

SCHEDULE 2

PRE-COMPLETION TRANSACTIONS

PART 2

PRE-COMPLETION TRANSACTIONS WHICH ARE ASSIGNMENTS OF RIGHTS

Pre-completion transactions which are assignments of rights

- 6 A pre-completion transaction is an “assignment of rights” if the entitlement of the transferee referred to in paragraph 3(1)(a) is an entitlement to exercise rights under the original contract.

Assignments of rights: application of rules about completion and consideration

- 7 (1) This paragraph applies if the pre-completion transaction is an assignment of rights.
- (2) If the subject-matter of the original contract is transferred to the transferee, the transfer is taken to be the completion of the original contract (despite section 10 and in particular subsection (10)(a) of that section).
- (3) Sub-paragraphs (4) to (8) apply if—
- (a) the subject-matter of the original contract is transferred to the transferee, or
 - (b) the original contract is substantially performed by the transferee.
- (4) The transferee is taken to be the buyer in the land transaction effected as mentioned in section 10(3), or treated as effected under section 10(4).
- (5) For the purpose of determining the chargeable consideration for that land transaction, the land transaction is taken to give effect to a contract the consideration under which is the consideration paid or provided by the transferee or a person connected with the transferee—
- (a) for the subject-matter of the original contract, and
 - (b) for the assignment of rights.
- (6) Paragraph 1 of Schedule 4 (chargeable consideration: money or money’s worth) has effect accordingly but subject to sub-paragraphs (7) and (8) of this paragraph.
- (7) This paragraph does not allow any amount of consideration given by a person to be counted twice in determining the chargeable consideration.
- (8) In any case where there is a relevant connection between the parties as mentioned in paragraph 15(2) (minimum consideration rule), the chargeable consideration for the land transaction mentioned in sub-paragraph (4) of this paragraph is calculated (regardless of whether the consideration is taken to be the amount in paragraph (a), (b) or (c) of paragraph 15(2)) as if in paragraph 1 of Schedule 4 the words “or a person connected with the buyer” were omitted.
- (9) The original contract is to be taken to be “substantially performed by the transferee” where a land transaction is treated as effected under section 10(4) by reason of—
- (a) the transferee under the assignment of rights, or a person connected with the transferee, taking possession of the whole, or substantially the whole, of the subject-matter of the original contract,

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- (b) a substantial amount of the consideration being paid or provided by the transferee or a person connected with the transferee, or
 - (c) consideration paid or provided by the transferee, or a person connected with the transferee, amounting, when taken together with consideration paid or provided by another person, to a substantial amount of the consideration.
- (10) References in sub-paragraph (9) to possession and to the payment or provision of a substantial amount of the consideration are to be read in accordance with subsections (2) and (3) of section 14 (meaning of substantial performance).
- (11) In sub-paragraph (9), “the consideration”—
- (a) in relation to the land transaction, means (what is taken to be) the consideration for the acquisition of the subject-matter of the land transaction;
 - (b) in relation to the original contract, means the consideration for the transferee’s acquisition of the subject-matter of that contract;
 - (c) in relation to the assignment of rights, means the consideration for the transferee’s acquisition of the rights to which that contract relates.

Assignment of rights: transferor treated as making separate acquisition

- 8 (1) Where paragraph 7(4) to (8) applies (assignment of rights: original contract completed or substantially performed) this Act has effect as if—
- (a) the effective date of the land transaction mentioned in paragraph 7(4) (“the transferee’s land transaction”) were also the effective date of another land transaction (a “notional land transaction”), and
 - (b) the original buyer were the buyer in that notional land transaction.
- (2) The notional land transaction is referred to in this paragraph as being “associated with” the assignment of rights under which the original buyer is the transferor.
- (3) Where sub-paragraph (1) applies and the assignment of rights mentioned in paragraph 7(1) (“the implemented assignment of rights”) was preceded by one or more related assignments of rights, then for the purposes of this Act there is taken to be, for each assignment of rights (other than the first) in the chain formed by the implemented assignment of rights and those preceding assignments of rights, an additional notional land transaction—
- (a) the effective date of which is the effective date of the transferee’s land transaction, and
 - (b) where the buyer is the transferor under that assignment of rights.
- (4) In sub-paragraph (3), “related assignment of rights” means a transaction that is an assignment of rights in relation to the original contract and has some subject-matter in common with the implemented assignment of rights.
- (5) The additional notional land transaction is referred to in this paragraph as being “associated with” the assignment of rights.
- (6) For the purpose of determining the chargeable consideration—
- (a) for the notional land transaction, Schedule 4 has effect as if paragraph 1 of that Schedule provided that the chargeable consideration is (except as otherwise provided) the sum of A and B;

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- (b) for any additional notional land transaction, that Schedule has effect as if paragraph 1 of it provided that the chargeable consideration is (except as otherwise provided) the sum of A, B and C.
- (7) A is the total amount of any consideration in money or money's worth given (whether directly or indirectly) by any of the following as consideration under the original contract—
- (a) the transferee under the assignment of rights with which the notional land transaction or the additional notional land transaction is associated;
 - (b) where the assignment of rights is one in a chain of successive transactions that are pre-completion transactions in relation to the original contract (all having at least part of their subject-matter in common), the transferee under any subsequent pre-completion transaction in that chain;
 - (c) a person connected with a person falling within paragraph (a) or (b).
- (8) B is the total amount of any other consideration in money or money's worth given as consideration under the original contract (directly or indirectly) by—
- (a) the buyer (under the notional land transaction or the additional notional land transaction), or
 - (b) a person connected with the buyer.
- (9) C is the amount of any consideration in money or money's worth given for the preceding assignment of rights by—
- (a) the buyer (under the additional notional land transaction), or
 - (b) a person connected with the buyer.
- (10) In sub-paragraph (9), “the preceding assignment of rights” means the assignment of rights as a result of which the buyer became entitled to call for a transfer of (what became) the subject-matter of the assignment of rights associated with the additional notional land transaction.

Notional land transactions: effect of rescission etc. following substantial performance

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- (1) This paragraph applies where paragraph 8(1) (transferor treated as making separate acquisition) applies by virtue of the substantial performance by the transferee of the original contract.
 - (2) If the original contract is (to any extent) subsequently rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of paragraph 8(1), and any tax paid by virtue of paragraph 8(3), must (to that extent) be repaid by WRA.
 - (3) But repayment of tax is due only if a claim for it is made by amendment, in accordance with section 41 of TCMA, of the return in respect of the notional or additional notional land transaction.

Assignment of rights relating to part only of original contract

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- Where the transferee under the assignment of rights referred to in paragraph 7(1) is entitled to call for the transfer of part, but not the whole, of the subject-matter of the original contract—
- (a) paragraph 7 applies as if the original contract, so far as relating to that part of its subject-matter, were a separate contract, and

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- (b) the references in paragraph 8 to the original contract are to be read accordingly.

Assignment of rights: references to “the seller”

- 11 (1) This paragraph applies where—
- (a) the pre-completion transaction is an assignment of rights, and
 - (b) either the subject-matter of the original contract is transferred to the transferee or the original contract is substantially performed by the transferee.
- (2) This paragraph does not apply if the original contract is itself a free-standing transfer (see Part 3 of this Schedule for the treatment of such cases).
- (3) The general rule is that in relation to a relevant land transaction, references in this Act to the seller are to be read as references to the seller under the original contract (but see sub-paragraphs (4) and (5)).
- (4) In cases where the original contract was substantially performed before the transferee became entitled to call for a transfer of the whole or part of the subject-matter of the original contract, references in this Act to the seller are to be read as references to the person who was the buyer under the original contract when it was substantially performed.
- (5) In relation to a relevant land transaction, references to the seller in any of the following provisions are to be read as including the seller under the original contract and the transferor under any relevant assignment of rights—
- (a) paragraph 8(1)(a) of Schedule 4 (debt as consideration);
 - (b) paragraph 11(2)(c) of that Schedule (carrying out of works);
 - (c) paragraph 14 of that Schedule (indemnity given by buyer);
 - (d) paragraph 1(1) and (2) of Schedule 20 (transfers involving public bodies);
 - (e) paragraph 2(1)(a) of Schedule 21 (compliance with planning obligations: conditions for relief).
- (6) The following are “relevant land transactions”—
- (a) the land transaction given effect by the transfer mentioned in sub-paragraph (1)(b) or treated as having been given effect by the substantial performance mentioned in that sub-paragraph;
 - (b) the notional land transaction mentioned in paragraph 8(1) and any additional notional land transaction under paragraph 8(3).
- (7) In determining under section 8(1) whether or not a relevant land transaction such as is mentioned in sub-paragraph (6)(a) is linked to another transaction, it may be assumed that any of the following is the seller in the relevant land transaction—
- (a) the seller (determined in accordance with sub-paragraph (3)), or
 - (b) the transferor under any relevant assignment of rights.
- (8) The following are “relevant assignments of rights” in relation to a relevant land transaction—
- (a) the assignment of rights mentioned in sub-paragraph (1)(a);
 - (b) any other transaction that is an assignment of rights in relation to the original contract and has some subject-matter in common with the assignment of rights mentioned in paragraph (a).