

SCHEDULE 2

PRE-COMPLETION TRANSACTIONS

PART 3

PRE-COMPLETION TRANSACTIONS WHICH ARE FREE-STANDING TRANSFERS

Pre-completion transactions which are free-standing transfers

- 12 A pre-completion transaction which is not an assignment of rights is referred to in this Schedule as a “free-standing transfer”.

Free-standing transfers: consideration and substantial performance

- 13 (1) This paragraph applies where the pre-completion transaction is a free-standing transfer.
- (2) If the transferee acquires the subject-matter of the free-standing transfer, the consideration for the transaction giving effect to that acquisition is taken to include the consideration given for the free-standing transfer (if that would not otherwise be the case).
- (3) References in sub-paragraph (2) to an acquisition include an acquisition treated as having taken place by virtue of section 10(4) (and the reference to the transaction giving effect to that acquisition is to be read accordingly).
- (4) An action taken by the transferee (or an assignee of the transferee) that would, if taken by the original buyer, constitute (for the purposes of section 14(1)) the taking of possession of the whole or substantially the whole of the subject-matter of the original contract is treated as being the substantial performance of the original contract.
- (5) If a transaction that is a free-standing transfer in relation to a contract is also a free-standing transfer in relation to another contract (in particular, where there have been successive free-standing transfers), each of those contracts is to be regarded as “the original contract” for the purposes of separate applications of sub-paragraph (4).
- (6) In sub-paragraph (4)—
- (a) the reference to the transferee includes a person connected with the transferee, and
 - (b) the reference to an assignee of the transferee—
 - (i) is to a person who, as a result of a transaction that is an assignment of rights in relation to the free-standing transfer, is entitled to call for a transfer of the whole or part of the subject-matter of the free-standing transfer, and
 - (ii) includes a person connected with such a person.

References to “the seller” in cases involving free-standing transfers

- 14 (1) This paragraph applies where—

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- (a) the pre-completion transaction is a free-standing transfer and the transferee acquires the subject-matter of the free-standing transfer as mentioned in paragraph 13(2) (read with paragraph 13(3)), or
 - (b) the pre-completion transaction is an assignment of rights and either—
 - (i) the subject-matter of the original contract is transferred to the transferee, or
 - (ii) the original contract is substantially performed by the transferee, but paragraph 11(1) (references to the seller where transferee is assignee under an assignment of rights) does not apply because the original contract is a free-standing transfer (see paragraph 11(2)).
- (2) The general rule is that in relation to the relevant land transaction, references in this Act to the seller are to be read as references to the seller under the first appropriate transaction (but see sub-paragraph (3)).
- (3) In relation to the relevant land transaction, references to the seller in the specified provisions (see sub-paragraph (4)) are to be read as including—
- (a) the seller in the first appropriate transaction,
 - (b) the transferor under the final transaction, and
 - (c) the transferor under any other pre-completion transaction relating to, and which has some subject-matter in common with, the transactions mentioned in paragraphs (a) and (b).
- (4) The specified provisions are—
- (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).
- (5) In determining under section 8(1) whether or not the relevant land transaction 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 in the first appropriate transaction,
 - (b) the transferor under the final transaction, and
 - (c) the transferor under any other pre-completion transaction relating to, and which has some subject-matter in common with, the transactions mentioned in paragraphs (a) and (b).
- (6) In this paragraph—
- (a) “the relevant land transaction” means—
 - (i) the land transaction mentioned in sub-paragraph (1)(a), or
 - (ii) in a case falling within sub-paragraph (1)(b), the land transaction given effect by the transfer to the transferee of the subject-matter of the original contract or the substantial performance by the transferee of the original contract;
 - (b) “the final transaction” means—
 - (i) in a case falling within sub-paragraph (1)(a), the transaction giving effect to the acquisition by the transferee of the subject-matter of the free standing transfer;

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- (ii) in a case falling within sub-paragraph (1)(b), the transaction giving effect to the acquisition by the transferee of the subject-matter of the assignment of rights (whether by the transfer of the subject-matter of the original contract to the transferee, the substantial performance of the original contract by the transferee or otherwise);
 - (c) “the first appropriate transaction” means the original contract, unless sub-paragraph (7) applies.
- (7) In applying this paragraph to a case where the original contract is not performed at the same time as, and in connection with the performance of the final transaction, “the first appropriate transaction” means a transaction that is a pre-completion transaction in relation to the original contract and meets the following conditions.
- (8) The conditions are that the pre-completion transaction—
 - (a) is performed at the time when the final transaction is performed and (if it is not itself that final transaction) is performed in connection with the performance of the final transaction,
 - (b) is a transaction on which the entitlement of the transferee to call for the transfer of the subject-matter of the final transaction depends, and
 - (c) is not preceded by another pre-completion transaction meeting the conditions in paragraphs (a) and (b).
- (9) For the purposes of sub-paragraphs (7) and (8)—
 - (a) a contract for a land transaction is taken to be “performed” when it is substantially performed or completed (whichever is earlier);
 - (b) a free-standing transfer other than a contract is taken to be “performed” when the transferee under that free-standing transfer (or an assignee of that transferee, as defined in paragraph 13(6)(b)) acquires the subject-matter of that free-standing transfer.
- (10) Where the final transaction is a pre-completion transaction in relation to each of two or more contracts such as are mentioned in paragraph 2(1)(a) that together form a series of such contracts (each having some subject-matter in common with all the others), references in this paragraph to the “original contract” are to be read as references to the first contract in that series.