additional tax due will not be required until 30 days after the end of the period of extension.

Amendments to paragraphs 12A and 19 will provide that the notional and actual leases will be treated as a single lease:

- granted on the date the agreement was substantially performed,
- for a term which begins with the date of substantial performance and ends at the end of the term of the actual lease; and,
- in consideration of the total rent payable over the term of the single lease (and any other consideration given).

Paragraphs 14 and 15 will be abolished.

Summary of impacts

| Exchequer impact (£m) | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
|---|--|---------|---------|---------|---------|---------|
| | - | nil | nil | nil | nil | nil |
| This measure is not expected to have an exchequer impact. | | | | | | |
| Economic impact | The measure is not expected to have any significant economic impacts. | | | | | |
| Impact on individuals and households | These changes are not expected to have a significant effect on individuals and households as very few residential leases are subject to SDLT on the rent. | | | | | |
| Equalities impacts | The potential for equalities impacts has been considered and none have been identified. | | | | | |
| Impact on business including civil society organisations | These changes will simplify the SDLT provisions that apply to certain lease transactions, reducing the cost for businesses of complying with the rules. Approximately 22,000 businesses each year are expected to benefit from these changes. 13,000 of them will benefit with an average reduction in ongoing administrative burdens of £150 per business because they will no longer be required to complete the complex calculations to determine whether their rent increase is 'abnormal', while 9,000 businesses per year will benefit with an average reduction in ongoing administrative burdens of £53 per business because they will fill in at least one less return. | | | | | |

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|--|--|----------|-------------------|
| | Approximately 5,500 businesses will incur one-off costs of familiarising themselves with new legislation. This is estimated to be around £330,000 for the whole business population. | | |
| | | Cost | Time Period (yrs) |
| | Compliance Costs | | |
| | One-off Costs | £330k | N/A |
| | Average Annual Costs | N/A | N/A |
| | Total Costs (PV) | £330k | N/A |
| | Compliance Benefits | | |
| | One-off Benefit | N/A | N/A |
| | Average Annual Benefit | £2.4m | 5 |
| | Total Benefit (PV) | £11.3m | N/A |
| | Net Benefit (NPV) | £11.0m | N/A |
| | Impact on Administrative Burden (included in Net Benefit) | | |
| | Increase | Decrease | Net Impact |
| | 0 | £2.4m | -£2.4m |
| Operational impact (£m) (HMRC or other) | This measure will simplify the SDLT rules and therefore should result in fewer enquiries to HMRC. However, these savings are not expected to be significant. | | |
| Other impacts | <p><u>Small firms impact test:</u> these changes will benefit all businesses to which the specific leases provisions apply, regardless of size.</p> <p>Other impacts have been considered and none have been identified.</p> | | |

Monitoring and evaluation

This measure will be subject to ongoing monitoring of information collected from land transaction returns and regular communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact on Jane Ewart on 0207 7147 3795 (email jane.ewart1@hmrc.gov.uk).

1 SDLT: leases

Schedule 1 contains provision about stamp duty land tax in relation to leases.

SCHEDULE 1

Section 1

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) 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.”
- (4) After sub-paragraph (5) insert –
- “(6) Sub-paragraph (2) is subject to paragraph 3A.”
- 3 After that paragraph insert –
- “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, and
 - (c) the term of the new lease is expressed to begin during that one year period.
- (2) Paragraph 3 does not apply to treat the lease as continuing after the original fixed term.
- (3) The term of the new lease is treated for the purposes of this Part as beginning immediately after the original fixed 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), the final day of the period (or further period) of one year mentioned in paragraph 3(3)(a) of that Schedule as a result of which the amount is payable;”, 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

- 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, this Part applies as if the notional lease and the actual lease were a single lease –
- (a) granted 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 the term of that single lease 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).”
- (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”), this Part applies as if the first lease and the second lease were a single lease –
 - (a) granted 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 the period of that single lease 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).”, and
- (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 and the actual lease were a single lease –
- (a) granted 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 the period of that single lease 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).”

(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) and (3) 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.
- (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 one year 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.

EXPLANATORY NOTE

STAMP DUTY LAND TAX ON LEASES

SUMMARY

1. This clause and Schedule amend Schedule 17A of the Finance Act 2003 (FA 2003). Schedule 17A makes special provision for Stamp Duty Land Tax (SDLT) on certain types of lease transactions. The amendments will abolish the rules on abnormal rent increases. They will also simplify the reporting requirements where a lease continues after the expiry of its fixed term and where an agreement for a lease is substantially performed before the actual lease itself is granted.

DETAILS OF THE SCHEDULE

2. Paragraph 1 provides for amendments to be made to Part 4 of FA 2003 (in which Schedule 17A is contained).

Leases that continue after a fixed term

3. Paragraphs 2 and 3 amend paragraph 3 of Schedule 17A.
4. Paragraph 3 of Schedule 17A applies where a lease continues after the expiry of its fixed term. Currently, it provides that, where a lease continues after the end of its fixed term, it is treated as extended (in yearly increments). If any additional tax is due in respect of the extended lease, a return, together with the tax due, must be submitted to HM Revenue & Customs (HMRC) within 30 days after the expiry of the original (or previously extended) fixed term.
5. Paragraph 2 amends paragraph 3(3) of Schedule 17A to provide that, where a lease is treated as extended under that paragraph, notification of any additional tax due need not be given until 30 days after the end of the period of extension.
6. Paragraph 3 inserts a new paragraph 3A into Schedule 17A. Paragraph 3A provides, in essence, that paragraph 3 does not apply in cases where a new lease is granted within one year of the date of expiry of the original fixed term (or of any one-year extension). Instead, the new lease is treated as beginning immediately after that date. Any rent payable in relation to the extended lease is treated as payable under the new lease.
7. Paragraph 4 amends section 87 of FA 2003, by specifying “the relevant date” for the purpose of any interest payable on unpaid tax when paragraph 3(3) applies.

8. Paragraph 5 amends section 119(2) of FA 2003, by adding paragraph 3(4) of Schedule 17A to the list of provisions that provide for a different “effective date” from that set out in section 119(1).

Agreement for lease

9. Paragraph 6 changes the rules that apply when an agreement for lease is substantially performed before the lease itself (“the actual lease”) is granted. The current rules are contained in paragraph 12A and 19 of Schedule 17A. Paragraph 19 makes provision for leases (or, where appropriate, missives of let) in Scotland. Paragraph 12A applies where, before a lease is granted, an agreement for lease is entered into and the agreement is substantially performed. The agreement is treated as the grant of a lease beginning on the date of substantial performance. If the transaction is notifiable, a return has to be submitted, and any tax chargeable paid, within 30 of the date of substantial performance. When the actual lease is granted, the notional lease is treated as surrendered and the actual lease is treated as if it were granted in consideration of the surrender of the notional lease. A second return is required for the actual lease. Relief is available for any period of overlap between the notional and actual leases.
10. Paragraph 6(2) replaces paragraph 12A(3) with a new paragraph 12A(3) and inserts paragraph 12A(3A).
11. The new paragraph 12A(3) provides that, where an agreement for lease has been substantially performed and a lease is subsequently granted, the notional lease and the actual lease are treated as a single lease, granted on the day of substantial performance, for a term beginning on that day and ending at the end of term of the actual lease. The consideration for the new single lease is the total rent (and any other consideration) payable over its term.
12. The new paragraph 12A(3A) provides that where paragraph 12A(3) applies, the actual lease is disregarded except for the purposes of section 81A of FA 2003. Section 81A requires a return, or further return, to be submitted when a transaction is linked with an earlier transaction and the effect of the later transaction is that the earlier transaction becomes notifiable or there is any additional tax to pay.
13. Paragraph 6(3) replaces paragraphs 19(2) and (4) of Schedule 17A with new paragraphs 19(2), 19(2A), 19(4) and 19(4A). These make similar provisions for Scotland.

Abnormal rent increases

14. Paragraph 7 repeals paragraphs 14 and 15 of Schedule 17A and makes consequential amendments to FA 2006 and the Scotland Act 2012. Paragraphs 14 and 15 impose an additional SDLT charge where there is a

rent increase after the first five years of the term of a lease and this increase is 'abnormal'. Broadly speaking, an increase is abnormal if the rent doubles, or more than doubles, after the fifth year. HMRC must be notified each time there is an abnormal increase.

Commencement

15. Paragraph 8 provides that the amendments made by paragraphs 1 to 7 will have effect from the date on which Finance Bill 2013 receives the Royal Assent:

- The abolition of the rules on abnormal rent increases will apply to any increases on or after that date.
- The changes to the rules on fixed term leases will apply where the period of continuation begins on or after that date.
- The amendments concerning substantial performance will apply where the effective date of the actual lease is on or after that date.

BACKGROUND NOTE

16. Following representations from stakeholders, it was announced at Budget 2012 that the Government would explore ways of simplifying the complex rules that apply to certain lease arrangements. Informal consultation took place over the summer with industry representatives and other interested stakeholders.

17. Taking account of these discussions, the Government has decided to abolish the abnormal rent increases provisions and streamline the reporting requirements where a lease continues after the expiry of its fixed term and where an agreement for lease is substantially performed before the actual lease is granted.

18. If you have any questions about these changes, or comments on the legislation, please contact Jane Ewart on 020 7147 3794 (email: jane.ewart1@hmrc.gsi.gov.uk).