

2.6.15. Abnormal increase in rent after fifth year

(Paragraphs 14 and 15 Schedule 17A³¹⁶)

Paragraph 14 deals with increases in rent after the end of the fifth year of the term of a lease (whether in pursuance of a provision in the lease or otherwise). It provides that where an increase in rent is 'abnormal' (as defined in paragraph 15) that increase is treated as the grant of a new lease for a new rent equal to the 'excess rent' which is the difference between the new rent and that previously 'previously taxed'. Paragraph 14 can apply more than once and there can, therefore, be multiple charges.

The rent 'previously taxed' is determined as follows³¹⁷:

- (1) Where paragraph 14 has not previously applied to an increase in the rent payable under the lease:
 - a. if the amount of rent payable under the lease is determined under paragraph 7 of Schedule 17A (variable or uncertain rent), the rent previously taxed is the rent assumed to be payable after the fifth year of the term of the lease (in accordance with paragraph 7(3) Schedule 17A);
 - b. if there has been a variation in the lease falling within paragraph 13 of Schedule 17A (increase of rent treated as grant of new lease: variation of lease in first five years), the rent previously taxed is the rent payable as a result of the variation (or, if there has been more than one such variation, the most recent one);
 - c. in any other case, the rent previously taxed is the rent payable under the lease without the abnormal increase.
- (2) Where paragraph 14 has previously applied to an increase in the rent, the rent previously taxed is the rent payable as a result of the last increase in relation to which the provision applied.

In applying these rules, paragraphs 9(2) and 9A(3) of Schedule 17A (which in certain circumstances result in a deemed reduction of rent for a period during which rents overlap) are to be disregarded³¹⁸.

The 'deemed' lease will be linked with the earlier actual lease (the 'original lease') and is treated as beginning on the date on which the increased rent first became payable and being for a term equal to the unexpired term of the original lease. The rules relating to the effect of later linked transactions will

³¹⁶ As amended by paragraph 7 Schedule 25 FA 2006 with effect from 19 July 2006.

³¹⁷ In paragraphs 14(4), (4A) and (4B) Schedule 17A

³¹⁸ The reliefs under paragraph 9(2) and 9A(3) are discussed at 1.8 and 2.6.17.

THE SDLT REGIME IN DETAIL

apply with the result that there may be an obligation to notify the deemed grant.

No abnormal increases falling within paragraph 14 can occur until 2008 as the provision applies only to rent increases under leases actually granted on or after the implementation date, 1 December 2003, or under deemed leases with an effective date on or after that date³¹⁹. Any due diligence exercise will, however, need to take this possibility into account.

When is an increase in rent abnormal?

Paragraph 15 defines what is 'abnormal' for the purposes of paragraph 14. Broadly speaking, an 'abnormal' increase is one where the annualised increase in rent, calculated since the later of the grant of the lease or the last time the provisions of section 14 were applied, is greater than 20%.

Paragraph 15 sets out a three step calculation which needs to be done to establish whether a rent increase is abnormal.

Step One - Find the start date.

Where paragraph 14 has not previously applied to an increase in the rent payable under the lease:

- if the amount of rent payable under the lease is determined under paragraph 7 of Schedule 17A (variable or uncertain rent), the start date is 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) Schedule 17A);
- if there has been a variation in the lease falling within paragraph 13 of Schedule 17A (increase of rent treated as grant of new lease: variation of lease in first five years), the start date is the date of the variation (or, if there has been more than one such variation, the date of the most recent one);
- in any other case, the start date is the beginning of the term of the lease.

Where paragraph 14 has previously applied to an increase in the rent, the start date is the date of the last increase in relation to which that provision applied.

Step Two - Find the number of whole years in the period between the start date and the date on which the increased rent first becomes payable.

Step Three

The rent increase is regarded as abnormal if difference between the increased rent and the rent previously taxed (the 'excess rent') is greater than:

³¹⁹ See SDLTM13250 (lease chapter – April 2007 version).

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

where:

R is the rent previously taxed and

Y is the number of whole years found under Step Two

It is intended that in due course an abnormal rent calculator will be included on HMRC website. There is an example of a manual calculation in the lease chapter of the SDLTM at SDLTM13255.³²⁰

2.6.16. The term of the lease

The term of a lease was dealt with in paragraph 6(1) and 6(2) Schedule 5 as originally enacted but these sub- paragraphs were repealed by the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003)(No.2) Regulations 2003 and not replaced. It is understood that HMRC have indicated in correspondence that they nevertheless intend to apply the provisions of the repealed paragraph³²¹ and it is therefore reproduced below in full:

“6—(1) For the purposes of this Schedule the term of a lease is determined as follows.

(2) Subject to the following provisions of this paragraph, the term of a lease is:

(a) the contractual term specified in the lease, or

(b) if shorter, the period from the date of the grant of the lease until the end of the contractual term.”

The provisions of repealed paragraph 6(2), in any event, did no more than state the position at common law which is that, although the parties to a lease can define the duration of the term by reference to a date earlier than that of the lease and can create obligations under the lease in respect of a prior period, the term of the lease cannot begin before the lease is executed.³²² Special SDLT rules apply for lease renewals (see 2.6.17 below).

Paragraph 12A Schedule 17A³²³ provides that where an agreement for lease is entered into and is substantially performed without at that time having been completed, the agreement for lease is treated as if it were the grant of a lease in

³²⁰ April 2007

³²¹ This is reflected at SDLTM10400 and SDLTM 14060 lease chapter (April 2007 version)

³²² See *Bradshaw v. Pawley* [1980] 1 WLR 10

³²³ Inserted by paragraph 22(2) Schedule 39 FA 2004 with effect for any transaction of which the effective date is on or after 22 July 2004