

SCHEDULES

SCHEDULE 39

STAMP DUTY LAND TAX AND STAMP DUTY

PART 1

AMENDMENTS TO PART 4 OF THE FINANCE ACT 2003: GENERAL

Introduction

- 1 Part 4 of the Finance Act 2003 (c. 14) (stamp duty land tax) is amended in accordance with this Part of this Schedule.

Variation of lease

- 2 In section 43 (land transactions)—
- (a) in paragraph (c) of subsection (3) (variation of chargeable interest), after “interest” insert “(other than a lease)”;
 - (b) after that paragraph insert—
 - “(d) the variation of a lease is an acquisition and disposal of a chargeable interest only where it takes effect, or is treated for the purposes of this Part, as the grant of a new lease.”.

Agreement for lease

- 3 In section 44 (contract and conveyance), after subsection (9) insert—
- “(9A) Where—
- (a) paragraph 12A of Schedule 17A applies (agreement for lease), or
 - (b) paragraph 19(3) to (6) of Schedule 17A applies (missives of let etc in Scotland),
- it applies in place of subsections (4), (8) and (9).”.

Contract providing for conveyance to third party

- 4 (1) After section 44 insert—

“44A Contract providing for conveyance to third party

- (1) This section applies where a contract is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—
- (a) to a person (C) who is not a party to the contract, or
 - (b) either to such a person or to B.

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(2) B is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.

(3) If the contract is substantially performed B is treated for the purposes of this Part as acquiring a chargeable interest, and accordingly as entering into a land transaction.

The effective date of the transaction is when the contract is substantially performed.

(4) Where the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of subsection (3) shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the contract.

(5) Subject to subsection (6), section 44 (contract and conveyance) does not apply (except so far as it defines “substantial performance”) in relation to the contract.

(6) Where—

- (a) this section applies by virtue of subsection (1)(b), and
- (b) by reason of B’s direction or request, A becomes obliged to convey a chargeable interest to B,

section 44 applies to that obligation as it applies to a contract for a land transaction that is to be completed by a conveyance.

(7) Section 44 applies in relation to any contract between B and C, in respect of the chargeable interest referred to in subsection (1) above, that is to be completed by a conveyance.

References to completion in that section, as it so applies, include references to conveyance by A to C of the subject matter of the contract between B and C.

(8) In this section “contract” includes any agreement and “conveyance” includes any instrument.”.

(2) In section 48 (chargeable interests), after subsection (6) insert—

“(7) This section has effect subject to subsection (3) of section 44A (contract and conveyance to third party).”.

(3) In section 77 (notifiable transactions), after subsection (4) insert—

“(5) A land transaction that a person is treated as entering into by virtue of subsection (3) of section 44A (contract and conveyance to third party) is notifiable.”.

Contract and conveyance: effect of transfer of rights

5 (1) Section 45 (contract and conveyance: effect of transfer of rights) is amended as follows.

(2) In subsection (1)—

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- (a) after paragraph (b) insert “, and
 - (c) paragraph 12B of Schedule 17A (assignment of agreement for lease) does not apply.”;
- (b) at the end insert “, and references to the transferor and the transferee shall be read accordingly”.

(3) For subsection (5) substitute—

“(5) Where a transfer of rights relates to part only of the subject-matter of the original contract (“the relevant part”)—

- (a) subsection (8)(b) of section 44 (restriction of charge to tax on subsequent conveyance) has effect as if the reference to the amount of tax chargeable on that contract were a reference to an appropriate proportion of that amount, and
- (b) a reference in the second sentence of subsection (3) above to the original contract, or a reference in subsection (4) above to the secondary contract arising from an earlier transfer of rights, is to that contract so far as relating to the relevant part (and that contract so far as not relating to the relevant part shall be treated as a separate contract).”.

(4) After that subsection insert—

“(5A) In relation to a land transaction treated as taking place by virtue of subsection (3)—

- (a) references in Schedule 7 (group relief) to the vendor shall be read as references to the vendor under the original contract;
- (b) other references in this Part to the vendor shall be read, where the context permits, as referring to either the vendor under the original contract or the transferor.”.

(5) After section 45 insert—

“45A Contract providing for conveyance to third party: effect of transfer of rights

(1) This section applies where—

- (a) a contract (“the original contract”) is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—
 - (i) to a person (C) who is not a party to the contract, or
 - (ii) either to such a person or to B,and
- (b) there is an assignment or other transaction (relating to the whole or part of the subject-matter of the original contract) as a result of which a person (D) becomes entitled to exercise any of B’s rights under the original contract in place of B.

References in the following provisions of this section to a transfer of rights are to any such assignment or other transaction.

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- (2) D is not regarded as entering into a land transaction by reason of the transfer of rights, but section 44A (contract providing for conveyance to third party) has effect in accordance with the following provisions of this section.
- (3) That section applies as if—
- (a) D had entered into a contract (a “secondary contract”) in the same terms as the original contract except with D as a party instead of B, and
 - (b) the consideration due from D under the secondary contract were—
 - (i) so much of the consideration under the original contract as is referable to the subject-matter of the transfer of rights and is to be given (directly or indirectly) by D or a person connected with him, and
 - (ii) the consideration given for the transfer of rights.
- (4) The substantial performance of the original contract shall be disregarded if—
- (a) it occurs at the same time as, and in connection with, the substantial performance of the secondary contract, or
 - (b) it occurs after the transfer of rights.
- (5) Where there are successive transfers of rights, subsection (3) has effect in relation to each of them.
- (6) The substantial performance of the secondary contract arising from an earlier transfer of rights shall be disregarded if—
- (a) it occurs at the same time as, and in connection with, the substantial performance of the secondary contract arising from a subsequent transfer of rights, or
 - (b) it occurs after that subsequent transfer.
- (7) Where a transfer of rights relates to only part of the subject matter of the original contract, or to only some of the rights under that contract—
- (a) a reference in subsection (3)(a) or (4) to the original contract, or a reference in subsection (6) to the secondary contract arising from an earlier transfer, is to that contract so far as relating to that part or those rights, and
 - (b) that contract so far as not relating to that part or those rights shall be treated as a separate contract.
- (8) The effective date of a land transaction treated as entered into by virtue of subsection (3) is not earlier than the date of the transfer of rights.
- (9) In relation to a such a transaction—
- (a) references in Schedule 7 (group relief) to the vendor shall be read as references to A;
 - (b) other references in this Part to the vendor shall be read, where the context permits, as referring to either A or B.
- (10) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of subsection (3)(b).
- (11) In this section “contract” includes any agreement.”.

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- (6) In section 122 (index of defined expressions), in the entry for “vendor” insert at the end “(see too sections 45(5A) and 45A(9))”.

Relief for sale and leaseback arrangements

- 6 (1) Section 57A (sale and leaseback arrangements) (inserted by the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816)) is amended as follows.
- (2) In subsection (3) (the qualifying conditions), for paragraph (b) substitute—
- “(aa) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,
 - (b) that the only other consideration (if any) for the sale is the payment of money or the assumption, satisfaction or release of a debt (or both),”.
- (3) After paragraph (c) of that subsection insert—
- “(d) that the sale is not a transfer of rights within the meaning of section 45 (contract and conveyance: effect of transfer of rights) or 45A (contract providing for conveyance to third party: effect of transfer of rights), and
 - (e) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see paragraph 1 of Schedule 7) at that date.”.
- (4) Omit subsection (4) (chargeable consideration for sale taken to be not less than market value).

Registration of land transactions

- 7 In section 79 (registration of land transactions etc), in subsection (2) (transactions to which section does not apply), for the words from “other than” to the end of paragraph (b) substitute “other than a transaction treated as taking place—
- (a) under subsection (4) of section 44 (contract and conveyance) or under that section as it applies by virtue of section 45 (contract and conveyance: effect of transfer of rights), or
 - (b) under subsection (3) of section 44A (contract providing for conveyance to third party) or under that section as it applies by virtue of section 45A (contract providing for conveyance to third party: effect of transfer of rights).”.

“Effective date” of a transaction

- 8 In section 119 (meaning of “effective date” of a transaction), in subsection (2) (cases where effective date is not date of completion)—
- (a) after the entry for section 44(4) insert—
 - “section 44A(3) (contract providing for conveyance to third party),
 - section 45A(8) (contract providing for conveyance to third party: effect of transfer of rights),”;
 - (b) at the end insert—

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“paragraph 12A(2) of Schedule 17A (agreement for lease followed by substantial performance),
paragraph 12B(3) of that Schedule (assignment of agreement for lease occurring after agreement substantially performed), and
paragraph 19(3) of that Schedule (missives of let etc in Scotland followed by substantial performance).”.

Chargeable consideration

- 9 (1) Schedule 4 (chargeable consideration) is amended as follows.
- (2) In paragraph 10 (carrying out of works), after sub-paragraph (2) insert—
- “(2A) Where subsection (8) of section 44 (contract and conveyance) applies, so that there are two notifiable transactions (the first being the contract and the second being the transaction effected on completion), the condition in sub-paragraph (2)(a) is treated as met in relation to the second transaction if it is met in relation to the first.”.
- (3) In paragraph 17 (arrangements involving public or educational bodies) (inserted by the Stamp Duty Land Tax (Amendment of Schedule 4 to the Finance Act 2003) Regulations 2003 ([S.I. 2003/3293](#))), after sub-paragraph (4) insert—
- “(4A) Sub-paragraphs (3) and (4) shall be disregarded for the purposes of determining whether the land transaction in question is notifiable.”.

Provisions relating to leases

- 10 In Schedule 5 (amount of tax chargeable: rent), after paragraph 1 insert—
- “Amounts payable in respect of periods before grant of lease*
- 1A For the purposes of this Part “rent” does not include any chargeable consideration for the grant of a lease that is payable in respect of a period before the grant of the lease.”
- 11 (1) Schedule 17A (further provisions relating to leases) (inserted by the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 ([S.I. 2003/2816](#))) is amended as follows.
- (2) After paragraph 7 insert—
- “First rent review in final quarter of fifth year*
- 7A Where—
- (a) a lease contains provision under which the rent may be adjusted,
(b) under that provision the first (or only) such adjustment—
- (i) is to an amount that (before the adjustment) is uncertain,
and
(ii) has effect from a date (the “review date”) that is expressed as falling five years after a specified date,
and

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- (c) the specified date falls within the three months before the beginning of the term of the lease,

this Schedule has effect as if references to the first five years of the term of the lease were to the period beginning with the start of the term of the lease and ending with the review date.

References to the fifth year of the term of the lease shall be read accordingly.”.

- (3) In paragraph 9 (rent for overlap period in case of grant of further lease), in sub-paragraph (1), at the end of paragraph (b) insert “, or

- (c) a person claiming relief against re-entry or forfeiture as under-lessee in relation to the original sub-lease (“the old lease”) is granted a lease (“the new lease”) in pursuance of an order of a court.”.

- (4) After paragraph 12 insert—

“Agreement for lease

- 12A (1) This paragraph applies where in England and Wales or Northern Ireland—

- (a) an agreement for a lease is entered into, and
 - (b) the agreement is substantially performed without having been completed.

- (2) The agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of substantial performance.

The effective date of the transaction is that date.

- (3) Where a lease is subsequently granted in pursuance of the agreement—

- (a) the notional lease is treated as if it were surrendered at that time, and
 - (b) the lease itself is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.

- (4) Where sub-paragraph (1) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.

- (5) In this paragraph “substantially performed” and “completed” have the same meanings as in section 44 (contract and conveyance).

Assignment of agreement for lease

- 12B (1) This paragraph applies, in place of section 45 (contract and conveyance: effect of transfer of rights), where in England and Wales or Northern Ireland a person assigns his interest as lessee under an agreement for a lease.

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- (2) If the assignment occurs without the agreement having been substantially performed, section 44 (contract and conveyance) has effect as if—
- (a) the contract were with the assignee and not the assignor, and
 - (b) the consideration given by the assignee for entering into the contract included any consideration given by him for the assignment.
- (3) If the assignment occurs after the agreement has been substantially performed—
- (a) the assignment is a separate land transaction, and
 - (b) the effective date of that transaction is the date of the assignment.
- (4) Where there are successive assignments, this paragraph has effect in relation to each of them.”.
- (5) In paragraph 16 (surrender of existing lease in return for new lease), at the end insert—
- “Paragraph 5 (exchanges) of Schedule 4 (chargeable consideration) does not apply in such a case.”.
- (6) In paragraph 19 (provisions relating to leases in Scotland), 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”)—
- (a) the first lease is treated as if it were surrendered at that time, and
 - (b) the second lease is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
- (3) Where in Scotland—
- (a) there are concluded missives of let that do not constitute a lease, and
 - (b) the agreement represented by the missives of let is substantially performed without a lease having been executed,
- the missives of let are treated as if they did constitute a lease (“the notional lease”).
- The effective date of the transaction is when the agreement is substantially performed.
- (4) Where sub-paragraph (3) applies and at some later time a lease is executed—
- (a) the notional lease is treated as if it were surrendered at that time, and
 - (b) the lease itself is treated for the purposes of paragraph 9 as if it were granted in consideration of that surrender.
- (5) References in sub-paragraphs (2) to (4) to the execution of a lease are to the execution of a lease that either—

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- (a) is in conformity with the missives of let, or
 - (b) relates to substantially the same property and period as the missives of let.
- (6) Where sub-paragraph (3) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.”.

Transfer of rights after 10th July 2003 relating to earlier contract: applicability of SDLT regime

- 12 In Schedule 19 (commencement and transitional provisions), in paragraph 3 (contract entered into before first relevant date), for paragraph (c) of sub-paragraph (3) substitute—
- “(c) if on or after that date there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance to him.”.

Commencement

- 13 (1) Paragraph 4, and paragraphs 7 and 8 so far as relating to the section 44A inserted by that paragraph, apply in relation to any contract entered into after 17th March 2004.
- (2) Paragraph 5, and paragraphs 7 and 8 so far as relating to the section 45A inserted by that paragraph, apply in relation to any transfer of rights occurring after that date.
- (3) Subject to sub-paragraphs (4) and (5), the amendments made by the other provisions of this Part of this Schedule apply in relation to any transaction of which the effective date is after 17th March 2004.
- (4) Paragraph 12 does not apply in relation to a contract that was substantially performed before 17th March 2004.
- (5) Paragraphs 6 and 11 (which contain amendments the effect of which is reproduced in Part 2 of this Schedule) do not apply in relation to any transaction of which the effective date is on or after the day on which this Act is passed.
- (6) In this paragraph—
- “effective date” and “substantially performed” have the same meaning as in Part 4 of the Finance Act 2003 (as amended by this Part of this Schedule);
 - “transfer of rights” has the same meaning as in section 45 of that Act or, as the case may require, section 45A of that Act (inserted by paragraph 5(5)).