
Changes to legislation: National Health Service (Scotland) Act 1978, Cross Heading: Certain transactions deemed sale of goodwill is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 9

ADDITIONAL PROVISIONS AS TO PROHIBITION OF SALE OF MEDICAL PRACTICES

Certain transactions deemed sale of goodwill

- 2 ^{F1}(1) For the purposes of section 35(1) and paragraph 1, a disposal of premises previously used for the purposes of a medical practice shall be deemed to be a sale of the goodwill of a medical practice if—
- (a) the person disposing of the premises did so knowing that another person (“A”) intended to use them for the purposes of A’s medical practice; and
 - (b) the consideration for the disposal substantially exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice.
- ^{F1}(1A) If a person disposes of any premises together with any other property, the court shall, for the purposes of sub-paragraph (1), make such apportionment of the consideration as it thinks just.
- ^{F1}(1B) For the purposes of sub-paragraphs (1) and (1A)—
- (a) “disposal” means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions) and “disposes” and “disposing” are to be read accordingly; and
 - (b) a person who procures the disposal of any premises is to be treated as having disposed of them.]
- (2) Where in pursuance of any partnership agreement ^{F2}. . .—
- (a) any valuable consideration, other than the performance of services in the partnership business, is given by a partner or proposed partner as consideration for his being taken into partnership.
 - (b) any valuable consideration is given to a partner, on or in contemplation of his retirement or of his acceptance of a reduced share of the partnership profits, or to the personal representative of a partner on his death, not being a payment in respect of that partner’s share in past earnings of the partnership or in any partnership assets or any other payment required to be made to him as the result of the final settlement of accounts, as between him and the other partners, in respect of past transactions of the partnership, or
 - (c) services are performed by any partner for a consideration substantially less than those services might reasonably have been expected to be worth having regard to the circumstances at the time when the agreement was made,
- there shall be deemed for the purposes of section 35(1) and paragraph 1 to have been a sale of the goodwill ^{F3}. . . of the practice of any partner to whom, or to whose personal representative, the consideration or any part thereof is given or, as the case may be, for whose benefit the services are performed, to the partner or each of the partners by or on whose behalf the consideration or any part thereof was given or, as

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the case may be, the partner who performed the services, and the said sale shall be deemed for the purposes of section 35(1) and paragraph 1 to have been effected—

- (i) in a case to which paragraph (a) or paragraph (b) applies, at the time when the consideration was given, or, if the consideration was not all given at the same time, at the time when the first part thereof was given, or
- (ii) in a case to which paragraph (c) applies, at the time when the agreement was made.

[^{F4}(3) Sub-paragraph (3A) applies if a person (“the assistant”)—

- (a) performs services on behalf of a person who carries on a medical practice (or as an employee of a person employing a practitioner who carries on a medical practice);
- (b) receives substantially less remuneration for performing those services than might reasonably have been expected, having regard to the circumstances at the time when the remuneration was fixed; and
- (c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice.

^{F4}(3A) For the purposes of section 35 and paragraph 1, a sale of the goodwill of the practice is to be deemed to have taken place (at the time when the remuneration was fixed), unless it is proved that the remuneration was not fixed in contemplation of the assistant’s succeeding to the practice.]

[^{F5}(4) For the purposes of section 35(1) and paragraph 1, the goodwill of a medical practice shall be deemed to have been sold if—

- (a) a person carrying on the practice (or employing a practitioner who carries on a medical practice) agrees, for valuable consideration—
 - (i) to do or refrain from doing any act, for the purpose of facilitating the succession of another person to the practice; or
 - (ii) to allow any act to be done, for that purpose; or
- (b) a person—
 - (i) gives valuable consideration to a person carrying on the practice (or employing a practitioner who carries on a medical practice); and
 - (ii) succeeds, or has previously succeeded, to the practice.

^{F5}(5) Sub-paragraph (4) does not apply—

- (a) if it is proved that no part of the consideration was given in respect of the goodwill; or
- (b) to anything done—
 - (i) in relation to the acquisition of premises for the purposes of a medical practice;
 - (ii) in pursuance of a partnership agreement; or
 - (iii) in the performance of medical services by one person as an assistant to another.]

(6) In determining for the purposes of section 35(1) and this Schedule the consideration given in respect of any transaction, the court shall have regard to any other transaction appearing to the court to be associated with the first transaction, and shall estimate the total consideration given in respect of both or all the transactions, and shall apportion it between those transactions in such manner as it thinks just.

[^{F6}(7) For the purposes of section 35 and this Schedule—

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- (a) consideration is deemed to be given to a person (“B”) if—
- (i) it is given to another person but with B’s knowledge and consent; and
 - (ii) it appears to the court that B has derived, or will derive, a substantial benefit from the giving of the consideration; and
- (b) unless the context otherwise requires, references to a person include, in the case of an individual who has died, references to his personal representative.]

Textual Amendments

- F1** Sch. 9 para. 2(1)(1A)(1B) substituted for Sch. 9 para. 2(1) (1.4.1998) by 1997 c. 47, s. 41(10), **Sch. 2 Pt. I para. 59(5)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F2** Words in Sch. 9 para. 2(2) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), **Sch. 2 Pt. I para. 59(6)a)**, Sch. 3 Pt. I; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F3** Words in Sch. 9 para. 2(2) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 59(6)(b), **Sch. 3 Pt. I**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F4** Sch. 9 para. 2(3)(3A) substituted for Sch. 9 para. 2(3) (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(7)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F5** Sch. 9 para 2(4)(5) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(8)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F6** Sch. 9 para. 2(7) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(9)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16A(5) added by [2002 asp 5 Sch. 2 para. 2\(2\)](#)
- s. 19A(2)(b) words repealed by [2003 asp 4 sch. 4 para. 5\(4\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(a) words substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(b) substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(c) words substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(e) word substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 70A inserted by [1997 c. 46 s. 26\(2\)](#)
- s. 70A(2) word substituted by [2005 asp 13 s. 14\(3\)](#)
- s. 85AB(7) inserted by [2005 asp 13 sch. 2 para. 2\(18\)\(b\)](#)
- Sch. 11 para. 2(1A) inserted by [2005 asp 13 s. 14\(6\)\(a\)](#)