

SCHEDULE 5

(introduced by section 27)

MULTIPLE DWELLINGS RELIEF

PART 1

INTRODUCTORY

Overview of relief

- 1 (1) This schedule provides for relief in the case of certain land transactions involving multiple dwellings.
- (2) It is arranged as follows—
 - Part 2 identifies the transactions to which this schedule applies,
 - Part 3 defines key terms,
 - Part 4 describes the relief available if a claim is made,
 - Part 5 provides for withdrawal of the relief,
 - Part 6 contains rules to determine what counts as a dwelling.

PART 2

TRANSACTIONS TO WHICH THIS SCHEDULE APPLIES

The rule

- 2 This schedule applies to relevant transactions.
- 3 A relevant transaction is a transaction (other than a transaction to which schedule 19 (leases) applies) that is—
 - (a) within paragraph 4 or paragraph 5, and
 - (b) not excluded by paragraph 6.

Single transaction relating to multiple dwellings

- 4 A transaction is within this paragraph if its main subject-matter consists of—
 - (a) an interest in at least two dwellings, or
 - (b) an interest in at least two dwellings and other property.

Linked transactions relating to multiple dwellings

- 5 A transaction is within this paragraph if—
 - (a) its main subject-matter consists of—
 - (i) an interest in a single dwelling, or
 - (ii) an interest in a single dwelling and other property,
 - (b) it is one of a number of linked transactions, and
 - (c) the main subject-matter of at least one of the other linked transactions consists of—
 - (i) an interest in some other dwelling or dwellings, or

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(ii) an interest in some other dwelling or dwellings and other property.

Excluded transactions

- 6 A transaction is excluded by this paragraph if—
- (a) relief under schedule 9 (crofting community right to buy) is available for it, or
 - (b) relief under schedule 10 (group relief), 11 (reconstruction relief and acquisition relief) or 13 (charities relief)—
 - (i) is available for it, or
 - (ii) has been withdrawn from it.

PART 3

KEY TERMS

Consideration attributable to dwellings and remaining property

- 7 In relation to a relevant transaction—
- (a) the consideration attributable to dwellings is so much of the chargeable consideration for the transaction as is attributable to the dwellings,
 - (b) the consideration attributable to remaining property is the chargeable consideration for the transaction less the consideration attributable to dwellings.

Dwellings

- 8 “The dwellings” are, in relation to a relevant transaction, the dwelling or dwellings that are, or are part of, the main subject-matter of the transaction.

Interest in a dwelling

- 9 A reference in this schedule to an interest in a dwelling is to any chargeable interest in or over a dwelling.

PART 4

THE RELIEF

Calculation of relief

- 10 The amount of tax chargeable in relation to a relevant transaction is—
- $$(DT \times ND) + RT$$

where—

- DT is the tax due in relation to a dwelling,
- ND is the number of dwellings that are, or are part of, the main subject-matter of the transaction, and
- RT is the tax due in relation to remaining property.

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- 11 However, if the result of paragraph 10 would be that the tax chargeable in relation to the transaction is less than the minimum prescribed amount, the tax chargeable is that amount.
- 12 The minimum prescribed amount is such proportion of the tax that would be chargeable in relation to the transaction but for the relief as may be prescribed by the Scottish Ministers by order.

Tax due in relation to a dwelling

- 13 The tax due in relation to a dwelling is determined as follows.

Step 1

Find the total consideration attributable to dwellings, that is—

- (a) the consideration attributable to dwellings for the transaction, or
- (b) where the transaction is one of a number of linked transactions, the sum of—
 - (i) the consideration attributable to dwellings for the transaction, and
 - (ii) the consideration attributable to dwellings for all other relevant transactions.

Step 2

Divide the total consideration attributable to dwellings by total dwellings.

“Total dwellings” is the total number of dwellings by reference to which the total consideration attributable to dwellings is calculated.

Step 3

Calculate the amount of tax that would be due in relation to the relevant transaction were—

- (a) the chargeable consideration equal to the result obtained in Step 2,
- (b) the transaction a residential property transaction, and
- (c) the transaction not a linked transaction.

The result is the tax due in relation to a dwelling.

Tax due in relation to remaining property

- 14 The tax due in relation to remaining property is determined as follows.

Step 1

Calculate the amount of tax that would be due in respect of the transaction but for this schedule.

Step 2

Divide the consideration attributable to remaining property by the chargeable consideration for the transaction.

Step 3

Multiply the amount calculated in Step 1 by the fraction reached in Step 2.

The result is the tax due in relation to remaining property.

General

- 15 “Attributable” means attributable on a just and reasonable basis.

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PART 5

WITHDRAWAL OF RELIEF

Full withdrawal of relief

- 16 Relief under this schedule is withdrawn in relation to a relevant transaction if—
- (a) an event occurs in the relevant period, and
 - (b) had the event occurred immediately before the effective date of the transaction, the transaction would not have been a relevant transaction.
- 17 Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the transaction but for the relief.

Partial withdrawal of relief

- 18 Relief under this schedule is partially withdrawn in relation to a relevant transaction if—
- (a) an event occurs in the relevant period, and
 - (b) had the event occurred immediately before the effect date of the transaction—
 - (i) the transaction would have been a relevant transaction, but
 - (ii) more tax would have been payable in respect of the transaction.
- 19 Where relief is partially withdrawn, tax is chargeable on the transaction as if the event had occurred immediately before the effective date of the transaction.
- 20 In that case, the tax so chargeable must be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

Relevant period

- 21 “The relevant period” means the shorter of—
- (a) the period of 3 years beginning with the effective date of the transaction, and
 - (b) the period beginning with the effective date of the transaction and ending with the date on which the buyer disposes of the dwelling, or the dwellings, to a person who is not connected with the buyer.
- 22 In relation to a transaction effected on completion of a contract that was substantially performed before completion, paragraph 21 applies as if references to the effective date of the transaction were to the date on which the contract was substantially performed.

Interpretation

- 23 In this Part of this schedule, “event” includes any change of circumstance or change of plan.

PART 6

WHAT COUNTS AS A DWELLING

- 24 This Part of this schedule sets out rules for determining what counts as a dwelling for the purposes of this schedule.
- 25 A building or part of a building counts as a dwelling if—
- (a) it is used or suitable for use as a single dwelling, or
 - (b) it is in the process of being constructed or adapted for such use.
- 26 Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling.
- 27 Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling.
- 28 The main subject-matter of a transaction is also taken to consist of or include an interest in a dwelling if—
- (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
 - (b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a single dwelling, and
 - (c) construction or adaptation of the building, or the part of a building, has not begun by the time the contract is substantially performed.
- 29 In paragraph 28, “relevant deeming provision” means section 10 or 11.
- 30 Subsections (3) to (6) of section 59 apply for the purposes of this Part of this schedule as they apply for the purposes of subsection (1)(a) of that section.